

LELAND H. BRAY

IBLA 78-432

Decided October 3, 1978

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting the filing of an "Amended Notice of Location." CA MC 11720.

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 sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b), and 43 CFR 3833.1-2, the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, shall within 90 days after the date of location of such claim file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

APPEARANCES: Leland H. Bray, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On April 28, 1978, appellant Leland H. Bray sought to file with the Bureau of Land Management (BLM) in Sacramento, California, an amended notice of location of a claim known as Star Lite #1. The date of location of said claim as set forth therein is November 13, 1977.

The amended notice of location set forth the location of the claim as sec. 34, T. 6 S./sec. 3, T. 7 S., R. 31 E., in Inyo County,

California. The locators named therein were the appellant, Samuel E. Leight, Helen Leight, and Arline Bray.

The amended notice of location was allegedly filed to correct an earlier notice of location of a claim known as Star Lite #1. This earlier claim was situated in sec. 34, T. 6 S., R. 31 E., Mount Diablo meridian, in the Tungsten Hills Mining District, Inyo County, California. The locators of this earlier claim were Samuel E. Leight and D. C. Laderoute. Notice of location was set forth as July 28, 1977.

Leland H. Bray appeals from the Bureau of Land Management decision rejecting the filing of the amended notice of location. Said amended notice of location was rejected by BLM because it had not been filed within 90 days after the date of location of the claim as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744, and supporting regulations, 43 CFR 3833.1-2(b).

We affirm the decision of BLM in rejecting the filing of the amended notice of location.

Section 314(b), FLPMA, 43 U.S.C. § 1744, sets forth the applicable law:

The owner of an unpatented lode or placer mining claim or mill or tunnel site located after the date of approval of this Act 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, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground.

As set forth above, the amended notice of location was received by BLM on April 28, 1977. The date of location of the Star Lite #1 claim including posting of the location notice and marking of the boundaries of the claim is set forth therein as November 13, 1977. BLM acted correctly in rejecting the filing of this amended notice of location, since said amended notice of location had not been filed within 90 days of November 13, 1977.

Appellant contends:

The reason for this appeal is that the above mentioned claim was originally filed in the name of Samuel Eugene Leight and D. C. Laderoute on July 28, 1977. It was thereafter discovered that the claim as staked was overlapping some adjacent claims owned by third parties. As a result,

an amended notice of location was filed on February 6, 1978, in the name of Samuel Eugene Leight, Helen Leight, Leland H. Bray and Arline Bray, which showed an original date for the markings as November 13, 1977. The reason the November 13th date was used was because it was understood at that time that the original filing of the Starlite #1 was filed on that date; however, we have subsequently learned that that was in error. The actual relocation with the change of configuration had actually taken place on February 3, 1978. It was our belief that inasmuch as we were filing an amended notice of location on a claim bearing the same name that it was necessary to indicate on the notice of location filed in Inyo County as close as possible the date of original filing. Otherwise, it would have been simply a matter of filing a new notice of location, rather than an amended notice of location setting forth the new date on which the posting was accomplished.

It would seem unfair that our claim would now be put in jeopardy because we had in effect abandoned [sic] the original claim in favor of the amended notice of location to change the configuration to avoid conflict with claims of third parties.

Wherefore, it is respectfully submitted that the amended notice of location should be allowed to be further amended to fully set forth the nature of what transpired in February of this year.

We see no merit in appellant's contentions. Appellant cannot correct his error by an appeal. The key dates are the date of location of the claim as recited in the notice of location and the date of filing of the notice of location with BLM. The date of location is the date indicated on the notice of location. 43 CFR 3833.0-5(h). As the date of location is shown as November 13, 1977, and the notice was filed with BLM on April 28, 1978, the filing was not timely. Foyle Mason, 35 IBLA 40 (1978).

The rule of law enunciated herein has been followed consistently by the Board. For example, in Southwestern Exploration Associates, 33 IBLA 240 (December 28, 1977), the Board rejected a similar appeal stating:

The Federal Land Policy and Management Act, 43 U.S.C. § 1701 (1976), and the regulations which implement it contain no provisions for waiver of the 90-day requirement or for the granting of extensions. On the contrary, the consequences of failing to timely file notices of location are clearly stated in 43 CFR 3833.4(a):

The failure to file such instruments as are required by secs. 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claims, mill site, or tunnel site and it shall be void.

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.

Joan B. Thompson
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

