

D. L. NIELSEN
R. W. TOMPKINS

IBLA 81-173

Decided August 25, 1981

Appeal from decision of the Colorado State Office, Bureau of Land Management, declaring placer mining claims abandoned and void. C MC-167250.

Affirmed.

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

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site. These requirements are mandatory and failure to comply within the time period prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, millsite or tunnel site.

2. Notice: Generally -- Regulations: Generally

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

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Federal Land Policy and Management Act of 1976: Rules and Regulations -- Mining Claims: Recordation

Under 43 CFR 3833.1-2(d), a location notice for each mining claim filed for recordation must be accompanied by the stated fee. As this is a mandatory requirement there is no recordation unless the documents are accompanied by the stated fee.

APPEARANCES: D. L. Nielson and R. W. Tompkins, pro sese.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

D. L. Nielsen and R. W. Tompkins appeal from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated October 27, 1980, which declared appellants' mining claim, Union Blue Placer #1, abandoned and void.

The claim in question was apparently located on July 25, 1980. Following receipt of the location documents on October 27, 1980, BLM declared the claim void, rejected the filing, and returned the documents to appellants because of failure to file within 90 days after the date of location and failure to pay a \$5 service fee. Appellants filed a timely appeal.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of location. It also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner and renders the claim void. Tod Anderson, 50 IBLA 66 (1980); Faith C. Hartman, 44 IBLA 310 (1979).

Where the owner of an unpatented mining claim located after October 22, 1976, fails to file a location notice with BLM within 90 days after the date of location, his claim is properly deemed to be abandoned and to be null and void. Tod Anderson, supra; Lee Resources Management Corp., 50 IBLA 131 (1980); Beryl Rhodes, 46 IBLA 287 (1980).

[2] Appellants allege in their statement of reasons that they were not aware of their responsibilities concerning the mining claims due to a lack of "readily available information." They do not deny that they failed to timely submit the required information. The Board

has held in numerous cases that the statute permits no exception to the requirement of timely filing of the notice of location with BLM, and has noted that persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); Santa Monica Hospital Center Foundation, 51 IBLA 194 (1980).

[3] The filing fee was also omitted by appellants. Appellants state that they forgot to enclose the filing fee. 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. Without payment of the filing fee, there is no recordation. Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1979); Robert W. Miller, 51 IBLA 364 (1980); Eva Holmes, 51 IBLA 140 (1980); R. L. Durrant, 47 IBLA 208 (1980).

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:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

