

STEPHEN GREIST

IBLA 80-806

Decided December 17, 1980

Appeal from decision of Alaska State Office, Bureau of Land Management, declaring six placer mining claims abandoned and void (F-60620-60678).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Recordation of
Mining Claims and Abandonment -- Mining Claims: Recordation

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

2. Administrative Authority: Estoppel

Reliance upon erroneous advice or incomplete information provided by Departmental employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute for his failure to comply with its requirements.

APPEARANCES: Joel A. Rothberg, Esq., of Katzebue, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Stephen Greist appeals from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated June 24, 1980, which declared his six placer mining claims abandoned and void. ^{1/}

BLM stated that it was without authority to accept his mining claim recordation filing because they were not filed with that office by October 22, 1979, as required under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a).

Appellant contends that the decision to reject the filing of his location notices should be reversed under the principle of equitable adjudication. He states there are sufficient extenuating circumstances to excuse the late filing. According to appellant, when he first went to the BLM office for information about how to file location notices, BLM personnel explained the procedures without the aid of an interpreter, and he did not understand what he was told. He admits that he was advised to get help from his son who could explain the deadlines and that he was given a copy of the regulation. However, he contends these sources of information were either incomprehensible to him or noninformative, and he was unaware that he was not getting all the information he needed. According to his affidavit, appellant is a 62-year old Alaskan native with no formal education and very little ability to communicate in English or to understand the language.

[1] Section 314(b), FLPMA, 43 U.S.C. § 1744 (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

^{1/} The location dates of the claims and their numbers are as follows:

<u>Claim Name</u>	<u>Located and Posting Date</u>	<u>Serial Number</u>
Hill Big Claim	7/6/53	F-60620
Big Claim	7/21/53	F-60621
Big Claim at Shovel Creek Discovery	2/8/54	F-60622
on Shovel Creek	1/26/54	F-60623
Hill Top Claim	1/26/54	F-60624
Hill Big Claim at Shovel Creek	2/8/54	F-60625

The pertinent regulation, 43 CFR 3833.1-2(a) reads as follows:

[§] 3833.1-2 Manner of recordation -- Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, * * * shall file (file shall mean being received and date stamped by the proper BLM Office on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location [of the claim or site, a certificate of location 2/] containing the information in paragraph (c) of this section shall be filed.

The above quoted regulation notes that "file" shall mean being received and date stamped by the proper BLM office. Therefore, the documents had to be received and date stamped by the Fairbanks District Office by October 22, 1979, in order to be filed timely. Norman E. Brooks, 48 IBLA 16 (1980); Ray F. Coffee, 47 IBLA 217 (1980); John Sloan, 47 IBLA 146 (1980); C. F. Linn, 45 IBLA 156 (1980). The documents were not date stamped by the Fairbanks District Office until October 26, 1979. Failure to comply must result in a conclusive finding that the claims have been abandoned and are void. 43 U.S.C. § 1744(c) and 43 CFR 3833.4.

It is unfortunate that the appellant's problems with communication and his failure to understand English may have prevented his timely filings in this case. However, the statutory and regulatory mining recordation requirements are mandatory, and failure to comply with them must result in a finding that the claim is void. G. R. Marquardson, 49 IBLA 114 (1980); Robert Alameda, 48 IBLA 178 (1980); John Walter Chaney, 46 IBLA 229 (1980); Walter T. Paul, 43 IBLA 119 (1979). There is no latitude for this Board to apply the principles of equitable adjudication in this type of case. The statute, FLPMA, does not give the Board authority to waive the application of, or the effect of, a claimant's failure to meet the requirements of its implementing regulations. Lost Pollack Mining & Exploration, Ltd., 50 IBLA 227 (1980).

[2] Appellant contends he should be given equitable consideration because he was not given complete information by the BLM. This

2/ The bracketed language was inadvertently omitted from 43 CFR 3833.1-2(a) (1979) upon printing. The correctly promulgated regulation appeared at 44 FR 20430 (Apr. 5, 1979).

Board has repeatedly held that reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements. Elden A. Leroy, 49 IBLA 320 (1980); Clair R. Caldwell, 42 IBLA 139 (1979); Paul S. Coupey, 35 IBLA 112 (1978). In Fred S. Ghelarducci, 41 IBLA 277 (1979), the Board similarly held that reliance on incomplete information supplied by BLM employees cannot estop the United States or excuse compliance with a regulation.

If the land is open to mining location, appellant may relocate the claims for locatable minerals, subject to intervening rights of the third parties, and the filing of all required notices of such relocation as required by the Act, supra, and 43 CFR 3833.1.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

