

ROBERT P. WILSON

IBLA 81-782

Decided August 10, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 54381 through CA MC 54433.

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. 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.

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

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

APPEARANCES: Howard Wilson, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Robert P. Wilson appeals from a decision dated June 8, 1981, wherein the California State Office, Bureau of Land Management (BLM), declared unpatented mining claims and tunnel sites, 1/ CA MC 54381 through CA MC 54433, abandoned and void because of appellant's failure to file on or before December 30, 1980, timely evidence of assessment work performed or a notice of intent to hold the mining claims, as required by section 314 of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1(a). The claims were located between 1924 and 1979.

[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 that 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 the proofs 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 since the claims were first located, and that evidence of such work has been placed of record annually in the records of Plumas County, California.

1/ See Appendix.

Under the facts of this case, appellant owned claims for each of which a copy of the notice of location, as well as the initial proof of labor, had been timely recorded with BLM in 1979. Under FLPMA and its implementing regulations, evidence of appellant's assessment work was due to be filed next with BLM on or before December 30, 1980. 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).

[4] Five of appellant's claims are tunnel sites (CA MC 54429 through CA MC 54433). In Feldslite Corporation of America, 56 IBLA 78, 88 I.D. 643 (1981), this Board noted that section 314 of FLPMA, supra, only required the filing of notices of location for millsite and tunnel site claims, but the Department's implementing regulations required the annual filing of notices of intention to hold as well. See 43 CFR 3833.2-1(d). The Board then examined the question of the effect of a failure to comply with this purely regulatory filing requirement as to a millsite and held that the failure to file the notice of intention to hold required by 43 CFR 3833.2-1(d) is a curable defect and that the millsite may not be deemed abandoned unless the claimant is given notice of this deficiency and afforded a period of time in which to comply.

As noted, regulation 43 CFR 3833.2-1(d) imposes the same requirement of annually filing a notice of intention to hold for a tunnel site as for a millsite. No such notices of intention to hold were filed for appellant's tunnel sites prior to December 31, 1980. We hold therefore that with respect to the tunnel sites, BLM should provide appellant notice of this deficiency and afford him a period of time in which to comply with the regulatory requirement. Should compliance then not occur, the tunnel sites may be properly declared abandoned and void.

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

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

APPENDIX

<u>Serial Number</u>	<u>Claim Name</u>
CA MC 54381	Ridge
CA MC 54382	Iron Dyke No. 1
CA MC 54383	Iron Dyke No. 2
CA MC 54384	Iron Dyke No. 3
CA MC 54385	Iron Dyke No. 4
CA MC 54386	Iron Dyke No. 5
CA MC 54387	Native Son #1
CA MC 54388	Native Son #2
CA MC 54389	Native Son #3
CA MC 54390	Native Son #4
CA MC 54391	Native Son #5
CA MC 54392	Native Son #6
CA MC 54393	Native Son #7
CA MC 54399	Victory No. 4
CA MC 54400	White Diamond
CA MC 54401	White Diamond Extension
CA MC 54402	Little Mike CA
CA MC 54403	Ward Creek
CA MC 54404	Robbie Lee
CA MC 54405	Silver Fraction
CA MC 54406	Silver Lilly
CA MC 54407	Little Wonder
CA MC 54408	Apex
CA MC 54409	Green Ledge Extension
CA MC 54410	Butch #1
CA MC 54411	Tommy #1
CA MC 54412	Ward Creek Placer
CA MC 54413	South Fraction
CA MC 54414	Copper Cliff No. 1
CA MC 54415	Copper Cliff No. 2
CA MC 54416	Copper Cliff No. 3
CA MC 54417	Copper Cliff No. 4
CA MC 54418	Copper Cliff No. 5
CA MC 54419	Telge #1
CA MC 54420	Telge #2
CA MC 54421	Telge #3
CA MC 54422	Telge #4
CA MC 54423	Telge #6
CA MC 54424	Big Injun
CA MC 54425	Peacock Walker Extension No. 12

CA MC 54426
CA MC 54427
CA MC 54428
CA MC 54429
CA MC 54430
CA MC 54431
CA MC 54432
CA MC 54433

Alice Walker Extension No. 14
Gertrude
Mountain Lion No. 1
Ward Creek Tunnel Site
Robinson Creek #2 Tunnel Site
North Branch Tunnel
South Branch Tunnel
Clearwater Tunnel

