

Appeal from a decision of the Colorado State Office, Bureau of Land Management, which declared mining claims C MC-112351, C MC-112352, and C MC-112353 abandoned and void.

Affirmed.

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

A notice of intent to hold a mining claim, made in compliance with 43 U.S.C. § 1744(a) (1982) must be a copy of the document which was or will be recorded with the county or local recording office. A document styled as a notice of intent which is not intended to be so recorded is not a notice of intent within the meaning of 43 U.S.C. § 1744(a).

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

The Department does not have an affirmative duty to immediately adjudicate mineral recordation filings.

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

The filing of a defective instrument is not sufficient to satisfy the recordation requirements of 43 U.S.C. § 1744 (1982).

APPEARANCES: David C. Mize, Esq., Colorado Springs, Colorado, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE ARNESS

Joseph L. Frankmore has appealed a decision of the Colorado State Office, Bureau of Land Management (BLM), dated March 11, 1986, which declared mining claims C MC-112351 through C MC-112353, 1/ abandoned and void when

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1/ The claims are named Jimmy Dale, Eva Marie, and Ray Day. All three claims were located prior to Oct. 21, 1976.

review of BLM records for the claims indicated that no assessment affidavits or notices of intent to hold were timely filed with BLM on or before October 22, 1979. Frankmore contends BLM's decision is wrong because a notice of intention to hold dated September 18, 1979, was filed timely with BLM prior to October 22, 1979. Section 314 of FLPMA, 43 U.S.C. § 1744 (1982), and implementing regulations at 43 CFR Subpart 3833 require the owner of an unpatented mining claim located on public land prior to October 21, 1976, to file evidence of assessment work performed or a notice of intention to hold the claim with the proper BLM office prior to October 22, 1979, and prior to December 31 of each year thereafter.

The statute permits a miner to file either an affidavit of assessment work or a notice of intent to hold. The Act provides that claimant must:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by section 28-1 of Title 30, relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

43 U.S.C. § 1744(a) (1982). Thus, in order to be a notice of intent in the contemplation of the recording statute, a notice must be a "copy of the official record of the instrument filed" with the local recording office. 43 U.S.C. § 1744(a)(2) (1982).

[1] While we do not question the assertion by counsel for appellant that his letter dated September 18, 1979, declared a present intention to hold these three claims, that itself is not sufficient, as was pointed out in Add-Ventures, Ltd., 95 IBLA 44 (1986). In Add-Ventures, which involved a similar issue to that raised by Frankmore here, we described the elements necessary to a notice of intent which will satisfy the statutory filing requirements:

As an alternative to filing a affidavit of assessment work, subsection 1744(a) permits a locator to file a notice of intent. Appellant correctly states the statute does not prescribe the form a notice must take, but this does not mean that any document sent to BLM from which intent might be inferred is sufficient. See Paul S. Coupey, 35 IBLA 112, 115 (1978). Rather, whatever the form of the instrument, it must be filed with BLM as a notice of intent. 43 U.S.C. § 1744(a)(2) (1982); 43 CFR 3833.2-3(a). It must indicate that the claim owner continues to have an interest in the claim. 43 CFR 3833.0-5(1). It must also be a

copy of the document which was or will be recorded in the local office where the claim's location notice has been recorded. 43 U.S.C. § 1744(a)(1); 43 CFR 3833.2-3; Ronald Willden, 60 IBLA 173 (1981); Ted Dilday, 56 IBLA 337, 88 I.D. 682 (1981). The instrument must also include "a description of the location of the mining claim sufficient to locate the claim lands on the ground," 43 U.S.C. § 1744(a)(2) (1982), the BLM assigned claims number, 43 CFR 3833.2-3(b)(1)(i), or the name of the claim, Arley Taylor, 90 IBLA 313, 314 (1986); Philip Brandl, 54 IBLA 343, 344 (1981). While the letters from appellant's attorney identify the claims by their assigned claim numbers, nothing in the case file shows them to have been recorded with the Talkeetna Recording District, nor do the letters themselves indicate that they were sent to BLM to be filed as notices of intent. Thus, we conclude that appellant's letters to BLM do not meet the requirements of the statute and regulation. Ronald Willden, *supra*; John Murphy, 58 IBLA 75, 82 (1981). (Emphasis supplied.)

Id. at 49.

While the September 18, 1979, letter furnished to BLM in this case does supply some of the necessary information, it is not a notice of intent in compliance with the provisions of section 1744(a), because it quite clearly is not a document which had been recorded or would be submitted for recordation with the local office where the location notices for the three claims made by Frankmore were recorded. Nothing in the September 18, 1979, letter indicates it was sent to the clerk and recorder of Chaffee County, Colorado, (the local recording office) for recording, nor does the appellant indicate that the September 18 letter was later recorded with the county clerk and recorder. While the letter does state it was sent to BLM to be filed as a notice of intent, it is clear that it was not a notice of intent as that term is used by section 1744(a)(1) and (2).

[2] It is also true that counsel, in the letter dated September 18, 1979, (and also in the statement of reasons filed in support of this appeal) has asked for advice to permit the correction of any errors in documents filed with the Department on behalf of Frankmore. While there can be no objection to such practice, (of course, it is a truism that all Department employees are bound to be as helpful and courteous as possible to the public) it cannot be used as a device to expedite consideration of a particular claim or to insure against error by creating a basis for asserting equitable estoppel against the Government. BLM does not have an affirmative duty to immediately determine the legal status of every claim filed with the Department and to notify claimants of its conclusions in time to permit them to correct their filings, where, as here, there are deadlines to be met. See Paul Vaillant, 90 IBLA 249 (1986).

[3] Finally, the filing of a defective instrument is not sufficient, under 43 U.S.C. § 1744(c) (1982) to satisfy the filing requirement of 43 U.S.C. § 1744 itself. While the letter of September 18, 1979, is clearly a defective instrument, the plain language of section 1744(c) makes clear

that it is only defective instruments "filed by record under other Federal laws permitting filing or recording" that is affected by this provision. See Add-Ventures, supra at 49 n.4. The letter dated September 18, 1979, may not, therefore, be considered, under section (d) of the statute, to be an acceptable filing pursuant to section 1744.

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.

Franklin D. Arness  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

R. W. Mullen  
Administrative Judge

