

DONALD C. STRONG

IBLA 82-576

Decided April 8, 1982

Appeal from decision of California State Office, Bureau of Land Management, declaring lode mining claim abandoned and void. CA MC 106862.

Affirmed.

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

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

2. 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), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

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

The mailing of a notice of location after the due date is not sufficient to comply with the requirements of the statute.

APPEARANCES: Donald C. Strong, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Donald C. Strong appeals the California State Office, Bureau of Land Management (BLM), decision of February 24, 1982, which declared Pashy-Strong Mines No. 6 lode mining claim, CA MC 106862, abandoned and void, and returned, unrecorded, the location notice. The claim was located in November 1981, and BLM received a copy of the location notice on February 19, 1982.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires the owner of a mining claim located on public land after October 21, 1976, to file a copy of the official record of the notice of location in the proper BLM office within 90 days after the date of location. The section further provides that failure to file timely such record shall be deemed conclusively to constitute an abandonment of the claim by the owner, and renders the claim void. Prudential Mining & Exploration, Inc., 60 IBLA 363 (1981); Faith C. Hartman, 44 IBLA 310 (1979).

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

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 * * *. [Emphasis supplied.]

The consequence of failure to file timely is spelled out in 43 CFR 3833.4(a), which provides: "The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill site or tunnel site and it shall be void."

[2] Where the owner of an unpatented mining claim located after October 21, 1976, fails to file a location notice with BLM within 90 days after the date of location, his claim is properly deemed conclusively to be abandoned and to be null and void. Prudential Mining & Exploration, Inc., *supra*; Tod Anderson, 50 IBLA 66 (1980). The Board has consistently held that the statute permits no exception to the requirements of timely filing of the notice of location with BLM, and that it has no authority to excuse a late filing or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46M (D. Mont. June 19, 1979).

Appellant does not allege that the location notice was received within the required 90-day period. He contends only that the notice was mailed February 13, 1982, which should have been in time to beat the 90-day deadline. His argument must fall.

[3] The 90th day after November 14, 1981, was February 12, 1982. Since appellant admits that the location notice was mailed February 13, he cannot impute the late filing to BLM inaction or to the Postal Service. The notice was not placed in the mails until after the date it was due in BLM.

As BLM has indicated, appellant may relocate this claim and then file the notice of location within the time period set forth in FLPMA. Any such relocation will be subject to any intervening rights of third parties and to possible closure of the land to operation of the mining laws.

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

Anne Poindexter Lewis
Administrative Judge

