

LELA J. FILLMORE

IBLA 81-833

Decided August 3, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring an unpatented mining claim abandoned and void. CA MC 56243.

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. Mining Claims: Assessment Work

The filing of evidence of annual assessment work in the county recording office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

3. Notice: Generally--Regulations: Generally--Statutes

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

APPEARANCES: Lela J. Fillmore, pro se.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Lela J. Fillmore appeals from a decision dated June 8, 1981, wherein the California State Office, Bureau of Land Management (BLM), declared the unpatented Apache #2 lode mining claim, CA MC 56243, abandoned and void because of appellant's failure to file timely, on or before December 30, 1980, evidence of assessment work performed or a notice of intent to hold the mining claim as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1(a). The claim was located in 1929.

[1] The statute provides that the owner of an unpatented mining claim located prior to the date of the Act, October 21, 1976, shall, within the 3-year period following that date, and prior to December 31 of each year thereafter, file proof of assessment work or a notice of intention to hold the unpatented claim, and the owner of an unpatented mining claim located after the date of the Act shall file similar proof of assessment work or a notice of intent to hold the claim prior to December 31 of each year following the calendar year in which the claim was located. The regulations, 43 CFR 3833.1-2 and 3833.2-1, merely replicate the statute. Copies of the notices of location and of proof of labor were filed for record with BLM on October 19, 1979, for all the claims.

Appellant contends that the required assessment work has been performed each year since the claim was located and evidence of the work has been placed on record annually in the records of Tuolumne County, California.

Under the facts of this case, appellant owned a claim located before October 21, 1976, which had been timely recorded in 1979. On October 22, 1979, appellant also filed annual assessment work proof. Thus, under the law, evidence of appellant's assessment work was next due to be filed with BLM on or before December 30, 1980. This was not done. The Board has repeatedly held that where these required documents are not timely filed, the mining claim is properly declared abandoned and void.

[2] Accomplishment of a proper recording in the appropriate county does not relieve the claimant from recording with BLM under the filing requirements of FLPMA or the implementing regulations. While under 43 CFR 3833.4(b) a defective or untimely recording under State law does not, of itself, constitute a failure to file under FLPMA, neither does a valid or timely filing with a county constitute a FLPMA filing. There are two separate filing requirements and compliance with one does not constitute compliance with the other.

[3] All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978). The responsibility for complying with the recordation requirements of FLPMA rested with appellant. This Board has no authority to excuse lack of compliance. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

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.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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James L. Burski  
Administrative Judge

