

PHYLLIS J. BIRCHARD

IBLA 82-4

Decided October 29, 1981

Appeal from decision of the Oregon State Office, Bureau of Land Management, returning notice of location and filing fee for the Black Angel placer mining claim. 3833 (952).

Affirmed.

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

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owners of unpatented lode or placer mining claims located after Oct. 21, 1976, within 90 days after the location of such claims, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments timely is deemed conclusively to constitute an abandonment of the mining claims by the owners, and they are properly declared void.

APPEARANCES: Phyllis J. Birchard, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Phyllis J. Birchard has appealed the decision of the Oregon State Office, Bureau of Land Management (BLM), dated July 2, 1981, returning the notice of location and filing fee submitted for the Black Angel placer mining claim, and declaring the claim abandoned and void for failure to file a copy of the notice of location for the claim with BLM within 90 days after the date of location as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and regulation 43 CFR 3833.1-2(b).

Appellant's notice of location for the Black Angel placer claim, executed on January 6, 1981, indicates that the date of the claim's location was January 2, 1981. The notice of location was mailed June 6, 1981, postmarked Portland, Oregon. The notice was received by BLM on June 8, 1981, the 157th day after the date of location.

In her statement of reasons, appellant contends that the notice of location had been held in the office of Marion County recorder from January 6, 1981, until she received the recorded instrument June 4, at which time she immediately transmitted the copy of the notice of location to BLM. Appellant thinks she should not be penalized for the delay caused by the county recorder.

[1] Section 314 of FLPMA, 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim located on Federal lands after October 21, 1976, to file a copy of the official record of the location notice in the proper BLM office, as designated by the Secretary of the Interior, within 90 days after the date of location. The statute also provides that failure to file timely such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owners. The pertinent regulation, 43 CFR 3833.1-2, provides that filing shall mean being received and date stamped by the proper BLM office within 90 days after the date of location.

The regulations allow the owners of an unpatented mining claim to file a legible reproduction of the notice of location which has been or will be recorded in the local jurisdiction where the claim is situated. 43 CFR 3833.0-5(i). Thus, appellant could have filed with BLM a copy of her notice of location without waiting for the county recorder to return a copy of the official record.

All persons dealing with the Government are presumed to have knowledge of the relevant statutes and regulations duly promulgated thereunder. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Brewery Hill Mining Co., 49 IBLA 197 (1980), 44 U.S.C. §§ 1507, 1510 (1976).

The above-cited statute and regulation 43 CFR 3833.4(a) impose a conclusive presumption of mining claim abandonment for any failure to file the required instruments in the proper BLM office by the date on which they are due. This Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellant may wish to consult with BLM about the possibility of relocating the subject claim.

Accordingly, 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

Edward W. Stuebing  
Administrative Judge

