

ROBERT THOMPSON

IBLA 78-151

Decided April 24, 1978

Appeal from decision of Colorado State Office, Bureau of Land Management, rejecting mining claim recordation notices TW No. 1 through 500.

Affirmed.

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

Pursuant to sec. 314(b) of the Federal Land Policy Management Act of 1977, a copy of the official record of the notice of location of a mining claim must be filed within 90 days after location of the claim. In computing this period the date of location is not counted but the last day of the period is. Thus, when a claim is located on September 1, 1977, a notice filed on December 1, 1977, is 1 day late, November 30, 1977, being the 90th day.

APPEARANCES: Guy B. Dwyer, Esq., Dells, Wilson, Dyer, & Fossum, P. C., Cortez, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Robert Thompson has appealed from a decision of the Colorado State Office, Bureau of Land Management, dated December 1, 1977, refusing to accept for recordation under section 314 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2769, 43 U.S.C.A. § 1744 (West supp. 1977), notices of location for the TW No. 1 through 500 mining claims. The claims were located by appellant on September 1, 1977. The notices of location were filed in the Colorado State Office on December 1, 1977.

[1] Section 314, supra, requires that the owner of an unpatented mining claim located after October 21, 1976, "shall, within 90 days after the date of location of such claim, file" a copy of the official record of the notice of location or certificate of location in the office of the Bureau of Land Management designated by the Secretary. The pertinent regulation repeats the statute, 43 CFR 3833.1-2(b), 42 FR 5301.

Section 314(c), supra, further provides that the failure to file such notices or certificates timely "shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner." Again the pertinent regulation, 43 CFR 3833.4(a) repeats the statute.

In pursuance of the statute and regulation, this Board has affirmed the rejection of untimely notices. Irwin W. Sweeney, 34 IBLA 205 (1978); Belton C. Hall, 33 IBLA 349 (1978); Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (1978); Southwestern Exploration Associates, 33 IBLA 240 (1977).

Appellant does not dispute the application of the statute if the notices are not filed within the 90-day period, but he does assert that his notices were filed on the last possible day. He says that September 1 was day number 244 in 1977 and December 1 was day number 335 and, thus, was 90 days after the date of location.

We cannot follow this method of computation. If the date of location is not counted, then the first day of the 90-day period is September 2, 1977, and the 90 days end on November 30, 1977. Therefore, a notice filed on December 1, 1977, is not "within the 90 days after" September 1, 1977, and is untimely filed.

The above procedure is the standard method of computing time.

In the construction of contracts and statutes as well as in matters of practice generally, when time is to be computed from a particular date or an act is to be performed within a specified period from or after a day named, the practice is to exclude the first day and include the last. 2/

2/ "52 Am. Jur. Time § 17. Bumet v. Willingham Loan & T. Co., 282 U.S. 437 (1931); Dutches v. Wright, 94 U.S. 553 (1876).

Uranium Exploration Company of California, 65 I.D. 365 (1958). See also 43 CFR 4.33(e) which follows the same rule.

Therefore, appellant's notices were untimely filed and were properly rejected.

Therefore, 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.

Martin Ritvo
Administrative Judge

We concur.

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge

