

Appeal from decision of Montana State Office, Bureau of Land Management, declaring unpatented mining claims and millsites abandoned and void. M MC 50467 through M MC 50493.

Affirmed in part; vacated in part and remanded.

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.

3. Mining Claims: Assessment Work

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

4. Federal Land Policy and Management Act of 1976: Assessment Work
-- Mining Claims: Millsites

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976), to file an annual notice of intention to hold the millsite, is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

APPEARANCES: Dave R. Newman, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Dave R. Newman appeals the Montana State Office, Bureau of Land Management (BLM), decision of April 20, 1981, which declared 19 unpatented mining claims and eight millsite claims, 1/ M MC 50467 through M MC 50493, abandoned and void because evidence of annual assessment work for the year ending September 1, 1980, had not been filed with BLM on or before December 30, 1980, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and regulation 43 CFR 3833.2-1. The claims were located before 1969.

Appellant asserts the document showing proof of labor was mailed from Elliston, Montana, on December 30, 1980. This is substantiated by the postmark on the envelope. The envelope, however, was not received by BLM until January 5, 1981.

Additionally, appellant recites briefly the work which has been done on the group of unpatented claims during the past 30 years.

[1] The owner of an unpatented mining claim located on public land before October 21, 1976, must file with the proper BLM office by

<u>1/ Claim Name</u>	<u>Serial No.</u>	<u>Claim Name</u>	<u>Serial No.</u>
Anna R.	M MC 50467	Invasion	M MC 50481
Anna R. Mill Site	M MC 50468	Landmark 4056 #1	M MC 50482
Big Boy	M MC 50469	Landmark 4056 #2	M MC 50483
Big Boy Extention	M MC 50470	Martin Mill Site	M MC 50484
Copper King Mill Site	M MC 50471	Moonlight	M MC 50485
Copper Queen Mill Site	M MC 50472	Ontario	M MC 50486
D-Day	M MC 50473	Opportunity	M MC 50487
Exhibition Mill Site	M MC 50474	Pearl Mill Site	M MC 50488
Fort Knox	M MC 50475	Pine Tree Mill Site	M MC 50489
Freedom	M MC 50476	Total Wreck	M MC 50490
Hattie M.	M MC 50477	Victory	M MC 50491
Hattie M. Mill Site	M MC 50478	West Champion	M MC 50492
Hi-Ore	M MC 50479	West Ontario	M MC 50493
Hi-Way	M MC 50480		

October 22, 1979, and on or before December 30 of each calendar year thereafter, a notice of intent to hold or proof of the assessment work performed on the claim during the preceding assessment year. 43 U.S.C. § 1744(a) (1976). Filing is accomplished when a document is delivered to and received by the proper BLM office. 43 CFR 1821.2-2(f).

[2] Failure to comply with the statutory requirements governing the recordation of information relative to unpatented mining claims must result in a conclusive finding that the claim has been abandoned. Edward P. Murphy, 48 IBLA 211 (1980); G. G. Monk, 47 IBLA 213 (1980); 43 CFR 3833.4. The responsibility for complying with the recordation requirements rested with appellant. This Board has no authority to excuse lack of compliance. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); A. J. Grady, 48 IBLA 218 (1980); Glen J. McCrorey, 46 IBLA 355 (1980). Those who deal with the Government are presumed to have knowledge of the law and the regulations duly adopted pursuant thereto. 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).

[3] Accomplishment of a proper state or county recording does not relieve appellant from filing with BLM under the requirements of FLPMA or the implementing regulations. What 43 CFR 3833.4(b) says is that a defective or untimely state or county filing does not, of itself, constitute a failure to file under FLPMA. Neither does a valid or timely filing with a state or county constitute a FLPMA filing. These are two separate filing requirements and compliance with one does not constitute compliance with the other.

As stated in Feldslite Corporation of America, 56 IBLA 78, 88 I.D. 643 (1981), section 314 of FLPMA, 43 U.S.C. § 1744 (1976), must be read as only requiring the filing of notices of location for millsite claims. It is clear, however, that the Department's implementing regulations do require the filing of notice of intent to hold, see 43 CFR 3833.2-1(d); and it is beyond dispute that no such filing was made timely for the subject millsites in 1980. The question for resolution concerns the effect of such a failure to file where the necessity for filing is established by the regulations only and not by the statute.

In Feldslite, supra, it was stated that this Board has, in the past, noted that there is a difference between the consequences which flow from failure to comply with a statutory requirement versus one that is purely regulatory. We have recognized that a failure to comply with express statutory requirements, both punctually and punctiliously, cannot be waived by the Department. Lynn Keith, supra. But where the failure to comply is with requirements imposed only by regulation, the deficiency is subject to curative action. See Robert W. Hansen, 46 IBLA 93 (1980).

As pointed out in Feldslite, supra, this approach has received judicial approbation by the Tenth Circuit Court of Appeals in Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981). Therein the court reviewed the various recordation provisions of FLPMA and the implementing regulations, and noted:

We conclude that the Secretary has not ignored § 1744(c) which assumes that even defective filings put the Secretary on notice of a claim, and we hold that once on notice, the Secretary cannot deem a claim abandoned merely because the supplemental filings required only by § 3833 -- and not by the statute -- are not made. This is also the Secretary's view: failure to file the supplemental information is treated by the Secretary as a curable defect. A claimant who fails to file the supplemental information is notified and given thirty days in which to cure the defect. If the defect is not cured, "the filing will be rejected by an appealable decision." [Emphasis in original; footnote omitted.]

[4] In our opinion, the logic of the court has applicability to the instant situation. Appellant satisfied the statutory requirements for the initial recordation of the unpatented millsite claims by filing notices of location prior to October 22, 1979. Accordingly, we hold that upon failure of a millsite claimant to file an annual notice of intent to hold, BLM should notify the claimant of this deficiency and afford the claimant a period of time within which to comply with the regulatory requirement. Should compliance not then occur, a millsite may properly be declared abandoned and void.

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 in part as to the mining claims, vacated in part as to the millsites and remanded for further action not inconsistent herewith.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

