

ROY M. BYRAM

IBLA 79-23      Decided January 15, 1979

Appeal from a decision of the Nevada State Office, Bureau of Land Management, refusing to accept for recordation maps of the Alcan and Betty lode claims. N MC 34060-34119.

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 October 21, 1976, 43 U.S.C. § 1744(b) (1976), 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: Roy M. Byram, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Roy M. Byram appeals from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated August 1, 1978, refusing to accept for recordation a map of the Alcan 1-30 and Betty 1-30 lode claims.

On July 28, 1978, the Nevada State Office, BLM, received for recordation a map of the Alcan 1-30 and Betty 1-30 lode claims. The

claims in question are located on the following lands in the public domain: Part of secs. 35 and 36, T. 15 S., R. 66 E.; secs. 1, 2, 11, and 12, T. 16 S., R. 65 E.; sec. 31, T. 15 E., R. 66 E.; and sec. 6, T. 16 S, R. 66 E., Mount Diablo meridian.

The map was submitted by the appellant in an effort to comply with the terms of 43 CFR 3833.1-2(b) (1977). This regulation reads:

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 or site filed under state law or if the state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section.

The above regulation serves to implement similar terms set forth in section 314 (b), Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1744 (1976).

In rejecting the filing of appellant's maps, BLM set forth two reasons for its actions:

1. Appellant failed to file a copy of the notice or certificate of location describing his claims.
2. Appellant failed to file the appropriate documents within 90 days of date of location.

Byram appeals the rejection of his filing and offers an explanation for each of the reasons set forth above by BLM. With respect to the first defect, i.e., failure to file the proper documents, Byram alleges that copies of the proper notices of location were unavailable to him as he was at the time living in Illinois to care for his sick wife. Appellant's records were located in Nevada and had to be mailed to him.

Appellant's explanation is hardly a suitable basis for an appeal. The terms of the regulation, 43 CFR 3833.1-2(b) (1977), quoted above in its entirety, call for the filing of a copy of the official record of the notice or certificate of location of the claim filed under state law, or if the state law does not require recordation of a notice or certificate of location, then a certificate of location containing certain information set forth by regulation.

Appellant submitted a copy of a map of his lode claims. The terms of the regulation are sufficiently clear to find that appellant has not complied with its terms.

In James F. Giancarlo, 37 IBLA 88 (1978), this Board affirmed BLM's rejection of the recordation of a notice of location which did not show any reference to the book and page of the county records for the county in which the claim was situated. The defect which justified BLM's rejection of a location notice in Giancarlo is of far less magnitude than that in the present case. BLM properly rejected appellant's filing of a claim map on the grounds that appellant failed to file the appropriate document as set forth in the regulation.

With respect to the second defect in appellant's submission, i.e., his failure to file within 90 days of date of location, appellant notes that he mailed his materials on July 22, 1978, but these materials were not received by BLM until July 28, 1978.

[1] The regulation itself answers this point. For purposes of this regulation, filing occurs when a document is received and date stamped in the proper BLM office. Hence, one relevant date for appellant's purposes is July 28, 1978, the date of receipt and date stamping by BLM.

The second relevant date to determine whether appellant has made a timely filing is the date of location of the various claims. Appellant's map and subsequently received notices of location indicate that the dates of location of his numerous claims are April 20, 21, and 22, 1978. Even if we were to assume that April 22, 1978, was the relevant date for all claims, (the 90th day thereafter being July 21, 1978), appellant was nevertheless tardy in submitting his documents within 90 days of date of location. Hence BLM properly rejected appellant's filing on this basis.

Past decisions of this Board reflect a consistent position regarding the importance of timely filing under 43 CFR 3833.1-2(b) (1977). Thus in Ronald Coulam, 35 IBLA 35 (1978) and in Foyle Mason, 35 IBLA 40 (1978) under similar facts, we stated that BLM properly refused to record materials submitted beyond the 90 day period.

In R. Wade Holder et al., 35 IBLA 169 (1978), we said:

[T]he 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." Since there is no authority for an exception to enforcement of the 90-day deadline, it must be enforced.

It is unfortunate that illness in appellant's family may have preoccupied him during the days prior to the filing deadline. However, it should be noted that appellant had 90 days to comply with the requirements of the regulation. In E. M. Koppen, 36 IBLA 379 (1978), this Board affirmed BLM in rejecting for recordation documents which were tardy due to the death of the individual entrusted with filing the proper notices.

Appellant is, of course, at liberty to relocate his claims if the lands remain open to such filing, and file appropriate instruments within the time period prescribed by the regulation if the lands in issue have not been otherwise appropriated or withdrawn.

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.

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Douglas E. Henriques  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

