

Appeal from decision of the Fairbanks District Office, Bureau of Land Management, declaring mining claims abandoned and void. F-37662 through F-37699.

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: Recordation

The owner of an unpatented mining claim must file a copy of the official record of the notice or certificate of location of the claim within 90 days after the date of location of that claim in the proper BLM office. In computing the 90-day period, the date of location is not included but the last day of the period is included. A copy of the notice of location for a claim located on Apr. 20, 1978, must have been filed with BLM by July 19, 1978.

APPEARANCES: Arthur L. Robsen, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Warren J. Fyten has appealed from the May 4, 1981, decision of the Fairbanks District Office, Bureau of Land Management (BLM), declaring certain mining claims abandoned and void. 1/ The decision found that the claims were located on April 20, 1978, but that the copies of the location notices were not received by BLM until July 20, 1978, 91 days later.

[1] Section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented 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.

The pertinent regulation, 43 CFR 3833.1-2(b), provides as follows:

The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), 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 * * *.

Failure to so file is considered conclusively to constitute abandonment of a claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

The sole issue in this appeal is whether July 20, 1978, was the 91st day after April 20, 1978. Appellant offers the following calculation in his statement of reasons:

April 20, 1978, was the 110th day of that year.

July 20, 1978, was the 201st day of that year.

Within the State of Alaska and so far as is known within the jurisdiction of the United States, periods of limitation are calculated by omitting counting of the initial date, counting the first succeeding date as day one, and continuing in serial manner through the conclusion of the period of limitations.

Counting April 21, 1978, (the day immediately following the date of the location) as day one, and counting serially through July 20, 1978, produces a total count of 90 days. The department admits the filing on the 20th of July, 1978, and hence on the 90th day.

1/ The claims are set forth in the Appendix.

In computing the 90-day period, appellant is correct that the date of location is not included, but the last day is included. See, e.g., Clayton F. Schacht, 58 IBLA 137 (1981); Thomas F. Byron, 52 IBLA 49, 50 (1981). Although appellant's statement of the method is correct, his arithmetic is not. 2/ The 90th day after April 20, 1978, is July 19, 1978. July 20 is the 91st day. This was doublechecked by the District Office. 3/ Because the claims were not recorded timely, the District Office properly declared them abandoned.

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge
ATTACHMENTS:

2/ If Apr. 21 is day 1, Apr. 30 is day 10; May 31 is day 41; June 30 is day 71; and July 20 is day 91.

3/ A District Office employee wrote a memorandum to the file confirming that he had carefully counted the number of days after a computer printout had called the matter to his attention.

APPENDIX

<u>BLM Serial</u>		<u>Date Filed</u>	
<u>Number</u>	<u>Claim Name</u>	<u>Date Located</u>	<u>with BLM</u>
F-37662	#1 above Cindy Lee	4/20/1978	7/20/1978
F-37663	#2 above Cindy Lee	4/20/1978	7/20/1978
F-37664	#3 above Cindy Lee	4/20/1978	7/20/1978
F-37665	#4 above Cindy Lee	4/20/1978	7/20/1978
F-37666	#5 above Cindy Lee	4/20/1978	7/20/1978
F-37667	#6 above Cindy Lee	4/20/1978	7/20/1978
F-37668	#7 above Cindy Lee	4/20/1978	7/20/1978
F-37669	#8 above Cindy Lee	4/20/1978	7/20/1978
F-37670	#9 above Cindy Lee	4/20/1978	7/20/1978
F-37671	#10 above Cindy Lee	4/20/1978	7/20/1978
F-37672	#11 above Cindy Lee	4/20/1978	7/20/1978
F-37673	#12 above Cindy Lee	4/20/1978	7/20/1978
F-37674	#13 above Cindy Lee	4/20/1978	7/20/1978
F-37675	#1 above Cindy Pup	4/20/1978	7/20/1978
F-37676	Cindy Lee	4/20/1978	7/20/1978
F-37677	#1 First Pup	4/20/1978	7/20/1978
F-37678	#2 First Pup	4/20/1978	7/20/1978
F-37679	#3 First Pup	4/20/1978	7/20/1978
F-37680	#1 Marks Pup	4/20/1978	7/20/1978
F-37681	#2 Marks Pup	4/20/1978	7/20/1978
F-37682	#3 Marks Pup	4/20/1978	7/20/1978
F-37683	#1 Below Cindy Lee	4/20/1978	7/20/1978
F-37684	#2 Below Cindy Lee	4/20/1978	7/20/1978
F-37685	#3 Below Cindy Lee	4/20/1978	7/20/1978
F-37686	#4 Below Cindy Lee	4/20/1978	7/20/1978
F-37687	#5 Below Cindy Lee	4/20/1978	7/20/1978
F-37688	#6 Below Cindy Lee	4/20/1978	7/20/1978
F-37689	#7 Below Cindy Lee	4/20/1978	7/20/1978
F-37690	#8 Below Cindy Lee	4/20/1978	7/20/1978
F-37691	#9 Below Cindy Lee	4/20/1978	7/20/1978
F-37692	#10 Below Cindy Lee	4/20/1978	7/20/1978
F-37693	#11 Below Cindy Lee	4/20/1978	7/20/1978
F-37694	#12 Below Cindy Lee	4/20/1978	7/20/1978
F-37695	#13 Below Cindy Lee	4/20/1978	7/20/1978

