

ALBERTA K. ROMERIO

IBLA 81-132

Decided June 4, 1981

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring various lode mining claims abandoned and void. M MC 38319 through M MC 38341.

Affirmed.

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

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Notice: Generally -- Regulations: Generally -- Statutes
All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Alberta K. Romerio, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Alberta K. Romerio appeals from a September 29, 1980, decision of the Montana State Office, Bureau of Land Management (BLM), declaring appellant's mining claims abandoned and void under section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976).

All of the claims involved herein were located between 1949 and 1963. ^{1/} On October 9, 1979, mining claims were filed with the Bureau of Land Management (BLM), for recordation as required by section 314(a) of FLPMA and 43 CFR 3833.2-1(a). No proof of labor or notice of intention to hold the mining claims was filed on or before October 22, 1979.

[1] Section 314(a), 43 U.S.C. § 1744(a) (1976), provides:

(a) The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection.

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, or a detailed report provided by section 28-1 of Title 30, relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this

<u>1/</u>	<u>Claim Name</u>	<u>Serial No.</u>	<u>Location Date</u>
	Nellie K.	M MC 38319	7-03-50
	Fatima	M MC 38320	6-01-52
	St. Anthony	M MC 38321	6-01-52
	Victoria	M MC 38322	6-10-49
	Norma Jean	M MC 38323	9-09-52
	The Miners	M MC 38324	7-12-63
	Miner #1	M MC 38325	7-12-63
	Miner #2	M MC 38326	7-12-63
	Miner #3	M MC 38327	7-12-63
	Miner #4	M MC 38328	7-12-63
	Miner #5	M MC 38329	7-12-63
	Miner #6	M MC 38330	7-12-63
	Miner #7	M MC 38331	7-12-63
	Miner #8	M MC 38332	7-12-63
	Miner #9	M MC 38333	7-12-63
	Miner #10	M MC 38334	7-12-63
	Miner #11	M MC 38335	7-12-63
	Miner #12	M MC 38336	7-12-63
	Miner #13	M MC 38337	7-12-63
	Miner #14	M MC 38338	7-12-63
	Miner #15	M MC 38339	7-12-63
	Miner #16	M MC 38340	7-12-63
	St. Anthony Extension	M MC 38341	7-12-63

subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

Where, as here, appellant chose to record her location notices with BLM on October 9, 1979, the statute required the filing of affidavits of assessment or notice of intention to hold on or before October 22, 1979. ^{2/} Since BLM did not receive the affidavits of assessment within the requisite time period, appellant's mining claims were deemed to be abandoned and void in accordance with the controlling statute and regulations. Santa Monica Hospital Center Foundation, 51 IBLA 194 (1980); Pearl Kelly, 51 IBLA 185 (1980); Michael Jon McFarland, 51 IBLA 173 (1980).

Appellant does not deny that she failed to submit the documents in a timely fashion. She merely states that it did not occur to her that BLM would consider that the assessment work had not been performed. Unfortunately, regardless whether the assessment work was done on the claims, failure to file timely such proof with BLM mandates a finding that the claims are abandoned and void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] All persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations. Santa Monica Hospital Center Foundation, supra; Michael John McFarland, supra; Tod Anderson, 50 IBLA 66 (1980). Thus, the fact that appellant may have been unaware of the recordation requirements cannot change the result herein.

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.

James L. Burski
Administrative Judge

We concur:

Bruce R. Harris
Acting Administrative Judge

Edward W. Stuebing
Administrative Judge

^{2/} Appellant filed affidavits of annual assessment work with BLM for 1979 and 1980 on October 24, 1980.

