



KAREN N. OWEN

176 IBLA 168

Decided November 6, 2008



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

KAREN N. OWEN

IBLA 2008-164

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Appeal from a decision of the Idaho State Office, Bureau of Land Management (BLM), declaring nine unpatented mining claims null and void *ab initio* because the notices of location for the claims were improperly recorded with the county before the claims were located on the ground. IMC 185501, *et al.*

Decision reversed and case remanded; petition for stay denied as moot.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Location

A BLM decision declaring mining claims null and void *ab initio* because the notices of location for the claims were improperly recorded with the county before the claims were located on the ground will be reversed when the mining claimant establishes, on appeal, that the notices of location for her claims are defective due to an obvious error in the date of location, and the Board determines that such a defect is curable and that the notices may be considered timely recorded with the county and BLM based on the correct date.

APPEARANCES: Karen N. Owen, Weiser, Idaho, *pro se.*

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Karen N. Owen has appealed from and petitioned for a stay of a May 9, 2008, decision of the Idaho State Office, Bureau of Land Management (BLM), declaring nine unpatented mining claims null and void *ab initio* because the notices of location for the claims were improperly recorded with the county before the claims were

located on the ground.¹ Owen establishes, on appeal, that the notices of location are defective due to an obvious error in the date of location. Because that defect is curable and, based on that corrected date, the notices may be considered timely recorded with both the county and BLM, we reverse BLM's decision and remand the case to allow Owen the opportunity to cure. The petition for stay is denied as moot.

Background

In 1979, Aileen Mayes, Owen's mother-in-law, filed notices of location for recordation with BLM for mining claims bearing the same names as those at issue in this case and covering the same ground. Mayes identified herself as the sole claimant. In 1998, BLM declared those claims forfeited and void for failure to pay the applicable mining claim maintenance fees.² This Board affirmed that decision in *Aileen Mayes*, 153 IBLA 192 (2000).

On December 13, 2000, Mayes relocated the claims, but BLM again invalidated them by a decision dated October 3, 2002, for failure to timely comply with the maintenance fee requirements.³ She did not appeal that decision to the Board.

On October 21, 2002, Mayes recorded notices of location for the claims with Idaho County, filing copies thereof with BLM on October 25, 2002, at which time BLM assigned the present recordation numbers for the claims. Each notice identified

¹ The claims are the Calumet (IMC 185501), Little Scotty (IMC 185502), Bear Track #1 (IMC 185504), Bear Track #2 (IMC 185505), Golden Star #1 (IMC 185506), Golden Star #2 (IMC 185507), Eager Beaver (IMC 185508), Big Swede (IMC 185509), and Beaver Tail (IMC 185510).

² Beginning in 1994, Congress, under 30 U.S.C. § 28f(a) (1994), required the holder of an unpatented mining claim to pay a claim maintenance fee of \$100 per claim on or before August 31 of each year through 1998. Failure to pay the claim maintenance fee conclusively constituted a forfeiture of the claim, and the claim was deemed null and void by operation of law. 30 U.S.C. § 28i (1994).

³ In the Department of the Interior and Related Agencies Appropriations Act, Pub. L. No. 107-63, 115 Stat. 414, 418-19 (2001), Congress amended 30 U.S.C. § 28f(a)(2000), to require payment of the claim maintenance fee on or before Sept. 1 of each year for the years 2002 and 2003.

the date of location of the claim as the 29th day of September, 2003.⁴ Neither the county nor BLM noticed the discrepancy between the date of location and the recordation date at the time of filing.

On June 9, 2003, Mayes conveyed the claims by quitclaim deed to Owen. Mayes passed away on July 13, 2003. Thereafter, Owen complied with all necessary annual filing requirements for the claims.

Nearly 5 years after Mayes conveyed the claims to Owen, BLM issued its decision declaring the claims null and void *ab initio* based on its conclusion that the location notices were not timely recorded. BLM stated that 43 C.F.R. § 3832.11 requires that a mining claimant comply with both state and Federal law when locating a mining claim on Federal land. Citing Idaho Code §§ 47-602 and 47-604, requiring, respectively, that the claimant post a notice of location at one corner of the claim providing various information, including the date of location, and that the notice be recorded in the county within 90 days “after the location of the claim,”⁵ BLM found that the “location notices were improperly recorded with the county before the date(s) the claims were located on the land,” and that the claims were therefore null and void *ab initio*.⁵ Decision at 2. Thus, BLM’s decision is based on the assumption that the reported date of location on the original notice is the true date of location. See *John C. Buchanan*, 52 IBLA 387, 389 (1981); *Lee Resources Management Corp.*, 50 IBLA 131, 133 (1980).

⁴ Although both the signature of Mayes and a notary appear on each notice, neither person dated any of the notices.

⁵ The decision cited § 47-605 as including the 90-day recordation deadline. That citation is incorrect. Section 47-604 contains that requirement. Section 47-605 is titled “Record of additional certificate.”

⁶ Based on BLM’s conclusion, it should have held the claims to have been abandoned or forfeited. See Idaho Code § 47-604 (“Failure to file notice of location for record within ninety (90) days after location of the claim shall constitute an abandonment of the claim”); 43 U.S.C. § 1744(c) (2000) (failure to record a copy of the notice of location with BLM within ninety days after the date of location conclusively constitutes an abandonment of the claim); 43 C.F.R. § 3830.91(a)(1)(claimant “will forfeit” mining claim if he or she fails to record the claim with BLM within 90 days after location).

Discussion

On appeal, Owen states that either Mayes or the woman who notarized the location notices entered the wrong year for the location date on each notice. Examination of the handwriting on the copies of the location notices in the case file leads to the conclusion that it was Mayes, not the notary, who entered the location date on each notice. This is consistent with Owen's explanation that it was an "honest mistake made by an elderly woman just trying to comply with the rules and regulations required of her." Statement of Reasons at 2. She suggests that there must be "a simple solution . . . to correct such a simple mistake." *Id.* at 3.

Owen alleges that the wrong year for location was mistakenly entered on the location notices, suggesting that the date of location should have been September 29, 2002, thereby satisfying both the State and Federal recordation requirements, when the location notices were filed by Mayes with the county on October 21, 2002, which was, in accordance with Idaho Code § 47-604, "[w]ithin ninety (90) days after the location of the claim," and copies thereof were filed with BLM on October 25, 2002, which was, in accordance with 43 U.S.C. § 1744(b) (2000), "within ninety days after the date of location."⁷ We agree. It is obvious from the record that the location notices are defective. The date given for location, September 29, 2003, is after Mayes filed the location notices with the county for recordation, after she filed a copies of those notices with BLM for recordation, after she transferred the claim to Owen, and even after she died on July 13, 2003. Owen has established that the date reported on the original notices of locations is not the true date of location of the claims.

The question presented is, therefore, whether the obvious defect in the notices of location is curable.

The regulation at 43 C.F.R. § 3832.91(a) states that a claimant may correct defects in a notice of location of a mining claim "by filing an amended notice of location (see § 3833.20 of this chapter on conditions allowing amendments and how

⁷ While BLM declared the prior claims void by decision dated Oct. 3, 2002, after the alleged date of location of the present claims, BLM Serial Register pages for each claim show that Mayes failed to comply with the maintenance fee requirements on or before Sept. 1, 2002, thereby resulting in forfeiture of the claim by operation of law. See 30 U.S.C. § 28i (2000). Therefore, the prior claims did not exist at the time of the alleged relocation on Sept. 29, 2002.

to record them).”⁸ Under 43 C.F.R. § 3833.21(a)(2), a claimant may amend a notice of location if there are omissions or other defects in the original notice of location that the claimant needs to correct or clarify, but only if “BLM recognizes the original location as a properly recorded and maintained mining claim or site.” 43 C.F.R. § 3833.21(a)(1). Failing to record a mining claim within 90 days of location and failing to pay the location fee or initial maintenance fee within 90 days of location are two of the three “[d]efects or other problems” under 43 C.F.R. Part 3833 that cannot be cured by filing an amended notice of location, the other being locating a mining claim on lands withdrawn from mineral entry. 43 C.F.R. § 3833.91(a), (b), and (c).

In addition, in 43 C.F.R. § 3830.91, BLM has identified specific statutory requirements that are not curable, including therein at subsection (a)(1) the failure to “[r]ecord a mining claim . . . within 90 days after you locate it.” The preamble to the rulemaking promulgating that regulation states: “One comment . . . asked for examples of requirements imposed by regulation (curable) and not by statute (incurable). We have added a list of the requirements that are statutory in section 3830.91. The ways in which claimants may fail to comply with regulatory requirements are innumerable.” 68 Fed. Reg. 61051-52 (Oct. 24, 2003).

Although in this case BLM characterized the defect as a recording error, which would not be curable under 43 C.F.R. § 3833.91(b), *i.e.*, failing to record a mining claim within 90 days of location because the claimant recorded the notices of location with the county prior to the date of location, the defect is in the stated date of location. Such a defect has been considered by this Board as curable by filing an amended location notice. *See Ray L. Virg-in*, 84 IBLA 347, 48-49 (1985);⁹ *cf. Park*

⁸ This is consistent with Idaho State law, which provides at Idaho Code § 47-605, titled “Record of additional certificate,” that “[i]f at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original certificate was defective . . . , and he shall be desirous of securing the benefits of this chapter, such locator or his assigns may file an additional certificate subject to the conditions of this chapter, and to contain all that this chapter requires an original certificate to contain: provided, that such amended location does not interfere with the existing rights of others at the time when such amendment is made.”

⁹ In *Virg-in*, BLM declared certain mining claims located on public land in the State of Alaska null and void *ab initio* because they were located on land withdrawn from mineral entry. The appellant alleged that the date he entered on the location notices
(continued...)

City Chief Mining Co., 57 IBLA 342, 344 (1981) (BLM may properly allow a claimant to cure a defective filing when the copy of the notice of location filed for recordation omitted the date of location). Thus, we must conclude that BLM erred in holding that the notices of location were improperly recorded prior to being located on the ground. Because the notices of location were recorded with the county and BLM within 90 days of the asserted date of location and the claims have been properly maintained, Owen may amend the original notices of location to correct the location date error. *See* 43 C.F.R. § 3833.21(a).

In accordance with 43 C.F.R. § 3830.94, BLM should offer Owen the opportunity to cure the defect in the notices of location by filing amended notices of location in compliance with Idaho Code § 47-605 and 43 C.F.R. § 3833.22. An amended notice of location relates back to the original location date and takes effect when recorded with the local recording office under state law or such other time as provided by state law. 43 C.F.R. § 3833.22(c); *see Ray L. Virg-in*, 84 IBLA at 349.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is reversed and the case remanded for action consistent with this opinion. The petition for stay is denied as moot.

_____/s/_____
Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

_____/s/_____
H. Barry Holt
Chief Administrative Judge

⁹ (...continued)

was incorrect; that the correct date was included in amended location notices; and that the corrected location date preceded the date of the withdrawal. The record also showed that the appellant's claims were filed for recordation within 90 days of the corrected date. The Board found that the appellant had presented convincing evidence to support his allegation that he located his claims prior to the date of withdrawal, and it reversed BLM's decision.