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DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

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Subject

3833 - RECORDATION OF MINING CLAIMS

1. Explanation of Material Transmitted: This release updates the previous manual to conform to recent administrative and judicial decisions and the revised rules that became effective on January 3, 1989.
2. Reports Required: None.
3. Materials Superseded: The material superseded by this release is listed under "Remove" below. No other directives are superseded.
4. Filing Instructions: File as directed below.

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All of 3833 (Rel. 3-132)
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3833
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3833 - RECORDATION OF MINING CLAIMS

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.01 Purpose. This Manual Section provides guidance and procedures for recording unpatented mining claims, mill, and tunnel sites; evidence of assessment work and notices of intention to hold; and transfers of interest in mining claims and sites. Where the singular word is used, the plural word is also intended where applicable.

.02 Objectives. The objectives are to assure that, consistent with the law and the regulations, all locations under the mining laws are maintained in an up-to-date manner in the Bureau of Land Management records.

.03 Authority.

A. Sections 304 and 314 of the Federal Land Policy and Management Act of 1976; 90 Stat. 2765, 2769; 43 U.S.C. 1734, 1744 (1982).

B. Act of May 10, 1872, as amended; 17 Stat. 91 et seq., 30 U.S.C. 21 et seq. (1982).

C. Act of August 31, 1951; 65 Stat. 290; 31 U.S.C. 9701 (1982).

D. Regulation 43 CFR 3833.

E. Act of September 27, 1988; P.L. 100-446; 43 U.S.C. 1474 (1988).

.04 Responsibility. (See Manual Section 3800.04.)

.05 References. Manual Sections 1274, 1275, 1276, 1372, 1841, and Handbooks 1274-1 and 1276-2.

.06 Policy. The BLM shall maintain an accurate and up-to-date recordation system that gives the Federal land manager and the public an accurate status of all mining claims, mill sites, and tunnel sites located on the public land.

.07 File and Records Maintenance. Mining claim recordation case files are an integral part of the BLM's public recordkeeping system. They are to be organized and maintained in accordance with standard BLM procedure as given in the Manual Sections referenced in .05 above.

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.1 Recordation of Mining Claims and Sites..11 Recordation of Mining Claims, Mill Sites, and Tunnel Sites Located on or Before October 21, 1976.

A. Statutory Deadline. The statutory deadline of October 22, 1979, for recording pre-FLPMA mining claims and sites has passed. Pre-FLPMA mining claims or sites cannot be accepted for recordation because, by law, they are abandoned and void. Pre-FLPMA mining claims or sites received for recordation must be returned to the mining claimant, as no statutory provision exists for accepting a notice or certificate of location for such an abandoned and void claim or site. (See 43 CFR 3833.1-1.)

B. National Park Service Land. All units of the National Park System were closed to mineral entry on September 28, 1976, by the act to provide for regulation of mining activity within areas of the National Park System, 16 U.S.C. 1901. All mining claims and sites on those lands had to be recorded with the National Park Service by September 28, 1977, or the claims were abandoned and void by operation of law. The recorded claims and sites are to be transferred to BLM.

.12 Mining Claims or Sites Located After October 21, 1976.

A. Requirements. All post-FLPMA mining claims and sites must be recorded with the proper BLM office within 90 days of the date of their location. It is not necessary to require evidence of recordation in the local recording office under State law. A filing received 91 days or later from its date of location is, by law, deemed abandoned and void. Gladys M. Cramer, 65 IBLA 120 (1982).

1. The 90-day period begins the day after the date of location. If the 90th day falls on a day when the office is closed to the public, consider the 90th day as the next day the office is open to the public. (See 43 CFR 1821.2-2(e).)

2. A service charge of \$10 is required for recording each mining claim, mill site, or tunnel site. Information pertaining to the location notice must be entered into the official record system for mining claim recordation, hereinafter referred to as the MCRS. The action date to be used is the date of receipt by the BLM.

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B. Information Required to Complete Recordation.

Recordation documents are accepted regardless of mining claim, mill, or tunnel site location deficiencies. If not shown on the notice or certificate of location, the following information shall be requested:

1. Name of Mining Claims or Sites. Mining claims and sites normally have a name, number, or a combination of both. If a mining claim or site has not been given a name or number, it shall be listed as "unnamed."
2. Mining Claimant's Name and Address. If more than one owner is listed, the filing may not be rejected or otherwise prejudiced if all owners or addresses are not listed. Filing by an agent is acceptable, but the filing must show the owner of record and a mailing address for the owner. Use the agent's address if that is the only address which has been provided.
3. Type of Mining Claim or Site. The recordation documents must indicate whether the location is for a lode or placer mining claim, or for a mill or tunnel site. If the mining claim is located for both placer and lode, separate recordings shall be made for each.
4. Location Date. If not shown on the notice or certificate of location, the location date is determined by State law. The owner of the mining claim or site must supply the location date.
5. Description of Mining Claims and Sites.
 - a. Surveyed Land.
 - (1) Mining claims and mill sites described by legal subdivision need no additional description or map. The description must include the legal subdivision, section, township, range, meridian, and State.
 - (2) Where mining claims or mill sites are described by an approved mineral survey, the appropriate mineral survey number, quadrant, section, township, range, meridian, and State provide an acceptable description. No additional description or map is necessary.

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(3) Mining claims and sites, which are not described by aliquot parts, must have the quadrant, section, township, range, meridian, and State in which they are located shown to the extent possible. Corrections may be accepted at any time.

b. Unsurveyed Lands. All mining claims and sites located on unsurveyed lands shall be identified as to protracted quadrant, section, township, range, meridian, and State to the extent possible. Corrections may be accepted at any time. Rectangular or protracted survey information shall be supplied by the owner or agent.

6. Narrative, Map, or Sketch. In order to define more closely a mining claim or site, other than mining claims or mill sites described by aliquot parts, one of the following is required:

a. Narrative. A metes and bounds description of the claim or site, or such other description as may be permitted or required under State law, is required. The description shall clearly reference the mining claim or site to a topographic or hydrographic feature, or to a permanent man-made object. Such feature or object shall be permanent and reasonably identifiable.

b. Maps. The mining claim or site shall be drawn, as accurately as possible, on a U.S. Geologic Survey topographic map (if available). More than one mining claim or site, or more than one group of mining claims or sites, may be drawn on the same map. The name, number, or other identification of each mining claim or site shall be shown. The claims shall be drawn with such accuracy so that they may be located on the ground.

c. Sketch. The term "sketch" includes all maps, whether printed, drafted with instruments, or hand-drawn, which are not published by the U.S. Geologic Survey. Information shown on a sketch shall be the same as that shown on a map, including sufficient reference to geographic features to show the location of the mining claim or site with such accuracy that it may be found on the ground. More than one mining claim or site, or groups of mining claims or sites, may be shown on one sketch.

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d. Corrections. A corrected estimate of the mining claim or site location according to the rectangular survey, as well as amended notices or certificates of location, may be accepted at any time.

C. Amendments. An amended notice or certificate of location may be filed at any time. The amendment shall identify the original claim name and BLM serial number. Normally, an amended notice or certificate of location corrects a defect or clarifies an error on the original notice or certificate of location. An amended location relates back to the date that the original mining claim or site was located. (For a thorough discussion of amended location notices and their proper use, see R. Gail Tibbets, 43 IBLA 210 (1979), Samuel P. Barr, Sr., 65 IBLA 167 (1982), and Coates - Lahusen, 69 IBLA 137 (1982).) A service charge of \$5 is required for filing each amended notice or certificate of location. The notice or certificate shall be filed within 90 days of the amendment. However, there is no penalty if an amended notice is not filed within 90 days of the amendment. (See Leland H. Bray, 37 IBLA 120 (1978).) Information pertaining to the amendment shall be entered into the MCRS. The action date to be used is the date of receipt by the BLM.

D. Relocation. A relocation is a new location which covers essentially the same land as a prior mining claim or site. The relocation is a new mining claim or site and requires a new location date, serial number, service charge, and case file. A relocation does not relate back to the date of the prior location and is adverse to the prior location. (See Coates - Lahusen, 69 IBLA 137 (1982).) Information pertaining to the relocation must be entered into the MCRS. The action date to be used is the date of receipt by the BLM.

E. Special Recording Acts. Under P.L. 84-359 (Act of August 11, 1955, 16 U.S.C. 792 et seq.) and the O and C Act of April 8, 1948 (62 Stat. 162), owners of claims and sites located within power site withdrawals or O and C lands have to identify these locations as being on land subject to these Acts. Failure to identify is not a fatal defect under FLPMA and does not cause the claim or site to be rejected. The owner shall be notified as to the requirements of these Acts. (See .61 below, 43 CFR 3730, and 43 CFR 3821.)

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.2 Evidence of Assessment Work or Notice of Intention to Hold a Mining Claim or Site.

.21 When Annual Filings Are Required.

A. Mining Claims or Sites Located on National Park System Land. An affidavit of assessment work or a notice of intention to hold a mining claim or site on land under the jurisdiction of the National Park Service (NPS) as of September 28, 1976, shall have been filed with BLM by October 22, 1979. Copies of evidence of assessment work or notices of intention to hold mining claims or sites on land transferred to the jurisdiction of the National Park Service after September 28, 1976, are filed in the proper BLM office in accordance with 43 CFR 1821.2-1. Copies are sent to the National Park Service by BLM.

B. Mining Claims Located on or Before October 21, 1976.

1. Evidence of Assessment Work. Evidence of assessment work or notices of intention to hold mining claims located before the passage of FLPMA must have been filed on or before October 22, 1979. For claims recorded in 1977 and 1978, special rules apply. (See 43 CFR 3833.2-2(a) and (b).) It is not necessary to require evidence of recordation in the local recording office. (See Lo Lo M. Cosby, 46 IBLA 363 (1980).)

2. Filing Requirements. In each calendar year after a claim is recorded, an affidavit of assessment work or a notice of intention to hold must be filed on or before December 30. If December 30 falls on a day when the office is closed to the public, the annual filing is deemed to be timely filed if it is received in the proper office on the next day the office is open to the public. (See 43 CFR 1821.2-2(e).)

a. Information pertaining to the annual filing must be entered into the MCRS. The action date to be used is the date of receipt if the document is received in the proper BLM office on or before December 30 of the appropriate calendar year. If the annual filing document is timely mailed and received in the proper BLM office by January 19, the action date to be used is December 30 of the appropriate calendar year.

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C. Mining Claims Located After October 21, 1976. An affidavit of assessment work or notice of intention to hold shall be filed on or before December 30 of each calendar year following the calendar year in which the mining claim was located. Information pertaining to the annual filing shall be entered into the MCRS. The action date to be used is the date of receipt if the document is received in the proper BLM office on or before December 30 of the appropriate calendar year. If the annual filing document is timely mailed and received in the proper BLM office by January 19, the action date to be used is December 30 of the appropriate calendar year.

D. Mill or Tunnel Sites. A notice of intention to hold a mill or tunnel site shall be filed on or before December 30 of each calendar year following the year of location in the proper BLM office. Failure to file a notice of intention to hold a mill or tunnel site is a curable defect. If a notice of intention to hold is not received, request it by decision. For pre-FLPMA mill or tunnel sites, the notice of intention to hold is to be filed initially in the calendar year following the calendar year the site is recorded with the BLM. Information pertaining to the annual filing must be entered into the MCRS. The action date to be used is the date of receipt if the document is received in the proper BLM office on or before December 30 of the appropriate calendar year. If the annual filing document is timely mailed and received in the proper BLM office by January 19, the action date to be used is December 30 of the appropriate calendar year.

E. Filing Deadline.

1. Personal Delivery. Documents that are delivered in person to the BLM office shall be delivered by close of business on December 30, unless the filing deadline is extended.

2. U.S. Postal Service Delivery. For those documents that are mailed, the envelope shall be postmarked by midnight of December 30, and received by the proper BLM office by close of business on the following January 19, unless these filing deadlines are extended. (See 43 CFR 3833.05(m).)

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3. Postage Meter Stamps. For those documents that are mailed and postmarked December 30, the postmark must be affixed by the United States Postal Service. If, within the circle shown on the envelope, a "P.O.," "U.S.," or "P.S." appears, the postage meter stamp was affixed by the U.S. Postal Service. However, if these letters are not shown within the circle, this is not conclusive proof that the U.S. Postal Service did not affix the postage meter stamp. Stamps affixed by parties under contract with the U.S. Postal Service are considered to be affixed by the Postal Service. In those instances where there is no indication within the circle that the postage meter stamp was affixed by the U.S. Postal Service, contact the specific post office named and verify whether or not the Pitney Bowes meter number is a private meter stamp.

.22 Contents For Evidence of Assessment Work.

A. Usual Evidence. A copy of the evidence of assessment work document which has been or will be filed in the local recording office shall be filed in the appropriate BLM office. When timely filed, information pertaining to the annual filing shall be entered into the MCRS.

B. Other Evidence. The Act of September 2, 1958 (30 U.S.C. 28-1) provides that geological, geochemical, and geophysical surveys conducted by qualified experts and verified by detailed reports may constitute assessment work. A copy of the report which has been or will be filed in the local recording office may be submitted in place of an affidavit of assessment work. It is not necessary to retain the entire report in the case file; however, cover sheets and table of contents shall be duplicated and placed in the case file before the report is returned to the mining claimant. When timely filed, information pertaining to the annual filing must be entered into the MCRS.

C. Serial Number. The mining claim recordation serial number assigned when the notice or certificate of location was recorded with BLM should be shown. Lack of a serial number is not cause for rejection or return. If the annual filing can be identified as to the appropriate mining claim, no further contact with the mining claimant is necessary. If the mining claim cannot be identified, request the serial number by decision.

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D. Change of Address. The affidavit of assessment work is a convenient method of showing an address change. Mining claimants shall be encouraged to indicate when the address is a new one. Where the affidavit is filed by an agent who gives his address, do not change the mining claimant's address unless requested to do so.

E. Receipt for Evidence of Assessment Work. A receipt must be issued. A date-stamped copy of the affidavit submitted by the claimant is to be used. A copy shall be retained by BLM.

F. Adjudicative Action. The contents of an affidavit of assessment work are not to be adjudicated. An affidavit which, on its face, does not comply with the requirements of State law is open to attack by rival mining claimants.

.23 Contents of a Notice of Intention to Hold a Mining Claim or Site.

A. Mining Claims.

1. Notice of Intention to Hold. A notice of intention to hold may be in the form of a letter or other instrument recordable under State law. The notice must be signed by the owner or the owner's agent. A copy of a notice of intention to hold which has been or will be filed in the local recording office is acceptable. When timely filed, information pertaining to the notice of intent to hold shall be entered into the MCRS.

- a. Serial Number. See .22C above.
- b. Change of Address. See .22D above.
- c. Receipt. See .22E above.
- d. Filing Deadline. See .21E above.

2. Petition for Deferment of Assessment Work. The Act of June 21, 1949 (63 Stat. 214, 30 U.S.C. 28b-c) provides for temporary deferment of the performance of annual assessment work in certain situations where legal impediments exist. (See 43 CFR 3852.)

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a. Pending Petition for Deferment. A petition for deferment of assessment work is entered into ALMRS as a 3852 case type. A copy of the petition shall be placed in the mining claim recordation case file. Information pertaining to the petition for deferment shall be entered into the MCRS as a petition for deferment of assessment work filed. The action date to be used is the date of receipt by the Bureau.

b. Granted Petition for Deferment. If a deferment of assessment work has been granted, it is not necessary for the mining claimant to submit an additional copy of the decision for the mining claim recordation case file. A copy of the decision granting the petition is placed in the ALMRS 3852 case file and the mining claim recordation case file. Information pertaining to the petition shall be entered into the MCRS as a petition for deferment of assessment work granted. The action date to be used is the date of the decision issued by BLM granting the deferment.

c. Notice of Intention to Hold and Petition for Deferment. Whether the petition for deferment of assessment work is pending or granted, the mining claimant shall also file a notice of intention to hold. (See Marcus D. Schneider, 94 IBLA 239 (1986).) The notice of intention to hold shall refer to a pending petition by date of filing and ALMRS serial number. The notice of intention to hold shall refer to a granted petition by the decision and date issued by BLM, along with the ALMRS serial number. (See 43 CFR 3833.2-5(b)(2) and (3).) The \$5 per claim filing fee for a notice of intention to hold is also required. Information pertaining to the notice of intention to hold shall be entered into the MCRS. The action date to be used is the date of receipt if the document is received in the proper BLM office on or before December 30 of the appropriate calendar year. If the notice of intention to hold is timely mailed and received in the proper BLM office by January 19, the action date to be used is December 30 of the appropriate calendar year.

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B. Mill or Tunnel Sites. A notice of intention to hold may be in the form of a letter or other instrument. The notice must be signed by the owner or the owner's agent. FLPMA does not require the holder of a mill or tunnel site to file a notice of intention to hold the site with the local recorder's office. (See Richard Holland, 74 IBLA 167 (1983).) As failure to file a notice of intention to hold a mill or tunnel site is a curable defect, multiple filings for past years (not future years) may be accepted at the same time. (See James J. Kohring, 89 IBLA 345 (1985).) Notices of intention to hold for previous years shall be accompanied by the proper service charge of \$5 for each claim for each year. Information pertaining to the notice of intention to hold a mill or tunnel site shall be entered into the MCRS. The action date to be used is the date of receipt if the document is received in the proper BLM office on or before December 30 of the appropriate calendar year. If the notice of intention to hold is timely mailed and received in the proper BLM office by January 19, the action date to be used is December 30 of the appropriate calendar year.

1. Serial Number. See 22C above.
2. Change of Address. See .22D above.
3. Receipt. See .22E above.

.24 Evidence of Assessment Work or a Notice of Intention to Hold Not Required. When the first half of the mineral entry final certificate has issued for a mining claim or a mill site under mineral patent application, the mining claimant is relieved of the requirement to submit an affidavit of assessment work or a notice of intention to hold for that calendar year and all future years until the patent is issued. Information pertaining to the issuance of the mineral entry final certificate shall be entered into the MCRS. The action date to be used is the date of entry on the first half of the mineral entry final certificate.

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.3 Notice of Transfer of Interest.

.31 Filing by Transferee. Where a mining claimant conveys part or all of the interest in a mining claim or site by deed or other conveyance document, the transferee must file a transfer of interest with BLM, along with the appropriate service charge. The claim names and serial numbers shall be identified, in addition to the name and address of the new owner.

A. Transfer Documents. The transfer instrument shall be recordable under State law, and it shall be in writing. A copy of the transfer document satisfies this regulation. However, the regulations do not require that the document itself be filed with the BLM; notification of the transfer is sufficient. (See Hugh B. Fate, Jr., 86 IBLA 215 (1985).)

B. Death of Mining Claimant. Upon the death of a mining claimant and settlement of the estate, the heirs or estate shall notify BLM of new ownership of the mining claim or site.

C. Filing Period. Regulations require that notice of the transfer of interest shall be made within 60 days after title transfer is completed. Late filings are not returned or rejected for being late. Prior to recording a change of ownership, the transferee may not be personally served but is bound by any adverse decision or contest proceeding against the mining claim or site. Information pertaining to the transfer of interest shall be entered into the MCRS. The action date to be used is the date of receipt by the BLM. The date the transfer of interest document was executed shall be entered in "Remarks."

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.4 Data Entry.

.41 MCRS Data Entry. The information from the notice or certificate of location, and other pertinent information from the mining claim case file, shall be entered into the official record system for mining claim recordation (MCRS). (See Handbook 1274-1 - Automated Mining Claim Recordation System.)

.42 Action Dates.

A. Location Notices. The action date to be used is the date of receipt by the Bureau.

B. Annual Filings. The action date to be used is the date of receipt if the document is received in the proper BLM office on or before December 30 of the appropriate calendar year. If the annual filing document is timely mailed and received in the proper BLM office by January 19, the action date to be used is December 30 of the appropriate calendar year.

C. Amendments. The action date to be used is the date of receipt by the BLM.

D. Transfers of Interest. The action date to be used is the date of receipt by the BLM. The date the transfer of interest document was executed should be entered in "Remarks."

.5 Service Charges.

.51 Payable to BLM.

A. Acceptable Payment. All service charges are payable in U.S. currency, postal money order, or negotiable instrument made payable to the Department of the Interior - Bureau of Land Management.

B. Location Notices. A service charge of \$10 is required for each mining claim or site recorded.

C. Annual Filings. A service charge of \$5 is required for each mining claim or site listed on an affidavit of assessment work or a notice of intention to hold.

D. Amendments. A service charge of \$5 is required for an amendment to a previously recorded location certificate.

E. Transfers of Interest. A service charge of \$5 is required for each mining claim or site transferred.

F. Deposits. Without exception, all deposits collected under 43 CFR 3833 are paid into the Bureau's special, reimbursable, nonyear account 14x1109 (45-4990).

.52 Documents Without Fees or Insufficient Fees. The regulations at 43 CFR 3833.1-4(b) provide that filings which are not accompanied by the proper service charges set forth in 43 CFR 3833.1-3 after January 1, 1991, shall not be accepted and shall be returned to the claimant/owner without further action.

A. Location Notices, Amendments, Evidence of Assessment Work, and Transfers of Interest Without Fees. When a document which requires a fee is filed with BLM without the fee, return the document to the claimant. It is not necessary to keep any record that the document was filed with BLM. Mail received by BLM or documents coming in over the counter are always date-stamped. Before returning a document to the claimant, the date stamp must be cancelled. Cancellation is extremely important as evidence BLM did not accept a document.

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1. To cancel the date-stamp, stamp over the date with another stamp which reads:

CANCELLED
DUE TO NONPAYMENT OF FEES

or

CANCELLED

(or some other similar message)

2. On the same document, near the date stamp, stamp or note the following:

FILING RETURNED WITHOUT
ACTION - NO FEES PAID
(Date and initials of person returning document)

(or some other similar message)

3. After the document is appropriately stamped, return the document to the claimant, along with a note on BLM letterhead which explains why the document is being returned and what the filing fees are. The document shall be sent by regular mail, not certified mail.

B. Filings With Insufficient Fees. When a document which requires a fee is filed with BLM with insufficient fees, how the document is processed depends upon whether it is a location notice, amendment, evidence of assessment work, or a transfer of interest.

1. Location notices. Serialize the location notices covered by filing fees and return whatever location notices are not covered by fees. For example, a claimant files location notices for Iris #1 through #4, along with a check for \$20. BLM would serialize Iris #1 and #2, and Iris #3 and #4 would be returned to the claimant. Follow the stamping procedure given in .52A1&2 above. Return the location notices to the claimant, along with a note on BLM letterhead explaining why they are being returned and what the filing fees are.

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a. When new location notices are filed, and the filing fees are not sufficient to cover all of the notices, a problem may exist in deciding which notices to retain and which notices to return to the claimant. Location notices shall be serialized in the following manner:

(1) Preferred:

(a) If the claims are numbered, serialize them in that order. For example, a claimant files 4 location notices for claims named Iris #1 through Iris #4, along with \$20. Serialize Iris #1 and Iris #2. Return the location notices for Iris #3 and Iris #4 to the claimant. Always use this method of serializing claims, if applicable.

(2) If the claims are not numbered as given in the example above, serialize them as follows:

(a) If the location dates are different, serialize the claims with the earliest location date first. For example, a claimant files 3 location notices for claims named Iris, Rose, and Lily, along with \$20. Iris and Rose were located 11/1/90 and Lily was located 11/2/90. Serialize Iris and Rose, and return the location notice for Lily to the claimant.

(b) If the location dates are the same, alphabetize the location notices by claim name and then serialize them. For example, a claimant files 3 location notices for claims named Iris, Rose, and Lily, along with \$20. Serialize Iris first, Lily second, and return the location notice for Rose to the claimant.

2. Amendments. Apply the fees in BLM serial order number, using the lowest number first. For example, the claimant files amended notices for Iris #1 through #4, along with a check for \$10. The claims are serialized as follows:

<u>Claim Name</u>	<u>BLM Serial Number</u>
Iris #1	IMC-51110
Iris #2	IMC-51111
Iris #3	IMC-76437
Iris #4	IMC-76438

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a. The amended notices for Iris #3 and #4 should be returned to the claimant.

b. Follow the stamping procedures given in 52A. Return the amended location notices to the claimant, along with a note on BLM letterhead explaining why the documents are being returned and what the filing fees are.

3. Evidence of assessment work, notices of intent to hold, and transfers of interest. Apply the fees in BLM serial order number, using the lowest number first. For example, the claimant filed 3 affidavits and \$40 for the following claims:

<u>Claim Name</u>	<u>BLM Serial Number</u>
Iris #3	IMC-76437
Iris #4	IMC-76438
Rose #36	IMC-115763
Rose #4	IMC-24071
Rose #37	IMC-115764
Lily 208	IMC-150021
Lily 7	IMC-15678
Lily 9	IMC-15679
Iris #1	IMC-51110
Iris #2	IMC-51111

a. The filings would be accepted for all of the claims except Rose #37 and Lily 208. On the affidavits for Rose #37 and Lily 208, stamp or note the following:

NO ACTION TAKEN ON
(List claim name and/or BLM serial #)
DUE TO NONPAYMENT OF FEES
RETURNED (Date and initials of person returning document)

(or some other similar message)

b. The stamp or note shall be placed close to the BLM date stamp, if possible. Return copies of the affidavits to the claimant and retain copies for the BLM mining claim file. Along with the returned copies, send the claimant a note on BLM letterhead explaining why the documents are being returned and what the filing fees are.

c. The same procedure would be followed for notices of intent to hold or transfers of interest.

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.53 Refunds. The regulations at 43 CFR 3833.1-3 refer to the service charges in the Mining Claim Recordation program as "nonrefundable." For purposes of this Manual Section, the terms "fees" and "service charges" are used interchangeably. Fees should be earned and not refunded if any type of processing is done on a document. However, as a general rule, fees shall be refunded when an overpayment is made.

A. Location Notices. All location notices retained by BLM are to be serialized and entered into the data base. The purpose for doing this is to allow easy tracking of all location notices filed with the BLM.

1. Location notices filed in the wrong State Office. If the problem is discovered by the cashier or someone else in Accounting, return the entire package, including the fees, to the mining claimant.

a. If the problem is not discovered until the location notices are serialized and the fees are earned, keep the fees and reject the filing.

2. Location notices over 90 days. If the mining claimant has hand-carried the notices to the Public Room, it is the claimant's choice as to whether the claimant wishes to file the location notices. If the claimant chooses to file the location notices, request and earn the fees.

a. If the notices are filed with BLM through the mail, serialize the location notices, enter them into the data base, keep the fees, and reject the filing.

b. If the notices are filed with BLM through the mail, but the fees are not included, serialize the location notices, enter them into the data base, and reject the filing. Do not request the fees.

c. If the location notices are filed with BLM through the mail, but the fees are not adequate to cover all of the location notices, serialize the location notices, enter them into the data base, keep the fees, and reject the filing. Do not request additional fees.

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3. Location notices timely filed. If the location notices are filed with BLM through the mail, and fees are not included or are inadequate, serialize the location notices, enter them into the data base, and request the fees necessary to cover all of the location notices.

a. If the location notices are filed with BLM through the mail and a status check shows the mining claims are null and void ab initio, serialize the location notices, enter them into the data base, earn the fees, and issue a decision declaring the mining claims null and void.

B. Maps. A fee is not required to file or amend a map.

C. Amended Location Notices. In some States, State law allows a mining claimant to amend more than one claim on an amendment. If an amendment purports to amend more than one claim, \$5 is required for each claim or site listed on the amendment.

D. Annual Filings.

1. Case File is Closed. If the case file is closed, but the mining claimant files evidence of assessment work or a notice of intention to hold mining claims, file the document in the appropriate case file and keep the fees. Notify the claimant the first year this occurs. In subsequent years, do not continue to notify the claimant. If a transfer of interest takes place, and the new owner makes an annual filing, notify the new owner that the case file is closed.

2. Locke Decisions. If a party makes an annual filing and pays the fee on a claim which is abandoned and void by operation of law for failure to make an annual filing in a previous year, but a decision was never issued by BLM notifying a claimant the claim was "closed," file the document, issue an abandoned and void decision, close the file, and keep the fee. If the party requests that the fee be returned because the claimant was never notified the claim was abandoned and void, refund the fee.

3. Duplicate Filings. If two or more parties own an interest in the same claim, and each party makes an annual filing and pays the filing fee, update and file documents in the appropriate case file and keep all fees.

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4. Second Filing Showing County Recordation. If the mining claimant files evidence of assessment work or a notice of intention to hold, and then makes a second filing of the same document without fees to show that it was recorded with the county, do not request fees for the second filing. If fees are inadvertently requested for a second filing by the same person, refund the fees.

a. If the mining claimant files evidence of assessment work or a notice of intention to hold, then makes a second filing of the same document to show it was recorded with the county, and pays the fees again, keep the fees.

E. Transfers of Interest.

1. When Fees Are Not Required. Filing fees are not required for options, leases, subleases, liens, mortgages, relinquishments, or bankruptcy notices.

2. When Fees Are Required. Fees are required for court decrees changing claim ownership, decrees of distribution of estates, death certificates with will or affidavit, name changes, mergers, and where delinquent co-owners are dropped under the provisions of 43 CFR 3851.4. If these documents are not accompanied by fees, request the fees. Return the documents if the fees are not paid after billing.

a. Fees are required for transfer of interest documents which were executed before January 3, 1989, which have been filed with BLM after January 3, 1989.

.6 Effect of Recording and Filing.

.61 Relationship to Other Laws. Nothing in Section 314 of FLPMA amended the recording requirements for mining claims and sites under other laws or regulations.

A. Validity. Recording a mining claim or site under FLPMA merely serves to protect whatever possessory rights the mining claimant may have in the mining claim or site.

B. Other Laws. Certain other laws require the filing of a notice or certificate of location made under the mining laws, notably P.L. 84-359, Act of August 11, 1955; 69 Stat. 681 (see 43 CFR 3736), and the O and C Act of April 8, 1948; 62 Stat. 162 (see 43 CFR 3821). Where the recordation is sufficient under Section 314 of FLPMA, it shall be accepted and recorded.

1. P.L. 84-359, Powersite Withdrawals. Placer mining claims recorded in powersite withdrawals are subject to a 60-day waiting period whereby mining cannot occur. If BLM determines that placer mining operations on the land may substantially interfere with other uses, a notice of intention to hold a hearing shall be sent to each of the locators by registered or certified mail within 60 days. (See 43 CFR 3736.1(b) and United States Forest Service v. Walter D. Milender, 104 IBLA 207 (1988), 95 I.D. 155 (1988).)

a. If a placer claim is recorded under FLPMA, and it is not identified by the owner as being located in a powersite withdrawal, the 60-day prohibition against mining shall begin when BLM discovers the placer claim is subject to the Act. A decision is sent notifying the owner that mining cannot occur for a 60-day period and reciting the conditions of the Act.

2. Act of April 8, 1948 (O and C Lands). All mining claims and sites located on O and C lands (these lands are only in Oregon and California) are subject to the filing requirements and timber management practices of the Act. Claimants with mining claims and sites located on these lands are sent a letter advising of the land status and requirements of the Act. (See 43 CFR 3821.)

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3. Separate Filings. Where other laws require filing a notice or certificate of location, or an affidavit of assessment work, separate filings shall be made unless the filing in conformity with FLPMA states that it is also intended to satisfy the requirements of the other acts.

C. Contest Actions. When the United States commences a contest action against a mining claim or site, all owners of record, along with suspected owners of record, shall be notified. (See BLM Manual Sections 3871 and 3872 and 43 CFR 4.450-5.) The pendency of contest proceedings does not excuse a claim owner from the statutory annual filing requirements. (See Gordon B. Copple et al., 105 IBLA 90 (1988).)

D. Known Unrecorded Mining Claims or Sites. The fact that a mining claim or site is known to have been located, but is not yet recorded with BLM, does not give the mining claimant possessory rights under 43 U.S.C. 1744 until the claim is recorded with BLM. If the location notice is not recorded with BLM within 90 days after its location, the unrecorded claim is abandoned and void by operation of law.

E. Void Mining Claims or Sites. If, at any time after a location notice or certificate is recorded with BLM, the mining claim or site is found to have been located on land not open to mineral entry under the mining law on the date of location, a decision finding the mining claim or site null and void ab initio must be issued. (See .72B)

F. False, Fictitious, or Fraudulent Documents. A person who knowingly files false, fictitious, or fraudulent documents is subject to criminal action by the United States under 18 U.S.C. 1001. If such filings are received, the matter must be brought to the attention of the Special Agent and the State Director for appropriate action.

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.7 Processing Recordation and Annual Filing Documents.

.71 Receiving Recordation Documents.

A. Receiving.

1. Time and Date Stamp. See Manual Section 1274.

2. Serialization. See Manual Section 1274.

3. Copies. Machine copies are made of defective filings before returning the documents to the mining claimant. These documents serve as background material should an appeal be filed from a subsequent adverse decision by BLM. Such copies shall clearly show the date that the documents were received by BLM.

B. Filing Fees.

1. Receipts for Monies. Issue a receipt for the check or money even if deficiencies in the filings are apparent or if insufficient funds are received. Deposit all funds in account 14x1109 (45-4990). (See Manual Section 1274.)

2. Filing Fees Not Submitted. Where an attempt is made to record documents requiring filing fees and the filing fees are not included, request the fees. If the fees are not submitted in response to the request, issue a decision declaring the claims abandoned and void.

3. Insufficient Filing Fees. If the documents are filed with insufficient filing fees, request the additional fees. If the fees are not submitted, contact the mining claimant to ascertain which of the mining claims or sites the filing fees cover and issue a decision declaring the remaining claims abandoned and void. If a response is not received, apply the remitted fees to cover the claims or sites in the order listed by the owner in his or her submission. Reject the remaining claims. (See Herbert M. Cole et al., 115 IBLA 272 (1990).)

.72 Adjudicative Actions.

A. Serial Number. Serial numbers assigned to each mining claim or site are shown on the receipt and accounting advice form.

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B. Land Status. Determine land status as of the time of original location. Mining claims or sites located entirely on land closed to mining claim location, after the date of closure, are null and void ab initio (from the beginning). Reasons an area may be closed to mineral entry include special acts, regulations, public land orders, and patents. A decision is issued declaring the mining claim or site null and void ab initio.

1. Lode Claims. Under certain conditions, the side lines of a lode may be extended onto land not open to mineral entry in order to obtain extralateral rights on land open to mineral entry. The extension of lines on land not open to entry does not give the lode claimant any surface or mineral rights in such lands, but serves to protect the apex rights on the land open to entry. (See Santa Fe Mining, Inc., 79 IBLA 48 (1984) and Marilyn Dutton Hansen, 79 IBLA 214 (1984).) The extended portion of the lode claim is not, therefore, null and void ab initio. However, the lode claimant shall be sent a notice advising of the situation.

2. Placer Claims and Mill Sites. The mining claimant owning a placer claim or mill site cannot extend claim boundaries onto land not open to mineral entry. However, for placer claims or mill sites located by metes and bounds descriptions, it is usually impossible to accurately locate the claims on the ground through State Office records. These claims shall not be adjudicated for land status unless it is obvious that the entire placer claim or mill site is located on land not open to mineral entry. This limitation does not apply to placer claims or mill sites which are located and described by legal subdivision on surveyed lands.

C. Subdivision of an Association Placer. For recordation purposes, a placer mining claim severed from an association placer shall be recorded under Sec. 314 of FLPMA as a separate entity. A separate case file shall be established and a \$10 service charge must be collected for each severed placer claim. A recordable document, such as a quitclaim deed, an amended notice, or certificate of location shall be filed with BLM. A copy of the original notice or certificate of location for the original association placer mining claim shall be part of the recordation documents so that it is obvious the chain-of-title relates back to the location date of the original association placer claim. The remaining mining claimant or claimants of the original association placer mining claim need not amend the original association placer claim.

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D. Citizenship. Only U.S. citizens, corporations organized under the laws of the United States, or aliens who have declared their intention to become U.S. citizens, may hold mining claims or sites (30 U.S.C. 22).

1. Mining Claims or Sites Held by Aliens. Mining claims or sites held by aliens may be adjudicated by BLM based upon the official records. The Bureau shall not summarily challenge mining claimants with a foreign address and shall only become involved in adjudication of citizenship under the following situations:

a. When a mineral patent application has been filed. (See Manual Section 3862.2.)

b. When the public interest would be served (i.e., public projects, withdrawals, or administrative sites).

c. When third parties challenge the citizenship requirement of a mining claimant.

2. Third Party Challenge. BLM acts upon third party challenges only when the third party presents a sworn affidavit to BLM testifying that a diligent search has been made of all State and Federal records and the third party cannot find the mining claimant registered as a citizen of the United States or as an associate of a company licensed to do business in the United States. Along with the sworn affidavit, the challenging third party shall give a written statement from the State authority declaring that the subject mining claimant or company is not licensed to do business in that State, and a statement from the United States Immigration and Naturalization Service stating that the mining claimant is not of record as a U.S. citizen. If these statements are not with the sworn affidavit, the petition for Bureau action shall be denied. Upon acceptance by the Bureau of the sworn affidavit and supporting documents, the mining claimant shall be notified as provided below.

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3. The Administrative Process for a Third Party Challenge. A certified or registered notice is sent to the mining claimant stating the citizenship requirement of 30 U.S.C. 22. The notice shall state that the Bureau believes that the mining claimant is an alien and not entitled to hold a mining claim or site under the mining laws. Copies of the affidavit and supporting data should be enclosed. The mining claimant is given 60 days to present documentation to verify U.S. citizenship, declaration of intention to become one, or association with a company licensed to do business in the United States. Failure to comply with the notice shall result in the issuance of a decision declaring the interest in the mining claim or site null and void because the mining claimant is an alien not entitled to hold a mining claim or site. Decisions adverse to the mining claimant are appealable to the Interior Board of Land Appeals.

4. False Statements. False statements by the challenging party are a violation of 18 U.S.C. 1001 and subject the party to criminal prosecution. If such statements are made, the matter shall be brought to the attention of the Special Agent and the State Director for appropriate action.

E. Service of Decisions. Any decision issued under the authority of Section 314 of FLPMA and 43 CFR 3833 is considered to have been constructively served upon the intended parties if it was sent to the last address of record by certified mail, return receipt requested. If it is returned as refused, unclaimed, or undeliverable for any reason, it is considered to have been received by the intended parties. The envelope and its contents shall be retained in the case file. (See 43 CFR 3833.5(d) and 43 CFR 1810.2)

F. Appeals. All final decisions of the authorized officer issued under the authority of Section 314 of FLPMA and 43 CFR 3833 are appealable to the Interior Board of Land Appeals pursuant to 43 CFR Part 4. (See 43 CFR 3833.5(h).)

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.73 Defects.

A. Curable Defects. Failure to file adequate information called for in .12B, .21D, .23A, .23B, and .3 above is a curable defect. In addition, when a claimant timely files with BLM a copy of assessment work, but for the wrong year, such error does not, by itself, require a finding that the claims are abandoned and void. This is a curable defect under 43 CFR 3833.4. (See Thomas A. Alexander, 108 IBLA 347 (1989).) For curable defects, a decision is issued to the owner of the mining claim or site giving 30 days to submit the requested information, or the mining claim or site will be declared abandoned and void. (See 43 CFR 3833.4(b).)

B. Fatal Defects. Failure to file the necessary instruments listed in .11, .12A, .21A, .21B, .21C, and .23A above are fatal defects. A decision is issued declaring the mining claim or site abandoned and void by operation of law. (See 43 CFR 3833.4(a).)

.74 Third Party Challenges. Where an adverse claimant states that a mining claim on file with BLM is abandoned by its owner because the owner filed annual filings with BLM but not with the county recorder's office, the BLM shall refer the adverse claimant to State or Federal courts for adjudication of the matter. BLM will abide by the judgment of the court in settling a dispute. The BLM is not the forum for resolution of private party disputes between rival claimants. If the court declares a mining claim or site abandoned, issue a notice to that effect and close the case file. See Gold Depository and Loan Co. Inc. v. Mary Brock et al., 69 IBLA 194 (1982) and Sandra Memmot (On Reconsideration), 93 IBLA 113 (1986).

.75 Form and Content of Decisions. Decisions and notices are to be concise and contain factual material only. The legal basis for the decision, and the process to be followed for an appeal, must be included in decisions. (See Manual Section 1841 for the process for writing and issuing decisions.)

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Glossary of Terms

-A-

affidavit of assessment work: the instrument required under State law that certifies that assessment work required by 30 U.S.C. 28 has been performed on, or for the benefit of, a mining claim. The instrument may be an affidavit of annual assessment work performed on each mining claim or a detailed report as authorized by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1).

agent: one acting on behalf of the owner or owners.

amended notice or certificate of location: normally a correction or clarification of the description or other pertinent information to the original notice or certificate of location. A location notice, even though styled "amended," may be considered an original location where the earlier location was improperly made. An amended location notice cannot be used as a new location instrument. (See Samuel P. Barr, Sr., 65 IBLA 167 (1982) and .12C of this Manual Section.)

authorized officer: any employee of the Bureau of Land Management to whom the State Director has delegated his authority to perform the duties described in 43 CFR 3833.

-B-

BLM: the proper Bureau of Land Management Office in which filings are made. In Alaska, filings may be made in either the Anchorage or Fairbanks office at the election of the mining claimant. (See 43 CFR 1821.2-1(d).)

-L-

local recording office: the office established under State law to accept recordation of legal documents, usually the county recorder's office.

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-N-

notice of intention to hold: a letter, or recordable instrument under State law, from the mining claimant stating his intention to hold a mining claim, mill or tunnel site.

-R-

relocation: a new location adverse to a prior location which does not relate back in title to a former location. (See Coates - Lahusen, 69 IBLA 137 (1982) and .12D of this Manual Section.)

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Key Cases in Mining Claim Recordation

Decisions of the Interior Board of Land Appeals:

Amended Location Notices.

Leland H. Bray, 37 IBLA 120 (1978)
R. Gail Tibbets, 43 IBLA 210 (1979)
Sunshine Mining Co. et al., 64 IBLA 399 (1982)
Samuel P. Barr, Sr., 65 IBLA 167 (1982)
Coates - Lahusen, 69 IBLA 137 (1982)
Hugh B. Fate, Jr. et al., 86 IBLA 215 (1985)
Russell Hoffman (On Reconsideration), 87 IBLA 146 (1985)
Russell Hoffman v. Bureau of Land Management, 105 IBLA 238
 (1988)

Dual Filing Required (BLM and County).

Herschel Knapp, 65 IBLA 314 (1982)

Dual Location by the Same Owner.

Edward E. Ellis, 101 IBLA 272 (1988)

Due Process Requirements for Recordation.

Myron Cherry, 87 IBLA 165 (1985)

Effect of Only One Filing (County Only) . .

Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981)
J & B Mining Co., Inc., 65 IBLA 335 (1982)

Effect of State Filing Laws.

James V. Joyce, 42 IBLA 383 (1979)
United States v. Richard P. Haskins, 59 IBLA 1 (1981)
Waldron Enterprises Mining, 88 IBLA 54 (1985)

Failure of U.S. Postal Service to Timely Deliver.

Elmer Transtrum, 65 IBLA 285 (1982)
Alice R. Kirk, 88 IBLA 4 (1985)

Fees - Bad Check.

Glen W. Taylor, 67 IBLA 393 (1982)

Fees - Late.

William Scott Olsen, 65 IBLA 274 (1982)

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Filing in the Wrong Office.

Gold Leaf Enterprizes, 105 IBLA 282 (1988)

Filings Between 10-21-76 and 10-22-79.

Lo Lo M. Cosby, 46 IBLA 363 (1980)

Harvey A. Clifton et al., 60 IBLA 29 (1981)

Insufficient Filing Fees.

Herbert M. Cole et al., 115 IBLA 272 (1990)

Insufficient Map or Narrative.

Floyd and Elsie Patrin, 87 IBLA 152 (1985)

United States Borax & Chemical Corp., 98 IBLA 358 (1987)

Jurisdiction Over Disputes Between Private Parties on Failure to File Annual Filings with BLM.

Gold Depository and Loan Co., Inc. v. Mary Brock et al.,
69 IBLA 194 (1982)

Harvey A. Clifton, 80 IBLA 96 (1984)

Sandra Memmott, 88 IBLA 379 (1985)

Location of Mining Claims Must Conform to State Law.

Waldron Enterprises Mining, 88 IBLA 54 (1985)

No Relief from Section 314 of FLPMA (43 U.S.C. 1744).

Gladys M. Cramer, 65 IBLA 120 (1982)

Karl Peterson, 89 IBLA 141 (1985)

Notation Rule and FLPMA.

B.J. Toohey, C.D. Toohey, and C.W. Toohey, 88 IBLA 66 (1985)

Notation Rule - State Selections.

Maple Leaf Gold, Inc. et al., 101 IBLA 158 (1988)

Ninety-Day Limit for Recordation.

E.M. Koppen, 36 IBLA 379 (1978)

Allen B. Clark, 87 IBLA 204 (1985)

Notice of Intention to Hold Required in First Calendar Year Following Location.

Evelyn L. Parent, George V. Hall, 66 IBLA 147 (1982)

Harvey A. Clifton et al., 60 IBLA 29 (1981)

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Notice of Intention to Hold Mill and Tunnel Sites is a Curable Defect.

Feldslite Corporation of America, 56 IBLA 78 (1981)
James J. Kohring, 89 IBLA 345 (1985)

Notice of Intention to Hold - Sufficiency.

R. H. Gunn, 98 IBLA 104 (1987)
L & S Mines, 98 IBLA 123 (1987)

Office Closed on December 30.

Buttes Resources Co., 65 IBLA 178 (1982)

Partially Located on Land Not Open to Mineral Entry.

Santa Fe Mining, Inc., 79 IBLA 48 (1984)
Marilyn Dutton Hansen, 79 IBLA 214 (1984)

Petition for Deferment of Assessment Work and Notice of Intention to Hold.

Marcus D. Schneider, 94 IBLA 239 (1986)

Presumption of Regularity.

Luella S. Collins (On Reconsideration), 101 IBLA 399 (1988)
Milton E Kutil, 104 IBLA 396 (1988)

Private Couriers.

Victor Shepherd, 102 IBLA 334 (1988)

Proof of Filing.

Richard A. Willers, 101 IBLA 106 (1988)

Retroactivity of Administrative Actions.

James E. Strong, 45 IBLA 386 (1980)
United States v. Richard R. Ballas, 87 IBLA 88 (1985)

Sufficiency of Filings.

Homer F. Wilson, 101 IBLA 70 (1988)
Donald L. Howard et al., 104 IBLA 374 (1988)
Joseph L. Frankmore, 101 IBLA 202 (1988)

Withdrawn Lands.

Donald E Stewart, 104 IBLA 48 (1988)
George and Reda Howard, 104 IBLA 114 (1988)
James E. Morgan et ux, 104 IBLA 204 (1988)
Kathryn J. Story, 104 IBLA 313 (1988)

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Federal Court Cases:

Roberts v. Morton, 549 F. 2d 158 (10th Circuit 1976); rehearing denied en banc (March 15, 1977)

-The location of Federal mining claims is to conform to State law (upholding 43 CFR 3831.1) or they are invalid.

-The United States is not bound by State statutes of limitation or subject to the defense of laches in enforcing its rights.

Topaz Beryllium v. United States, 479 F. Supp. 309 (D. of Utah, 1979); affirmed, 649 F. 2d 775 (10th Circuit, 1981)

-Sec. 314 of FLPMA is constitutional.

-The regulations in 43 CFR 3833 are a reasonable exercise of the Secretary's authority to administer the statute.

-The Secretary has the authority to collect additional information necessary to complete the recordation process.

United States v. Locke, 105 S. Ct. 1785 (1985)

-Sec. 314 of FLPMA is constitutional and is not a violation of due process nor a taking of property.

-Actual intent to abandon is irrelevant in enforcing the statute.

-Compliance with the statute is mandatory to keep a mining claim or site.

-The statutory filing deadline is December 30, not December 31.

NL Industries v. United States and AMC Corp, 9th Circuit, July 25, 1985.

-For pre-FLPMA mining claims, the annual filing is due in the calendar year following the calendar year of the mining claim's recordation, and on or before December 30 of each year thereafter.