

MELART, INC.

IBLA 81-23

Decided January 5, 1981

Appeal from a decision of the Alaska State Office, Bureau of Land Management, deeming certain lode mining claims abandoned and declaring void the recordation of such claims pursuant to the Federal Land Policy and Management Act of 1976. F 64436-64480.

Affirmed.

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

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the mining claim void.

2. Notice: Generally--Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Louisa B. Hisamoto, Secretary, Melart, Inc.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Melart, Inc., appeals the Alaska State Office, Bureau of Land Management (BLM), decision of August 18, 1980, which deemed certain mining claims 1/ abandoned and declared void the recordation of the claims pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

The mining claims had been located during the period May 9 through May 12, 1978. Copies of the location notices had been submitted to BLM October 22, 1979, more than 90 days after the date of location.

[1] Section 314 of FLPMA requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of the location. It also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner and renders the claim void.

The pertinent regulations provide in part:

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

* * * * *

(b) The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office) within 90 days after the date of location of that claim 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 or, if the state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section.

* * * * *

§ 3833.4 Failure to file.

(a) The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill site or tunnel site and it shall be void.

1/ See appendix.

In its statement of reasons appellant explains that it is a neophyte in the field of mining law and alleges that assessment work has been done annually on the claims since they were located.

[2] All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Edwin Forsberg, 47 IBLA 235 (1980). The regulations relating to the recordation of unpatented mining claims with BLM were originally promulgated January 27, 1977, at 42 FR 5300.

Under FLPMA and the regulations, the requirements for filing are clear. The Board has repeatedly held that when a notice of a mining claim is not filed with BLM within 90 days from the date of location, it has no force and effect. George Toole, 47 IBLA 89 (1980); M. J. Reeves, 41 IBLA 92 (1979); William E. Rhodes, 38 IBLA 127 (1978); R. Wade Holder, 35 IBLA 169 (1978). The claim must be deemed conclusively to have been abandoned under the terms of the statute and is rendered void. Phillip M. Gardiner, 41 IBLA 391 (1979).

It was error for BLM to accept, on October 22, 1979, the copies of the location notices of claims located in May 1978. The documents should have been returned to the claimant at that time. Similarly, it was error for BLM to retain the filing fees submitted for recordation of the location notices. Those fees should be repaid to Melart.

This decision is not prejudicial to the rights of Melart to relocate the mining claims, assuming the land is open to operation of the mining laws and the rights of third parties have not attached to the land. Notices of such relocations must be filed with BLM within 90 days after the date of location.

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.

Douglas E. Henriques

Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Bernard V. Parrette
Chief Administrative Judge

| <u>Serial No.</u> | <u>Claim Name</u> | <u>APPENDIX Posting Date</u> |
|-------------------|-------------------|----------------------------------|
| F-64436 | M-K | May 11, 1978 |
| F-64437 | M-L | May 11, 1978 |
| F-64438 | M-M | May 11, 1978 |
| F-64439 | M-N | May 11, 1978 |
| F-64440 | M-O | May 11, 1978 |
| F-64441 | M-P | May 12, 1978 |
| F-64442 | M-Q | May 12, 1978 |
| F-64443 | M-R | May 12, 1978 |
| F-64444 | M-S | May 12, 1978 |
| F-64445 | M-T | May 12, 1978 |
| F-64446 | M-U | May 12, 1978 |
| F-64447 | M-V | May 12, 1978 |
| F-64448 | M-2 | May 9, 1978 |
| F-64449 | M-3 | May 9, 1978 |
| F-64450 | M-4 | May 9, 1978 |
| F-64451 | M-5 | May 9, 1978 |
| F-64452 | M-6 | May 9, 1978 |
| F-64453 | M-7 | May 9, 1978 |
| F-64454 | M-8 | May 10, 1978 |
| F-64455 | M-9 | May 10, 1978 |
| F-64456 | M-10 | May 10, 1978 |
| F-64457 | M-11 | May 10, 1978 |
| F-64458 | M-12 | May 10, 1978 |
| F-64459 | M-17 | May 11, 1978 |
| F-64465 | M-35 | May 12, 1978 |
| F-64466 | M-36 | May 12, 1978 |
| F-64467 | M-41 | May 12, 1978 |
| F-64468 | M-42 | May 12, 1978 |
| F-64469 | M-47 | May 12, 1978 |
| F-64470 | M-48 | May 12, 1978 |
| F-64471 | M-A | May 10, 1978 |
| F-64472 | M-B | May 10, 1978 |
| F-64473 | M-C | May 10, 1978 |
| F-64474 | M-D | May 10, 1978 |
| F-64475 | M-E | May 10, 1978 |
| F-64476 | M-F | May 10, 1978 |
| F-64477 | M-G | May 11, 1978 |
| F-64478 | M-H | May 11, 1978 |
| F-64479 | M-I | May 11, 1978 |
| F-64480 | M-J | May 11, 1978 |

