

WILLIAM SCOTT OLSEN

IBLA 82-860

Decided July 12, 1982

Appeal from decision by Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 186113 through N MC 186115.

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 office of the BLM within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

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

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM Mar. 3, 1981, and the filing fees therefor are not paid to BLM until Apr. 20, 1981, the recordation date of the notices is Apr. 20, 1981.

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

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

4. Notice: Generally -- Regulations: Generally -- Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: William Scott Olsen, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

William Scott Olsen has appealed the Nevada State Office, Bureau of Land Management (BLM), decision of May 14, 1982, which canceled the recordation of, and rejected the filing of, the notices of location for the Olsen #1, #2, and #3 placer mining claims, N MC 186113 through N MC 186115, because the notices of location, together with a negotiable payment of the service fees, had not been filed with BLM within 90 days after the date of location, 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 3833.1-2(b). The mining claims were declared abandoned and void.

The claims were located January 10, 1981. Notices of location were recorded in Clark County, Nevada, January 30, 1981. Copies of the notices were submitted to BLM March 3, 1981. The remittance of \$15 covering the service fees was returned by the bank noted "Payment Stopped." A replacement check was received by BLM April 20, 1981, after the 90-day period prescribed by section 314 of FLPMA.

Appellant states that the fee was paid and included a photocopy of a check drawn by Claire C. Gilligan in the amount of \$15 for filings of William Scott Olsen mining claims, showing endorsement of BLM on the check and deposit date of April 21, 1981. He does not explain why the original remittance was dishonored by the bank.

[1, 2] Regulations implementing section 314 of FLPMA, are contained in 43 CFR Subpart 3833. Section 3833.1-2(b) requires that, for mining claims located after October 21, 1976, a copy of the official record of the notice

of location must be filed in the proper office of BLM within 90 days following the date of location. "Filed" means being received and date stamped by BLM. Section 3833.1-2(d) states that each claim recorded with BLM shall be accompanied by a \$5 service fee. Without payment of the full service fee, there is no recordation of the mining claim with BLM. Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981); Fred W. Croxon III, 56 IBLA 318 (1981); Brewery Hill Mining Co., 49 IBLA 197 (1980); Joe B. Cashman, 43 IBLA 239 (1979). Thus, as the full service fee of \$5 per claim was not tendered in negotiable funds until April 20, 1981, it must be held that the date of recordation of the three claims with BLM cannot be considered to have occurred earlier than that date, notwithstanding that BLM had initially stamped the notices as having been received on March 3, 1981.

[3, 4] Section 3833.4 provides that failure to file any instrument required by FLPMA within the time prescribed shall be deemed conclusively to constitute an abandonment of the mining claim, and it shall be void. This Board has no authority to excuse lack of compliance. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). It is axiomatic that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations pertinent thereto. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Brewery Hill Mining Co., supra.

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. Hentiques  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

