

JOHN T. MOTES
MARIE MOTES

IBLA 81-960

Decided September 21, 1981

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. A MC 10279.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in calendar year 1977, fails to file with BLM an affidavit of assessment work or a proper notice of intention to hold the claim on or before Dec. 30, 1978, the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

APPEARANCES: John T. Motes and Marie Motes, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

John T. Motes and Marie Motes appeal the August 12, 1981, decision of the Arizona State Office, Bureau of Land Management (BLM), which rejected the recordation of unpatented Motes #1 lode mining claim, A MC 10279, and declared the claim abandoned and void because no notice of intention to hold the mining claim or proof of labor was filed with BLM on or before December 30, 1979, 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. The Motes #1 claim had been located July 14, 1977, and a copy of the unrecorded location notice was filed with BLM July 19, 1977.

Appellants aver they filed a notice of intention to hold the claim with BLM in 1978, 1979, and 1980. A purported notice of intent to hold the claim in 1981 was submitted with the appeal.

[1] Section 314 of FLPMA, supra, requires the owner of an unpatented mining claim located after October 21, 1976, to file in the

proper BLM office, within 90 days after the date of location, a copy of the official notice of location recorded with the county recording office. The statute also requires the owner of an unpatented mining claim located after October 21, 1976, to file for record in the county recording office where the location notice is recorded, prior to December 31 of each year following the calendar year in which the claim was located, a notice of intention to hold the mining claim or an affidavit of assessment work performed on the claim, and within the same time period, to file in the proper BLM office a copy of the instrument recorded in the county. See 43 CFR 3833.1 and 3833.2. Failure to file the instruments relative to the location and the annual affidavit of labor or notice of intention to hold shall be deemed conclusively to constitute an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4.

Examination of the case record shows a copy of an unrecorded notice of location, a request from BLM to appellants asking for the county recordation numbers, and a subsequent letter from appellants indicating that the notice of location had been recorded in Cochise County, Arizona, on December 13, 1978. Also in the record are informal notes from appellants that they intend to hold the claim, which were received by BLM December 27, 1978, and August 21, 1981. There is no evidence that these notices of intention to hold have been placed of record in Cochise County, Arizona, so they do not satisfy the statutory requirements. See Robert W. Hansen, 46 IBLA 93 (1980). There are no copies of any affidavits of assessment work for the claim in the case record.

As appellants did not meet the statutory requirements for annual filings, BLM properly declared the claim abandoned and void. This Board has no authority to excuse improper filings or to waive the statutory consequences of failure to comply. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellants may wish to consult with BLM about the possibility of relocating their claim.

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.

Douglas E. Henriques

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

