

NOTE: This disposition is nonprecedential.

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

703-235-3750

703-235-8349 (fax)

January 21, 2016

IBLA 2015-151) IMC213869; IMC213870
)
JAY & MYRNA GRAYSON) Mining Claim Location
)
) Decision Affirmed

ORDER

Jay and Myrna Grayson (Appellants) appeal from a March 16, 2015, decision of the Idaho State Office, Bureau of Land Management (BLM), declaring the Ace of Hearts (IMC213869) and Ace of Diamonds (IMC213870) placer mining claims forfeited because Appellants failed to comply with a July 17, 2014, notice (Notice) from BLM requiring Appellants to amend their notices of location for the claims. For the following reasons, we affirm BLM's decision.

BACKGROUND

On June 25, 2014, Appellants filed copies of notices of locations for the Ace of Hearts and Ace of Diamonds placer mining claims for recordation with BLM. In each of the two location notices, Appellants stated that they had located the claim in "Township 35," "Range 44 E.," "Section E½," "Quarter Section 32," in Bonneville County, Idaho. With the location notices, Appellants also submitted a Notice of Intent to Hold (NOITH) the claims for the calendar year 2014 and a maintenance fee waiver certification for the assessment year running from September 1, 2014, to September 1, 2015.

In its July 17, 2014, Notice, BLM notified Appellants that it was "unable to complete recordation of the [claims] because the location notices did not contain a complete and accurate legal description." BLM specifically noted that the location notices "describe[d] the claims in T. 35, R. 44 E, sec. E ½, 32. They do not contain North or South for the Township, and there are errors with the section numbers as well as the quarter section. The sketches you provided were unclear." BLM required Appellants to amend their location notices "to correct the legal description" of the claims and required them to "submit a clear map of the location of [their] claims." BLM further stated that Appellants had 30 days from the date of receipt of the Notice

to submit the required information, and stated that the claims would be forfeited if they failed to submit the information within that time period, citing 43 C.F.R. § 3830.91(a)(8).

Appellants received BLM's Notice on July 21, 2014. They responded by filing amended notices of location for the two claims. The amended notices changed the Township from "35" to "3 S," so that the amended notices described the location of both claims as located on public land in T. 3 S, R. 44 E, Section E ½, Quarter Section 32, Bonneville County, Idaho. The Meridian was listed as "3" for the Ace of Diamond Claim, but no Meridian was provided for the Ace of Hearts claim. The amended notices added that the posted location notices for both claims were "further described as 900 feet, west direction from [the intersection of] FS Rd 188 & 381." Appellants also included a topographical map that includes an outline, in orange, of the "Approximate area of IMC 14245 and IMC 14246." BLM received the amended notices of location and map on August 22, 2014.

On March 16, 2015, BLM issued the challenged decision, in which it stated that the information Appellants submitted did not address the issues the agency had required that they address. Specifically, BLM stated that pursuant to 43 C.F.R. § 3832.12(c)(1), "placer claims must be described by aliquot part, using the U.S. Public Land Survey System and its rectangular subdivisions. The amended location notices and map do not meet these requirements." BLM accordingly declared the claims forfeited, stating that Appellants "did not submit amended location notices and map" for the claims that "met the requirements within the time allowed."

Appellants filed a timely appeal of BLM's decision.

DISCUSSION

Section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (2012), provides that the owner of an unpatented mining claim must file a copy of the notice or certificate of location with BLM within 90 days after the date of location. Such notice or certificate of location must include "a description of the location of the mining claim . . . sufficient to locate the claimed lands on the ground." 43 U.S.C. § 1744(b) (2012). A notice or certificate of location of a mining claim must contain, *inter alia*, "[a] complete description of the lands you have claimed as required in [P]art 3832 of this chapter [43 C.F.R., Chapter II]." 43 C.F.R. § 3833.11(b)(5). A notice or certification of location must "describe the land by state, meridian, township, range, section and by aliquot part to the quarter section." 43 C.F.R. § 3832.12(a)(1). A placer mining claim located on surveyed Federal land must be described "by aliquot part and complete lots using the U.S. Public Land Survey System and its rectangular subdivisions[.]" 43 C.F.R. § 3832.12(c). The phrase "[a]liquot part" is defined, in relevant part, by 43 C.F.R.

§ 3830.5 as “a legal subdivision of a section of a township and range . . . by division into halves or quarters.”

In addition to the description of a claim, the applicable regulations state that a claimant must file either a U.S. Geological Survey topographical map “with a depiction of the claim,” or a narrative or sketch describing the claim “and tying the description to a natural object, permanent monument or topographic, hydrographic, or man-made feature.” 43 C.F.R. § 3832.12(a)(2)(i). The regulations require that, in either case, a claimant must “show on a map or sketch the boundaries and position of the individual claim . . . by aliquot part within the quarter section accurately enough for BLM to identify the mining claims . . . on the ground.” 43 C.F.R. § 3812(a)(2)(ii).

The regulations further provide, with respect to the recordation, filing, and other requirements of Parts 3830 through 3839 of 43 C.F.R., Chapter II, that “[i]f there is a defect in your compliance with a regulatory, but not statutory, requirement, the defect is curable.” 43 C.F.R. § 3830.93(b). They go on to state: “You may correct curable defects when BLM gives you notice. If you fail to cure the defect within the time BLM allows, you will forfeit your mining claims or sites.” *Id.*

The regulations provide, with respect to notice from BLM, that the agency will send a notice by certified mail, return receipt requested, “[w]hen BLM determines that you have filed any document that is defective.” 43 C.F.R. § 3830.94(a). Upon receipt of such notice, the regulations require that a claimant “cure the defects within 30 days of receiving BLM’s notification of the defects.” 43 C.F.R. § 3830.94(b). To cure defects in the location of mining claims, the regulations provide that a claimant may correct defects in the location of a mining claim “by filing an amended notice of location” 43 C.F.R. § 3832.91(a); *see* 43 C.F.R. § 3833.21(a). The regulations state that “[i]f BLM does not receive the requested information in the time allowed, . . . you will receive a final decision from BLM that you forfeited the affected mining claims or sites.” 43 C.F.R. § 3830.94(d). Thus, the regulations make clear that a claimant must cure a defect within the time allowed by BLM, or the claim will be declared forfeited by BLM. *See* 43 C.F.R. §§ 3830.93(b) and 3830.94(d); *see Tim Dann*, 181 IBLA 91, 92 (2011) (citing *Topaz Beryllium Co. v. United States*, 649 F.2d 775, 778 (10th Cir. 1981) (recognizing that a defective filing for a claim will be rejected if not cured in 30 days after notice)).

In the present case, BLM notified Appellants that the legal descriptions of the claimed lands in their original location notices were defective, and they were required to cure the defects identified within 30 days of receipt of BLM’s Notice. The defects identified by BLM included that the location notices did “not contain North or South for the Township, and there are errors with the section numbers as well as the

quarter section. The sketches you provided were unclear.” BLM furnished a sample grid for Appellants’ use should they decide to use it.¹

As mentioned above, Appellants submitted amended location notices that changed the Township from “35” to “3 S,” which addressed one of the defects identified by BLM in its Notice, namely that the original notices did not contain North or South for the Township. The amended location notices did not, however, make any changes to the sections or quarter sections. The amended location notices and map submitted by Appellants did not cure the identified defects, namely the requirement to describe each claim “by aliquot part and complete lots using the U.S. Public Land Survey System and its rectangular subdivisions[.]” 43 C.F.R. § 3832.12(c).

We have carefully considered Appellants’ appeal, but it does not address the defects in their location notices, either those they filed initially or the amended notices they filed in response to BLM’s Notice. Instead, they provide details regarding the dates and payments they submitted to BLM to pay for the processing fees required for the notices of location. Appellants do not address the basis for BLM’s decision—that none of the notices satisfied the regulatory requirements to adequately describe the land encompassed by their mining claims—and therefore do not establish an error in that decision.

¹ BLM did not address whether Appellants’ location notices meet the additional requirements that are specific to placer mining claims located on Federal land, *i.e.*, acreage, conformity, and compactness. See *George Kendall*, 184 IBLA 71, 77 (2013). A placer claim located by an individual may not exceed 20 acres. 30 U.S.C. § 35 (2012); 43 C.F.R. § 3832.22(b)(1). An association placer claim may be located by up to eight persons or business entities, each of which may locate up to 20 acres, for a maximum of 160 acres per association placer claim with eight locators. 30 U.S.C. § 36 (2012); 43 C.F.R. § 3832.22(b)(2). In the present case, Appellants could each locate up to 20 acres, for a maximum of 40 acres per claim. A placer claim must conform, “as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys.” 30 U.S.C. § 35 (2012); 43 C.F.R. § 3832.12(a)(1). Also, a placer claim “must be as compact and regular in form as reasonably possible.” 43 C.F.R. § 3832.12(a). See *Kendall*, 184 IBLA at 77-81. We surmise that BLM did not discuss these requirements given the failure of Appellants to describe the claims by aliquot part and complete lots or to provide a map or sketch of the boundaries and position of the claim “by aliquot part within the quarter section accurately enough for BLM to identify the mining claims . . . on the ground.” 43 C.F.R. § 3812.12(a)(2)(ii).

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 affirmed.

_____/s/
James F. Roberts
Deputy Chief Administrative Judge

I concur:

_____/s/
Eileen G. Jones
Chief Administrative Judge