

Editor's note: Appealed -- aff'd, Civ. No. 78-46 (D. Mont. June 19, 1979)

NORTHWEST CITIZENS FOR WILDERNESS MINING CO., INC.

IBLA 77-217

Decided January 16, 1978

Appeal from letter-decision of the Montana State Office, Bureau of Land Management, Billings, Montana, refusing to accept certificates of location for various mining claims because they were not filed within 90 days of location.

Affirmed.

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

Under section 314(b) of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. § 1744(b) and 43 CFR 3833.1-2, the owner of a mining claim located after October 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to make a timely filing of the notice requires that the Bureau refuse to accept the notice and declare the claim to be null and void.

2. Administrative Authority: Estoppel -- Federal Land Policy and Management Act of 1976: Generally -- Mining claims: Recordation

The failure of a mining claimant to file the notice of recordation required by sec. 314(b) of the Federal Land Policy and Management Act of October 21, 1976, [**2] 43 U.S.C. § 1744(b), cannot be excused on the basis of equitable estoppel where no discussion covering the 90-day requirement was had between the Department and Appellant's representatives.

APPEARANCES: Peter C. Wagstaff, Esq., Coeur d'Alene, Idaho, for Appellant; Karen A. Shaffer, Esq., Office of the Solicitor, Department of the Interior, Washington, DC, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Northwest Citizens for Wilderness Mining Company, Inc., has appealed from a letter-decision of the Montana State Office, Bureau of Land Management (BLM), dated March 2, 1977, refusing to accept certificates of location for various mining claims because the certificates were not filed within 90 days of location as required by section 314(b) of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA), 43 U.S.C. § 1744(b).

On March 2, 1977, Appellant filed with BLM copies of certificates of location for 12 unpatented claims identified as N.W.C.F.W. #23 through #34. Of the 12 claims eight were located on October 23, 1976, and four were located on November 24, 1976. ^{1/}

Section 314(b) of FLPMA requires that the owner of an unpatented mining claim located after the date of approval of the Act (October 21, 1976) "shall, within ninety days after the date of location of such claim, file in the office of the Bureau designated by the Secretary, a copy of the official record of the notice of location or certificate of location * * *." Section 314(c) provides that failure to file timely is "deemed conclusively to constitute an abandonment" of the mining claim.

At the time Appellant attempted to file the recordation notice with BLM 131 days and 99 days had elapsed, respectively, from the time the claims were located and the date of filing the notices.

On December 10, 1976, the Department published in the Federal Register (41 FR 54084) proposed regulations relating to the recordation of mining claims. On December 29, 1976, the BLM office in Missoula, Montana, received a letter from Appellant's agent which stated: "I am preparing to comply with the recent guidelines proposed on Friday, December 10, 1976 (43 CFR 3830) * * *." Appellant's agent went on to question the filing fee requirement and whether BLM had the authority to resolve conflicting claims. In addition, on January 5, 1977, the BLM office in Billings, Montana, received a letter from Appellant's agent which stated: "Could your Department please clarify

^{1/} It was indicated in Appellant's statement of reasons for appeal that on November 27, 1976, ASARCO, Inc. top filed the claims in question and that on February 14, 1977, ASARCO, Inc. filed notices of recordation for the claims with BLM. Appellant states that for that reason it could not relocate its 12 claims.

the proper forms required and process involved in filing a single document representing 'group' Hard Rock Mining Claims rather than individual certificates of location." Appellant's agent expressed the idea that group filing would alleviate the "excessive cost" when numerous individual, yet contiguous, claims were maintained. His proposal was based on the proposed service fee (43 CFR 3833.1-2d) of \$ 10 for each notice or certificate filed with the BLM.

By letter, dated January 7, 1977, BLM in Billings, indicating that the Missoula office had forwarded Appellant's letter to it, responded by stating:

We will postpone answering your questions regarding the recordation of mining claims until the regulations are finalized. One of our men is going to be in Washington, D.C. next week to work on some of the very questions you asked.

* * * * *

You can expect to receive an answer to your questions shortly.

On February 1, 1977, BLM Billings received a postcard from Appellant's agent. He asked whether answers to his questions were available and if BLM would send him a copy of the final regulations. BLM responded by letter, dated February 3, 1977, stating:

When we wrote earlier to you telling [sic] we would be able to answer your questions concerning the recordation of mining claims shortly, we expected to be in a position to do so.

Our representative to the meetings in Washington, D.C. has been there and back and we still have not received the published regulations.

As soon as we receive copies you will be among the first to get the final regulations. * * *

The BLM letter was dated 2 weeks after the effective date of the final regulations (January 20, 1977) and one week after publication of the regulations in the Federal Register (42 FR 5298, January 27, 1977).

A letter received in the Billings office on February 11, 1977, from Appellant's agent stated that he still had not received any answer to his questions concerning procedures required for filing group hard rock mineral claims.

The BLM Billings office informed Appellant's agent by letter, dated February 14, 1977, that the final regulations had been mailed to him on February 9, 1977, and that the service fee was \$5 for each claim. The office also apologized for the delay in answering the questions. However, nowhere in the correspondence did the BLM address itself to the absolute necessity for compliance with the 90-day recordation period spelled out in 43 U.S.C. § 1744(b).

Appellant filed the certificates of location for the 12 claims with BLM on March 2, 1977, along with the necessary fees. In a cover letter dated February 25, 1977, Appellant stated: "Excuse the delay in submission, however, considering the finalized date of the Rules, we are certainly acting in good faith."

Appellant's submission of the certificates and the fees was rejected by the BLM because they were not received in the BLM office within 90 days from the dates of location of the claims. BLM directed Appellant's attention to 43 CFR 3833.1-2(b). 2/

Appellant argues on appeal that the late filing of its documents resulted from actions by the Department of the Interior in that "BLM's primary directive to the Appellant was to wait." (Page 5 of Rejoinder to the Answer by the Solicitor's Office.) Appellant also asserts that the Department should be equitably estopped from refusing to accept the State filings as properly filed.

[1] We recently held in Southwestern Exploration Associates, 33 IBLA 240 (December 28, 1977), that a mining claim located after October 21, 1976, for which a notice of recordation required to be filed by section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744, has not been filed within 90 days from the date of location, is void, and no force and effect can be given to a notice of recordation filed after the 90-day period. In Southwestern, we also pointed out that our conclusion was consistent with Solicitor's Opinion, M-36889 (May 17, 1977). It also accords with section 314(d) of FLPMA which recites that failing to file timely is "deemed conclusively to constitute an abandonment" of the mining claim.

[2] Appellant apparently argues that it was not under any obligation to record the claims until appropriate regulations had been promulgated. There is no sanction for that view either in FLPMA or

2/ 43 CFR 3833.1-2(b) reads in pertinent part:

"The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim * * *."

its legislative history. Within the 90-day period following the Act, Appellant could have sent the necessary documents to the Secretary of the Interior ^{3/} and requested him to file them in the appropriate office of the Bureau of Land Management or filed them with the local State office of BLM.

Despite Appellant's assertion that the Department should be estopped from denying the validity of the late filings, even taking Appellant's factual statements at their face value, they do not assert that any discussion whatsoever took place concerning the 90-day requirement. Indeed there was no action taken by Appellant within the 90-day period to constitute a tender. However, there is nothing in the exchanges between Appellant and the Bureau of Land Management to show that during that 90-day period, the Bureau was aware of the dates the claims were located. The questions posed to the Bureau related to the filing fees, whether the Bureau had authority to resolve conflicting claims, and whether a single document could embrace several claims, thus minimizing filing fees. None of these inquiries was sufficient, even if all were taken together, to put the Bureau on notice that the 90-day requirement was at issue.

Even assuming, arguendo, that the Bureau did mislead Appellant's representatives, we held in Charles House, Mrs. Leonard Skinner, IBLA (1978), as follows:

A representation by a Government employee that a rule of law is other than it actually is cannot change the force and effect of that rule, and the Department is not bound by such a representation. The incorrect or unauthorized acts of government employees may not override valid rules. Atlantic Richfield Co. v. Hickel, 432 F.2d 587, 591 (10th Cir. 1970). See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); Utah Power and Light Co. v. United States, 243 U.S. 389, 409 (1917); Parker v. United States, 461 F.2d 806 (Ct. Cls. 1972); Administrative Appeal of Joe McComas, 5 IBIA 125, 83 I.D. 227 (1976); Marathon Oil Company, 16 IBLA 298, 81 I.D. 447 (1974); Mark Systems, Inc., 5 IBLA 257 (1972).

^{3/} In the Solicitor's Opinion, M-36889, supra, it is stated in fn. on p.3:

"Section 103(n) of the FLPMA states that 'Bureau' means the Bureau of Land Management. The Department, on January 27, 1977, 42 F.R. 5298, adopted regulations that specifically explain where the notice of location is to be filed, and refer to BLM office having jurisdiction of the land covered by the claim as stated in 43 CFR 1821.2-1 (1976). Prior to the adoption of these regulations, the proper office was also the one designated in 43 CFR 1821.2-1, since that section governs the place of filing for all papers to be submitted to the Bureau in absence of a regulation to the contrary."

Accordingly, 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.

Frederick Fishman
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

