

MT. PINOS DEVELOPMENT CORP.

IBLA 84-634 Decided May 30, 1985

Appeal from a decision of the California State Office, Bureau of Land Management, declaring 18 unpatented placer mining claims abandoned and void, CAMC 149899 through CAMC 149916.

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 FLPMA, 43 U.S.C. § 1744 (1982), 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: Assessment Work

The filing of evidence of annual assessment work in the county recording office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

APPEARANCES: Win Sanger, president, Mt. Pinos Development Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Mt. Pinos Development Corporation, appeals from a decision dated April 20, 1984, of the California State Office, Bureau of Land Management (BLM), which declared the Hungry #1, the Los Padres Nos. 1 through 12, the "A" through "D" Buck, and the Dry Creek No. 1 mining claims to be abandoned and void because they were not filed for recordation with BLM on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), and the regulations, 43 CFR 3833.1 and 43 CFR 3833.2. 1/

1/ The claims which are the subject of this appeal are described as follows:

<u>Claim Name</u>	<u>Section No.</u>	<u>Town-ship</u>	<u>Range</u>	<u>Location</u>	<u>Date</u>
Hungry #1,	Sections 32 & 33	T8N,	R19W,	SBBM	12/18/63

The claims involved in this appeal were all located prior to the passage of FLPMA. Therefore, under section 314 of FLPMA, it was necessary to both file a copy of the notice of location and either evidence of assessment work or notice of intention to hold the claims with BLM on or before October 22, 1979. See 43 U.S.C. § 1744(a)(1) and (b) (1982).

In its statement of reasons appellant refers to a letter dated April 9, 1984, sent to BLM, with which appellant had enclosed a check for \$90 to "cover recording fees on 18 Placer Claims." In that letter appellant had stated:

No one in government has ever notified us that these claims should have been recorded with the BLM Office. However, it makes no difference because neither the Records which BLM sent to us or the Records of Ventura County indicate any conflict or interference with other claims. \* \* \*

We have done our ANNUAL LABOR on all of the Claims every year since they were located and have recorded a Proof of Annual Labor each year with the Ventura County Recorder.

The Ventura County Assessor has assessed us taxes on all of the claims since 1969, Assessor's parcel Number 004-0-240-100/302. Enclosed is the Assessor's letter of 2/3/84.

We have paid the taxes each year and have the Ventura Tax Collectors Receipts and our cancelled checks to prove.  
[Emphasis in original.]

footnote 1 (Continued)

Los Padres #1,	Sections 25 & 36	T8N, R20W, SBBM	11/2/64
	Section 31	T8N, R19W, SBBM	
Los Padres #2,	Sections 31 & 32	T8N, R19W, SBBM	7/31/64
	Section 5	T7N, R19W, SBBM	
Los Padres #3,	Section 4	T7N, R19W, SBBM	7/31/64
	Section 33	T8N, R19W, SBBM	
Los Padres #4,	Sections 4 & 9	T7N, R19W, SBBM	7/31/64
Los Padres #5,	Section 4	T7N, R19W, SBBM	7/31/64
	Section 33	T8N,	
Los Padres #6,	Sections 8 & 17	T7N, R19W, SBBM	7/31/64
Los Padres #7,	Section 9	T7N, R19W, SBBM	7/31/64
Los Padres #8,	Section 10	T7N, R19W, SBBM	7/31/64
Los Padres #9,	Sections 8 & 9	T7N, R19W, SBBM	7/31/64
Los Padres #10,	Sections 32 & 33	T8N, R19W, SBBM	11/7/66
Los Padres #11,	Sections 28 & 29	T8N, R19W, SBBM	11/7/66
Los Padres #12,	Sections 29 & 32	T8N, R19W, SBBM	11/7/66
"A" Buck,	Sections 13 & 24	T7N, R19W, SBBM	11/7/66
"B" Buck,	Sections 24 & 25	T7N, R19W, SBBM	11/9/66
	Sections 19 & 30	T7N, R18W, SBBM	
"C" Buck,	Section 30	T7N, R18W, SBBM	11/7/66
"D" Buck,	Sections 30 & 31	T7N, R18W, SBBM	11/7/66
Dry Creek #1,	Sections 4, 5 & 9	T7N, R19W, SBBM	11/8/63

The assessor's letter of February 3, 1984, notes that, since 1969, appellant has filed proofs of labor for each assessment year with the county, and that the Office of the Assessor of Ventura County has assessed appellant for 18 mining claims. Appellant notes in the statement of reasons that "[w]e have recorded, in effect re-located, each claim with a new description and map locating the claims exactly as required by BLM." Appellant further states that "[i]t would seem that the only logical and honest thing for BLM would have been to ask each county to report claims in good standing" given the fact that "three branches of the Government, U.S. Forest Service, Ventura County, and the BLM, all of whom knew of our claims, made no attempt to cure our ignorance."

[1, 2] The Board has consistently held, in conformity to the statute and applicable regulations (43 CFR Subpart 3833), that the owner of an unpatented mining claim located on public land before October 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper BLM office by October 22, 1979, and file a notice of intention to hold or proof of assessment work performed on the claim on or before December 30 in each subsequent calendar year. It was the intent of Congress that failure to file on time, in and of itself, causes the claims to be lost. United States v. Locke, 105 S. Ct. 1785, 1795-96 (1985).

Appellant supplies evidence that the notice of location and proof of assessment work had filed with the county. While this may have met the requirements of California State law as far as recordation is concerned, it did not accomplish compliance with the Federal recordation statute. Section 314 is independent from both state recordation requirements and the annual assessment work requirement of 30 U.S.C. § 28 (1982). Thus, neither actual performance of the assessment work nor filing evidence thereof in the county constitutes full compliance with section 314. The requirements of section 314 are met only where a claimant files a copy of the notice of location and files a copy of the annual affidavit of labor or notice of intention to hold the claim which he or she filed in the county. Appellant does not suggest that it did, in fact, submit a location notice for recordation or copies of its affidavit of labor to BLM within each applicable calendar year. Since such a filing was not made, the statute clearly compels the conclusion that the instant claims are extinguished, and therefore are abandoned and void. 43 U.S.C. § 1744 (1982). United States v. Locke, *supra*, Lanny Ray Southard, 86 IBLA 239 (1985).

Finally, we note that BLM had no affirmative duty to take extraordinary measures to ensure that any of the filings were made in the proper office even if it can be shown that BLM had knowledge of the existence of appellant's unpatented mining claims. *See, e.g., Stanley J. Pirtle*, 26 IBLA 348 (1976); Frank H. Crosby, 25 IBLA 160 (1976). In United States v. Locke, *supra* at 1800, the Supreme Court stated:

In altering substantive rights through enactment of rules of general applicability, a legislature generally provides constitutionally adequate process simply by enacting the statute, publishing it, and, to the extent the statute regulates private conduct, affording those within the statute's reach a reasonable opportunity both to familiarize themselves with the general requirements

imposed and to comply with those requirements. Texaco, [Inc. v. Short] 454 U.S. [516] at 532; see also Anderson National Bank v. Lockett, 321 U.S. 223, 243 (1944); North Laramie Land Co. v. Hoffman, 268 U.S. 276, 283 (1925). Here there can be no doubt that the Act's recording provisions meet these minimal requirements. Although FLPMA was enacted in 1976, owners of existing claims, such as appellees, were not required to make an initial recording until October 1979. This three-year period, during which individuals could become familiar with the requirements of the new law, surpasses the two-year grace period we upheld in the context of a similar regulation of mineral interests in Texaco.

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.

R. W. Mullen  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

Will A. Irwin  
Administrative Judge.

