

WILLIAM H. TOMPOROWSKI

IBLA 80-635

Decided February 26, 1981

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void.

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 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: William H. Tomporowski, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

William H. Tomporowski has appealed from the April 15, 1980, decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting his filing of copies of notices or certificates of location for the Blue Snake Nos. 1-4 mining claims because those documents were not filed on or before October 22, 1979, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations 43 CFR 3833.1-2(a) and 3833.4. The claims were located prior to October 21, 1976. Copies of the certificates of location were not filed until March 3, 1980.

Appellant asserts that the notices of location for these claims were brought to BLM in October 1979 by a colleague, along with copies of the certificates of location for the Blue Spider, Blue Snake (unnumbered),

and Rut 1 through 10 claims, N MC 119174-119185. Although some of the claims were recorded, the Blue Snake Nos. 1-4 were not. Appellant states that his colleague was not familiar with the claims, and therefore did not catch the error. Appellant did not recognize the error until after the October deadline. Appellant asserts that this error was as much BLM's fault as that of his colleague because the colleague provided BLM with the proper documentation of these claims. Nothing in the case file, however, shows that documents for the Blue Snake Nos. 1 through 4 claims were given to BLM prior to October 22, 1979. In these circumstances, we must accept the factual finding of BLM that the required documents were not timely filed.

Appellant asserts that the claims cannot be relocated because they have been overlapped by a barite company, although the record on appeal contains copies of certificates of location for the claims indicating he relocated them on May 16, 1980.

[1] 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. Edwin Forsberg, 47 IBLA 235 (1980); 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). This Board has no authority to waive the statutory and regulatory requirements.

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

Bruce R. Harris
Administrative Judge

