

EDWARD J. SZYNKOWSKI, JR.

IBLA 81-242

Decided March 25, 1981

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CA MC 65195 through 65204.

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

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a \$5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

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 secs. 3833.1 and 3833.2 within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it properly is declared abandoned and void.

APPEARANCES: Edward J. Szykowski, Jr., pro se.

## OPINION BY ADMINISTRATIVE JUDGE STUEBING

Edward J. Szykowski, Jr., hereinafter appellant, appeals from a decision dated December 9, 1980, of the California State Office, Bureau of Land Management (BLM), declaring 10 lode and placer mining claims 1/ abandoned and void for failure to timely file a notice of location as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulation at 43 CFR 3833.1-2. BLM further determined that pursuant to 43 CFR 3833.4(a) appellant's failure to file properly within the period prescribed in 43 CFR 3833.1 and 3833.2 was deemed conclusive abandonment of the mining claims and rendered them void.

The facts are as follows: On March 27, 1980, appellant submitted location notices for placer claims (see n.1) for recordation under section 314 of FLPMA, supra. The check in the amount of \$50 was returned by the bank as uncollectible.

On April 15, 1980, appellant was informed of the deficiency and was asked to replace the check promptly by a cashier's or certified check, bank draft, or money order. Appellant did not respond, the fee was never paid, and by decision dated December 9, 1980, his location notices received for recordation were rejected.

On appeal appellant argues that he can find nothing in the statute (90 Stat. 2743) which "authorizes the Secretary of the Interior or his employees to render a decision of null and void upon a claim for failure to make payment of a check good." Appellant further contends that the registration of the claims and the issuance of mining claim numbers satisfies the requirements of Congress and P.L. 94-579 (90 Stat. 2743). Finally, appellant asserts that: "Although my check in payment of fees was not paid by the bank, the Government has access to the normal laws and avenues of commerce in which to pursue the matter; i.e. (obtaining payment)."

[1] The applicable regulation, 43 CFR 3833.1-2(d), specifically provides: "Each claim or site filed shall be accompanied by a \$5 service fee which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner." This is a mandatory requirement.

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1/ The names and serial numbers of appellant's claims are as follows:

CAMC 65195 JEM TRAC #73  
 CAMC 65196 JEM TRAC LODE #2  
 CAMC 65197 JEM TRAC #1  
 CAMC 65198 JEM TRAC 16  
 CAMC 65199 JEM TRAC 20  
 CAMC 65200 JEM TRAC 19 A  
 CAMC 65201 JEM TRAC 20 A  
 CAMC 65202 JEM TRAC 21 A  
 CAMC 65203 JEM TRAC LODE #3  
 CAMC 65204 POISON OAK #1

without payment of the filing fee, there is no recordation. Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979) 2/ ; Phyllis Wood, 46 IBLA 309 (1980); Joe B. Cashman, 43 IBLA 239 (1979).

[2] 43 CFR 3833.4(a) states: "The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 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." As a result of appellant's failure to submit these documents, with appropriate filing fees, in a timely fashion, BLM properly declared his mining claims abandoned and void pursuant to the regulation cited above. Phyllis Wood, *supra*; Ernest K. Lehman and Associates, 43 IBLA 1 (1979); Juan Munoz, 39 IBLA 72 (1979); Paul S. Coupey, 35 IBLA 112 (1979).

Appellant's argument that no penalty or sanction exists for failure to include the \$5 service fee is without merit. Any doubt which might have existed before the amendment of 43 CFR 3833.1-2 was eliminated when 44 FR 9720 (Feb. 14, 1979) amended the section to include another sentence which states: "A notice or certificate of location shall not be accepted if it is not accompanied by the service fee and shall be returned to the owner." Although appellant attributes this result to the "tortured" reasoning of "some bureaucrat," he apparently has not considered that it is virtually impossible to have any instrument recorded anywhere without paying the prescribed fee. To contend that the United States has an obligation to record his claims and then attempt to recover the fee by standard collection methods is to assert that the cost in time and effort -- and the risk of loss -- should be borne by the taxpaying public for his personal benefit and convenience.

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.

Edward W. Stuebing  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

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2/ Appeal pending.

