

BEN MARTENSEN  
ANNE MARTENSEN  
WILL HALSTEAD

IBLA 80-896

Decided February 6, 1981

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring the Annie Mine lode mining claim abandoned and void. AA 39922.

Affirmed.

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

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. Therefore, where a notice of location of a claim or site is submitted for recordation on May 14, 1980, after having been located on May 3, 1980, and the filing fee is not paid to BLM until August 11, 1980, the recordation date of the notice is August 11, 1980, and thus more than 90 days after the date of location.

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

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim.

APPEARANCES: Ben Martensen, Anne Martensen, and Will Halstead, pro sese.  
OPINION BY ADMINISTRATIVE JUDGE STUEBING

Appellants appeal from the letter decision of the Alaska State Office, Bureau of Land Management (BLM), dated July 25, 1980, declaring the Annie Mine lode mining claim abandoned and void. Appellants located their claim on May 3, 1980, and filed for recordation with BLM on May 14, 1980, under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

The BLM decision stated that the appellants' attempt to file a location notice was rejected because it was not accompanied by a \$5 service fee for recordation, as required by 43 CFR 3833.1-2(d).

In a letter received by BLM on August 11, 1980, which we have accepted as appellants' notice of appeal, it is asserted that a check in the amount of \$5 had been sent with the original filing. Appellants also state that they were sending the fee again.

[1, 2] 43 CFR 3833.1-2(b) requires that the owners of mining claims located after October 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the date of location of the claims, failing which the claims are properly declared abandoned and void. 43 CFR 3833.1-2(d) states that each claim or site filed with BLM shall be accompanied by a \$5 service fee. This is a mandatory requirement. Without payment of the filing fee, there is no recordation. Topaz Beryllium Co. v. United States 479 F. Supp. 309 (D. Utah 1979) 1/; Phyllis Wood, 46 IBLA 309 (1980); Joe B. Cashman, 43 IBLA 239 (1979). Thus, as the filing fee for the notice of appellants' claim was not paid until August 11, 1980, it must be held that the date of recordation of the claim with BLM cannot be considered to have occurred earlier than that date. Joe B. Cashman, supra. As this date is more than 90 days after the date of location, appellants have not complied with the time requirements specified by the statute and regulations. Under 43 CFR 3833.4(a), the failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the prescribed time, must be deemed conclusively to constitute an abandonment of the mining claim. With regard to appellants' assertion that the filing fee had been paid on May 14, 1980, there is nothing in the record to show that BLM received the money. Therefore, without further evidence,

we must assume that the August 11, 1980, money order was the first recording fee tendered for the Annie Mine mine claim.

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.

Edward W. Stuebing

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Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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James L. Burski  
Administrative Judge

