

EUGENE J. CURLESS

IBLA 82-1058

Decided September 16, 1982

Appeal from decision of the Arizona State Office, Bureau of Land Management, rejecting the recordation of a mining claim location notice and declaring the unpatented mining claim abandoned and void. A MC 167029.

Affirmed.

1. 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 April 22, 1982, and the filing fee therefor is not paid to BLM until May 13, 1982, 102 days from the date of location, the recordation date of the notices is May 13, 1982.

2. 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.

3. Notice: Generally -- Regulations: Generally -- Statutes

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

APPEARANCES: Eugene J. Curless, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Eugene J. Curless has appealed the Arizona State Office, Bureau of Land Management (BLM), decision of July 7, 1982, which rejected the recordation and filing of the notice of location for the Virgene placer mining claim, A MC 167029, because the notice of location, together with the \$5 service fee 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) and (d). The mining claim was declared abandoned and void.

The claim was located February 3, 1982, and the notice of location was recorded in Yuma County, Arizona, on the same day. A copy of the notice was initially filed with BLM on April 22, 1982. However, the \$5 service fee was omitted, and the documents were returned. On May 13, 1982, a copy of the notice of location was filed with BLM with the concomitant \$5 service fee.

Appellant, in his statement of reasons, states that "a friend" told him there was no fee.

[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 the appropriate BLM office. 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); William Scott Olsen, 65 IBLA 274 (1982); Sunshine Mining Co., Silver Syndicate Inc., 64 IBLA 399 (1982); Cajen Minerals, 64 IBLA 261 (1982). Thus, as the service fee of \$5 per claim was not tendered until May 13, 1982, it must be held that the date of recordation of the claim with BLM cannot be considered to have occurred earlier than that date, notwithstanding that BLM had initially stamped the notice as having been received on April 22, 1982.

[3] 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); William Scott Olsen, *supra*; Cajen Minerals, *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. Henriques
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge

