

Appeal from a decision of the Fairbanks District Office, Bureau of Land Management, rejecting a filing for mining claim recordation. F 60626.

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.

APPEARANCES: John J. May, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

John J. May has appealed a decision of the Fairbanks District Office, Bureau of Land Management (BLM), dated September 10, 1984, that held the "Discovery" lode mining claim, F 60626, abandoned and void for failure to timely file a copy of the official record of the notice of location 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).

A certificate of location for the Discovery claim was filed with the Nulato Recording District on July 26, 1966. The claim is within protracted section 25, T. 10 S., R. 17 E., Kateel River Meridian. The BLM case record indicates that the location notice and an affidavit of assessment work were filed with BLM on October 26, 1979. The case record also contains timely filed affidavits of assessment work performed for 1980 through 1983.

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

Appellant indicates that he was not notified of the filing requirements by BLM. He states that he received word from another miner and filed as soon as possible thereafter. The filing was received by BLM on October 26, 1979.

[1] The Board has consistently held, in conformity with 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. John W. Finn, 87 IBLA 55 (1985). The failure to file the required instruments under FLPMA constitutes abandonment of the claim by the owner. 43 U.S.C. § 1744(c) (1982), 43 CFR 3833.1-1. The finding of abandonment is imposed by the statute and is not indicative of an action of BLM's part. Lynn Keith, 53 IBLA 192, 196, 88 I.D. 369, 372 (1981). It was the intent of Congress that failure to file on time, in and of itself, causes the claim to be lost. United States v. Locke, 105 S. Ct. 1785, 1795-96 (1985).

All persons dealing with the government are presumed to have knowledge of relevant and duly promulgated statutes and regulations. Federal Crop Insurance Co. v. Merrill, 332 U.S. 380 (1947). The Congress provided notice of the recording requirements of FLPMA through its enactment and publication. United States v. Locke, supra at 1800. In addition, it provided adequate time (three years) for the public to familiarize itself with its requirements. BLM was under no obligation and did not possess the resources necessary to inform each claim holder of the new filing requirements.

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.

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Will A. Irwin  
Administrative Judge

We concur:

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John H. Kelly  
Administrative Judge

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Wm. Philip Horton  
Chief Administrative Judge.

