

PARK CITY CHIEF MINING CO.

IBLA 81-278

Decided September 3, 1981

Appeal from decision of Utah State Office, Bureau of Land Management, declaring mining claims abandoned and void.

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

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed for recordation shall be accompanied by a one time \$5 service fee. This is a mandatory requirement and without payment of the fee there can be no recordation.

APPEARANCES: Robert C. Cummings, Esq., Salt Lake City, Utah, for the appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

The Park City Chief Mining Company has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated December 17, 1980, declaring the Teller and Teller Fraction mining

claims 1/ abandoned and void for failure to file timely in accordance with section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR Subpart 3833. The basis for the decision was appellant's failure to submit copies of certificates or notices of location and the requisite filing fees.

On October 22, 1979, appellant filed for recordation with BLM copies of certificates of location for seven mining claims and submitted filing fees in the amount of \$35. The cover sheet of the filing indicated that appellant was also the "owner" of the Teller Lode and Teller Fraction mining claims. On November 5, 1980, BLM received additional information that the Teller and Teller Fraction mining claims had been located January 1, 1914.

In its statement of reasons for appeal, appellant contends that BLM improperly declared the claims abandoned and void. With respect to the filing fee, appellant argues that submission of a filing fee is "not mandated" by section 314 of FLPMA, supra, and that when appellant recorded the claims on October 22, 1979, BLM requested only \$35 and that if BLM had indicated that further payment was necessary, the "additional filing fee would gladly have been paid." (Statement of Reasons at 3). Appellant asserts that it has now paid the fee. With respect to copies of certificates or notices of location, appellant argues that the applicable regulation, 43 CFR 3833.1-2(a), does not specify the "form" of such copies and that appellant had submitted all the necessary information (with one exception) on October 22, 1979, when it filed a number of documents. 2/ Appellant submits copies of notices of location for the Teller and Teller Fraction claims. Finally, appellant contends that it has shown "an intent not to abandon" the claims, that the documents filed indicate "a substantial and good faith compliance with the requirements of the law when considered together" and that the filing is merely "defective" within the meaning of section 314(c) of FLPMA, supra.

[1] Section 314(b) of FLPMA, supra, provides that the owner of an unpatented mining claim located prior to October 21, 1976, "shall, within the three-year period following October 21, 1976, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location." (Emphasis added.) See 43 CFR 3833.1-2(a). None of the documents filed by appellant on October 22, 1979, the filing deadline, could be held to constitute an acceptable copy of the official record of the notices of location for either of the claims in question. See 43 CFR 3833.0-5(i).

Appellant seeks to invoke certain language in section 314(c) of FLPMA, supra, that "it shall not be considered a failure to file if the

1/ The claims were apparently never assigned BLM serial numbers.

2/ These documents were certificates of location for other claims, mineral surveys, a map, a statement of ownership, and an affidavit of labor.

instrument is defective." See 43 CFR 3833.4(b). However, that language is applicable only "if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof * * *." Section 314(c), 43 U.S.C. § 1744(c)(1976). That section is not applicable in this case.

[2] The requirement of submitting a filing fee is not mandated by section 314 of FLPMA, supra. Rather, it is strictly a regulatory requirement. The applicable regulation, 43 CFR 3833.1-2(d), provides: "Each claim or site filed shall be accompanied by a one time \$5 service fee which is not returnable." (Emphasis added.) This requirement has been held to be reasonable under the statute. Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), aff'd, Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981). We have long held that this is a mandatory requirement and that without payment of the filing fee there can be no recordation. Edward S. Szykowski, 53 IBLA 310 (1981), and cases cited therein. BLM may properly declare a mining claim abandoned and void where the filing deadline passes without payment of the filing fee. Id. All persons are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Edward W. Kramer, 51 IBLA 294 (1980).

Failure to comply with the filing requirement of section 314(b) of FLPMA, supra, must result in a conclusive finding that the claim has been abandoned and that it is void pursuant to section 314(c) of FLPMA, supra, and 43 CFR 3833.4(a). Walter Schivo, 53 IBLA 40 (1981), and cases cited therein.

Despite appellant's asserted good faith efforts to comply, Congress, in enacting the filing requirements of FLPMA, supra, did not invest the Secretary of the Interior with authority either to waive or excuse compliance with the statute or to afford mining claimants any relief from the statutory consequences. 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.

Bruce R. Harris
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

