

JOHN T. TITUS

IBLA 81-241

Decided September 29, 1981

Appeal from decisions of the Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void. N MC-46433, et al.

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. 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.

APPEARANCES: John T. Titus, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is taken from decisions dated November 25 and 26, 1980, by the Nevada State Office, Bureau of Land Management (BLM), declaring unpatented mining claims abandoned and void because a notice

of intent to hold the claims or proof of labor had not been received by BLM on October 22, 1979.

All of the claims were located prior to October 21, 1976, and notices of location for all were filed with BLM on December 26 and 29, 1978. ^{1/}

In his statement of reasons appellant ^{2/} states that he sent proof of assessment to the Nye County Court House in Tonopah, Nevada. Appellant also expressed disappointment at having the claims declared null and void.

[1] In accordance with section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), 43 CFR 3833.2-1(a) provides:

The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Thus, evidence of annual assessment work or a notice of intention to hold the mining claims had to be filed on or before October 22, 1979.

[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. Robert P. Wilson, 57 IBLA 40 (1981). In any event, even in cases of severe hardship, this Board is not empowered to make exceptions to the requirements of the statute. Thus, the Secretary of the Department of the Interior does not have the authority to waive or excuse noncompliance with the statute or to afford claimants any relief from the consequences of failure to comply with the statute. Valiant Resources, Inc., 56 IBLA 278 (1981); Lyman Mining Co., 54 IBLA 165 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

^{1/} See Appendix which lists only the claims involved in the appeal.

^{2/} Donald Lani, the other owner of the claims, has not joined in the appeal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Anne Poindexter Lewis

Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Bruce R. Harris
Administrative Judge

APPENDIX

The claims involved are:

| <u>DATE</u> | <u>DATE</u> | <u>OF LOCATION</u> | <u>OF FILING</u> | <u>NAME OF CLAIM</u> | <u>N MC NUMBER</u> |
|---------------|---------------|--------------------|------------------|----------------------|--------------------|
| May 23, 1970 | Dec. 26, 1978 | | | GALENA | N MC-46340 |
| May 23, 1970 | Dec. 26, 1978 | | | GALENA #1 | N MC-46341 thru |
| | | | | thru #9 | N MC 46349 |
| July 25, 1970 | Dec. 26, 1978 | | | MOLLY | N MC-46350 |
| July 25, 1970 | Dec. 26, 1978 | | | MOLLY #1 | N MC-46351 thru |
| | | | | thru #4 | N MC 46354 |
| Aug. 20, 1970 | Dec. 26, 1978 | | | T AND L | N MC-46355 |
| June 20, 1973 | Dec. 26, 1978 | | | IVER JACK | N MC-46410 |
| Aug. 23, 1975 | Dec. 29, 1978 | | | GREEN HORNET | N MC-46433 |
| Aug. 23, 1975 | Dec. 29, 1978 | | | TEA KETTLE | N MC-46434 |
| Aug. 23, 1975 | Dec. 29, 1978 | | | TEA KETTLE #1 | N MC-46435 |
| Feb. 21, 1976 | Dec. 29, 1978 | | | PETE | N MC-46435 |
| Feb. 21, 1976 | Dec. 29, 1978 | | | PETE #1 | N MC-46437 thru |
| | | | | thru #2 | N MC 46438 |
| Apr. 17, 1976 | Dec. 29, 1978 | | | BLACK | N MC-46439 |
| Apr. 17, 1976 | Dec. 29, 1978 | | | BLACK #1 | N MC-46440 thru |
| | | | | thru #2 | N MC 46441 |
| Oct. 11, 1969 | Dec. 29, 1978 | | | CALCITE | N MC-46442 |
| Oct. 11, 1969 | Dec. 29, 1978 | | | CALCITE #1 | N MC-46443 thru |
| | | | | thru #5 | N MC 46447 |
| Oct. 20, 1973 | Dec. 29, 1978 | | | GATE | N MC-46448 |
| Oct. 20, 1973 | Dec. 29, 1978 | | | GATE #1 | N MC-46449 thru |
| | | | | thru #5 | N MC 46453 |

