

ROBERT G. SUNDER  
JEANNE E. R. SUNDER

IBLA 80-676

Decided February 19, 1981

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring placer claim abandoned and void. AA-31666.

Affirmed.

1. Notice: Generally--Regulations: Generally

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

2. 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.

3. 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 before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

APPEARANCES: Robert E. Sunder, Jeanne E. R. Sunder, pro sese.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Robert E. Sunder and Jeanne E. R. Sunder appeal from the decision of May 6, 1980, wherein the Alaska State Office, Bureau of Land Management (BLM), declared the R & J Mines placer claim, AA-31666, abandoned and void because the claimants did not file the location notice for recordation within 90 days after the date of location, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulations set forth at 43 CFR 3833.1-2(a) and (b). On October 10, 1979, claimants had filed a mining claim location notice for the R & J Mines placer claim with BLM. The notice states the claim was located on July 23, 1977.

In their statement of reasons appellants contend:

1. Claim is not a newly located claim-original claim filed in 1971 by Dean Wilson of Kenny Lake, Alaska and recorded in the Chitina Recording District, Glennallen Office
2. Claim top filed July 31, 1976 by Nick Jennings of Copper Center, Alaska and recorded in the Chitina Recording District, Glennallen, Office.
3. Claim subsequently sold and top rights relinquished to Robert E. Sunder of Copper Center, Alaska on July 22, 1977.
4. Since rights were transferred to Robert E. Sunder, all required paper work and all assessment labor has been completed and properly recorded.

[1] All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Edwin Forsberg, 47 IBLA 235 (1980); 44 U.S.C. §§ 1507, 1510 (1976).

[2] Under section 314 of FLPMA, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located after October 21, 1976, must file a copy of the official record of the notice of location of the claim with the proper BLM 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 (section 314 of FLPMA, supra; 43 CFR 3833.4). 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). To the extent the date of location was July 23, 1977, the claim must be deemed conclusively to have been abandoned under the terms of the statute and is rendered void. Melart, Inc., 52 IBLA 5 (1980); Phillip M. Gardiner, 41 IBLA 391 (1979).

[3] Appellants appear to argue on appeal that the date of location was July 31, 1976. On July 23, 1980, appellants, along with their statement of reasons of appeal, filed a copy of a notice of location of a claim located by Nick Jennings on July 31, 1976. A copy of appellants' location for this claim, as noted above, was filed on July 25, 1977. If the effective date of location was July 31, 1976, a copy of the notice of location for that date, along with documents showing an amendment in the claim from the name of Nick Jennings to the names of appellants, was required to be filed on or before October 22, 1979. This was not done. The owner of an unpatented mining claim located prior to October 21, 1976, had until October 22, 1979, to record the location with BLM and to provide certain ancillary information. Section 314, FLPMA, 43 U.S.C. § 1744 (1976). The pertinent regulations are 43 CFR 3833.1-2 and 3833.2-1. Recordation is effected only by filing in the proper BLM office a copy of the official record of the notice or certificate of location filed under state law, 43 CFR 3833.1-2(a), and by paying the appropriate service charge of \$5 per claim, 43 CFR 3833.1-2(d). Failure to comply with the regulations governing recordation of information relating to unpatented mining claims must result in a conclusive finding that the claim has been abandoned and that it is void. Edward W. Kramer, 51 IBLA 294 (1980); Edwin Forsberg, supra; Joe B. Cashman, 43 IBLA 239 (1979); Walter T. Paul, 43 IBLA 119 (1979); section 314(c), FLPMA, 43 U.S.C. § 1744(c) (1976). Accordingly, even if the effective date of location were July 31, 1976, appellants did not timely file the required documents.

This Board has no authority to waive the statutory and regulatory requirements. Appellant may, however, relocate his claims and file the notices required by 43 CFR 3833.1, subject to any intervening rights of third parties, and assuming the land is still open to mineral location.

Accordingly, 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

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Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

