

THE CARROW CO.

IBLA 88-59

Decided June 26, 1990

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring mining claim null and void ab initio. A MC 44107

Set aside and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claim Certificates or Notices of Location--Mining Claims: Recordation of Certificate or Notice of Location

A mining claimant may correct the misidentification of a township on a map filed pursuant to the regulations implementing 43 U.S.C. § 1744 (1982).

APPEARANCES: Donald R. Westfall, Esq., Phoenix, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BYRNES

The Carrow Company has appealed from the September 23, 1987, decision of the Arizona State Office, Bureau of Land Management (BLM), declaring the "Necessary" unpatented lode mining claim (A MC 44107) null and void ab initio because ownership of the land on which the claim was located had passed to the State of Arizona on February 14, 1912. The claim was located on November 25, 1957, and its location notice describes it by metes and bounds, tying it to "the old Ahuamado Ranch House" but not to any public land survey. When a copy of the notice of location was filed with BLM on June 11, 1979, to satisfy the recordation requirements of 43 U.S.C. § 1744 (1982), appellant was also required to submit a map of the claim. The map submitted indicates: "NE QUARTER SECTION 16 TOWNSHIP 19-South RANGE 10-East." The underlined entries were handwritten.

According to BLM's master title plat, sec. 16 in T. 19 S., R 10 E., Gila and Salt River Meridian, was part of a school grant, title to which vested in the State of Arizona on February 14, 1912. See Act of June 20, 1910, ch. 310, § 24, 36 Stat. 572; Proclamation, 37 Stat. 1728 (Feb. 14, 1912). If appellant's claim was in fact located in sec. 16, T. 19 S., R. 10 E., then BLM properly declared the claim null and void ab initio because that land was conveyed to the State without a reservation of minerals to the United States. Lynn M. Sheppard, 90 IBLA 23, 25, 92 I.D. 612, 614 (1985). Appellant, however, asserts that the correct township for the claim is 20 S., not 19 S. as the map indicated.

Appellant's admitted failure to properly identify the township in which the claim was located raises the issue whether appellant properly recorded the claim as required by 43 U.S.C. § 1744(b) (1982), under which a claim owner must file with BLM a copy of his notice or certificate of location "including a description of the location of the mining claim * * * sufficient to locate the claimed lands on the ground." Regulations implementing that provision have always required the filing of a map and/or a narrative or sketch sufficient to identify the claim. 43 CFR 3833.1-2(c)(6) (1979) (for claims located prior to Oct. 21, 1976); see 43 CFR 3833.1-2(b)(5)(ii); Arley Taylor, 90 IBLA 313, 316 n.1 (1986). Failure to record a claim results in a conclusive presumption of abandonment. 43 U.S.C. § 1744(c) (1982).

The Board has previously held that where no adequate map is filed, a location notice providing only a vague description of the claim does not comply with 43 U.S.C. § 1744 (1982). Joe Ostrenger, 94 IBLA 229 (1986). Indeed, location certificates have always been required to contain "a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim." 30 U.S.C. § 28 (1982); see generally, Vedin v. McConnell, 22 F.2d 753, 756-57 (9th Cir. 1927). If a location notice description is inaccurate, the situs of the claim on the ground as disclosed by its monuments controls over any conflicting descriptions or maps. See United States v. Kincanon, 13 IBLA 165, 168 (1973). Inasmuch as appellant's notice of location refers to "the old Ahuamado Ranch House," it appears to refer to a permanent monument as required by 30 U.S.C. § 28 (1982). See Vevelstad v. Flynn, 230 F.2d 695 (9th Cir.), cert. denied, 352 U.S. 827 (1956). In Arley Taylor, *supra* at 317, we stated: "the test established by statute for the sufficiency of a recorded description is whether the claim may in fact be found and identified by following the recorded description. 2 American Law of Mining, § 33.09[3] (2d ed. 1984)."

In certain cases where nothing in the record was sufficiently precise to determine whether a claim was situated on ground not open to location, the Board has required BLM to determine the situs of the claim on the ground. E.g., Leslie Corriea, 93 IBLA 346 (1986); but see Arley Taylor, *supra* at 318 (such action not required until future need arises to determine the exact status of claims which may be null and void in part). In the instant appeal, however, any difficulty arises only from appellant's misidentification of the township on the map.

[1] In cases where the map required by departmental regulations has not accurately depicted the situs of the claim, the Board has treated the defect as curable. E.g., Outline Oil Corp., 95 IBLA 255, 259 (1987). We note that a court considering the effect of a Nevada statute requiring a mining claim locator to file a map tying a claim to a public land survey held that the misidentification of the township did not invalidate the claim. Lombardo Turquoise Milling & Mining v. Hermanes, 430 F. Supp. 429, 440 (D. Nev. 1977). We are not aware of any contrary holding with respect to the Arizona statute. Accordingly, we conclude that a mining claimant

may correct the misidentification of a township on a map filed pursuant to the regulations implementing 43 U.S.C. § 1744 (1982). 1/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Arizona State Office is set aside and the case is remanded for further action in accordance with this opinion.

James L. Byrnes
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge

1/ We note that allowing correction of a map is consistent with the well-established rule that a claimant may amend a location notice to correct an error in the description of a claim and that such an amended location will relate back to the original location so long as the claim as marked on the ground does not take in new or additional land and no adverse rights have intervened. See R. Gail Tibbetts, 43 IBLA 210, 86 I.D. 538 (1979), overruled in part on other grounds, Hugh B. Fate, Jr., 86 IBLA 215 (1985).