

RONALD COULAM

IBLA 78-45

Decided May 8, 1978

Appeal from decision of Wyoming State Office, Bureau of Land Management, refusing to accept for recordation notices of location for Zinger and Zinger No. 2 lode mining claims.

Affirmed.

1. Administrative Procedure: Rule Making -- Regulations: Generally -- Secretary of the Interior

The promulgation or revocation of a regulation is within the special authority of the Secretary of the Interior and a limited number of delegates. A regulation, when promulgated, is binding upon all Departmental officials.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation -- Words and Phrases

"Date of location." Date of location of a mining claim is no later than the date on which the claimant certified he had complied with all requirements of law, as indicated by his signature on the notice and certificate of location. The date of recording the location notice of a mining claim in the county records has no bearing on the "date of location" of the claim, from which the 90-day period for recordation in BLM under FLPMA begins.

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

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, mining claims located after Oct. 21, 1976, must be recorded at the office of the Bureau of Land Management designated by the Secretary of the Interior, within 90 days after the date of location. By regulation the BLM State Offices are designated the proper offices for mining claim recordations each within its area of jurisdiction. BLM State Offices properly refuse to record notices of location of mining claims not received by the proper BLM State Office before the end of the 90-day period set by statute.

APPEARANCES: C. M. Peterson, Esq., Poulson, Odell & Peterson, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Ronald Coulam has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated September 23, 1977, refusing to accept certain mining claim location notices for recordation under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The notices, involving the Zinger and Zinger No. 2 lode mining claims located June 18, 1977, were not filed with BLM until September 19, 1977.

Appellant contends that the location of a mining claim is a series of acts, culminating in the recording of the location certificate in the records of the county in which the claim is situated, so that the requirement in FLPMA for recording a certified copy of the location notice within 90 days after "date of location" should be satisfied if the notice of location is filed with the proper BLM office within 90 days after recordation in the county records. Appellant also requests this Board to find that the definition of "date of location" in 43 CFR 3833.0-5 does not conform to the statutory requirements of FLPMA.

Section 314 of FLPMA, supra, requires that a copy of the official record of a notice of location of a mining claim located after the date of approval of the Act (October 21, 1976) shall be filed within 90 days after the date of location, in the office of BLM designated by the Secretary, and that failure to file such instruments

within the time allowed shall be deemed conclusively to constitute abandonment of the mining claims by the owner. Regulations in 43 CFR Subpart 3833 implement the Act. Section 3833.1-2(b) spells out the manner of recordation of an unpatented mining claim with BLM; section 3833.4(a) recites the penalty for failure to file the required notice within the time period prescribed. Additionally, in section 3833.0-5 are definitions of terms as used within the Subpart: "Proper BLM Office" is defined as meaning the Bureau of Land Management State Office having jurisdiction over the area in which the lands subject to the regulations are located, and reference is made to 43 CFR 1821.2-1 for a list of the State Offices and their areas of jurisdiction, section 3833.0-5(g); "Date of Location" is defined as meaning the date indicated in the notice of location or discovery posted on an unpatented mining claim. Section 3833.0-5(h).

The subject notices and certificates of location for the Zinger and Zinger No. 2 claims each recite the date of discovery as June 16, 1977, and each notice is executed June 18, 1977. Each notice was filed for record in Fremont County, Wyoming, at 2 p.m., July 14, 1977. Each notice thereafter was received by the BLM State Office for Wyoming at 10 a.m., Monday, September 19, 1977. There is no dispute as to these dates.

BLM returned the location notices for the Zinger and Zinger No. 2 claims without recordation because they had not been filed within the 90-day period specified by FLPMA. The 90th day after June 16 is September 14, the 90th day after June 18 is September 16.

[1, 2] Appellant contends that the location of a mining claim consists of several discrete actions, including discovery of a valuable mineral deposit, posting of the notice of location, discovery work, marking of the claim boundaries, and filing of location certificate of record, so that the recording of the location notice, as the final action in the location process, logically is the "date of location" from which the 90 days for filing of the location notice with BLM should be counted. Especially is this so, appellant argues, because Congress requires a copy of the official record of the notice or certificate of location which is available only after recordation in the county and receipt by the claimant of such recorded data.

Interesting though this argument may be, it does not overcome the plain language of the regulations implementing the recording provisions of FLPMA. As defined in the controlling regulation, the date of location is the date indicated by the locator as the date of location or the date of posting of the notice of location on the claim as reflected on the certificate or notice recorded pursuant to State law. 43 CFR 3833.0-5(h). It is, and must be, the date on which the claimant expresses his claim to the ground. It is well

established that the Federal law is paramount over State law, and if there be conflicts between the Federal mining law and any State mining law, the Federal law will prevail. So, although prior to the date of FLPMA, the acts of location of mining claims as defined by State law may have permitted some latitude to the claimant in his expression of the precise "date of location," there is now a positive requirement in Federal law that a notice of location of a mining claim must be filed with BLM within 90 days from the "date of location."

Appellant contends that his recorded location notices and certificates filed on September 19, 1977, with the BLM State Office were submitted within 90 days from the date of the final act of location of the claims, as required by State statute, i.e., recording of the location notices in the records of Fremont County, Wyoming, on July 14, 1977. He requests that this Board find that the definition of "date of location" in the regulation 43 CFR 3833.0-5(h) does not conform to the requirements in FLPMA. We do not accept this argument and we cannot agree to his request. We point out that promulgation of a regulation or modification thereof is within the special authority of the Secretary of the Interior, or to a very small number of departmental officers to whom the Secretary has delegated that authority. It is not within the power of this Board to set regulations aside. If the Board finds a regulation is not supported by, or is contrary to, a statute, it may call the matter to the attention of the Secretary and recommend an appropriate modification. But the Board may not act independently in such a matter. Once a regulation is promulgated, it is binding upon all departmental officials. McKay v. Wahlenmaier, 226 F.2d 35, 43 (D.C. Cir. 1955). The duty of this Board is to determine the applicability of a regulation to the factual circumstances of the case before it. Specifically in this case, we do not find any conflict between the regulatory definition of "date of location" and the intent or provisions of FLPMA. ^{1/} And as above pointed out, the date of location is the date set out in the notice or certificate of location recorded under State law, not the date when the notice is filed for record under State law. Southwestern Exploration Associates, 33 IBLA 240 (1977).

^{1/} We are aware of the proposed rulemaking published in the Federal Register of April 10, 1978 (43 FR 15102 et seq.). We do not recognize any material change in the proposed definition of "date of location" from that applied in this case. "Date of Location," within the ambit of FLPMA, continues to be the date the claimant entered upon the land, or the date of posting recited in the recorded notice of location. It is not the date of recording of the notice.

[3] This Board, consonant with the statute and regulations, has affirmed, without exception, the refusal of BLM to record notices of location of mining claims not filed within the time limits set by the Act. 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, supra. We adhere to that position. The attempted recordation of location notices dated June 18, 1977, by filing them on September 19, 1977, was not timely. The BLM State Office properly refused to record such notices.

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.

Douglas E. Henriques
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joan B. Thompson
Administrative Judge

