

FOYLE MASON

IBLA 77-524

Decided May 8, 1978

Appeal from decision of the California State Office, Bureau of Land Management, refusing to accept for recordation the notices of location of the Elgin Extension and Big Vent lode mining claims, CA-MC-4974.

Affirmed.

1. 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 1976, mining claims located after October 21, 1976, must be recorded in the proper office of the Bureau of Land Management within 90 days from the date of location, not within 90 days from the date the claims were recorded under State law. BLM properly refuses to accept for recordation notices of location filed after the 90-day period.

APPEARANCES: Foyle Mason, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Foyle Mason appeals from the decision of the California State Office, Bureau of Land Management (BLM), in which the State Office refused to accept for recordation the notices of location of the Elgin Extension and Big Vent lode mining claims because they were not timely filed. The Elgin Extension claim was located on January 15, 1977, recorded with the Colusa County Recorder on April 13, 1977, and filed with BLM on July 7, 1977. The Big Vent was located on February 1, 1977, recorded in the County on April 20, 1977, and filed with BLM on July 7, 1977. Appellant states he mailed the notices to BLM as soon as they were returned by the Colusa County

Recorder. He alleges, without explanation, that it was impossible to file the notices within the 90-day period. We note, however, that the notices were signed by him in April, which was several months after the location dates stated on the notices.

[1] Congress determined in section 314(b) of the Federal Land Policy and Management Act of 1976 that mining claims located after October 21, 1976, must be recorded in the office designated by the Secretary within 90 days of the date of location. 43 U.S.C.A. § 1744(b) (West Supp. 1977). Congress required that a copy of the "official record of the notice of location or certificate of location" be filed. Id. In section 314(c) of the Act, Congress stated that failure to file the notice timely "shall be deemed conclusively to constitute an abandonment of the mining claim." 43 U.S.C.A. § 1744(c) (West Supp. 1977).

Appellant did not file his notices of location within 90 days of the respective dates of location. Regulation 43 CFR 3833.0-5(h) defines "date of location" as meaning:

[T]he date indicated on the notice of location or discovery posted on an unpatented mining claim, mill site, or tunnel site under state law, or, if state law does not require the posting of a notice of location or discovery for unpatented mining claims or tunnel sites the date that the notice of location of the claim was posted in accordance with 43 CFR Parts 3830 and 3840 * * *.

Filing within 90 days of the date of recordation at the county recorder does not meet the requirements of the statute. Cf. Irwin W. Sweeney, 34 IBLA 205 (1978). Congress did not provide any relief for locators who have difficulty filing their notices during the 90-day period. Belton E. Hall, 33 IBLA 349 (1978); Southwestern Exploration Associates, 33 IBLA 240 (1977); Solicitor's Opinion, 84 I.D. 188 (1977). If the notices are not filed timely, the mining claims are deemed abandoned and BLM properly refused to accept the notices of location for recordation. Id.; Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (1978).

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.

Joan B. Thompson
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Newton Frishberg
Chief Administrative Judge

