

JIM SPICER

IBLA 78-498

Decided August 27, 1979

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting untimely filed notice of mining claim recordation N MC-21614.

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) (1976), and 43 CFR 3822.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim, or the claim is deemed abandoned and void.

2. Mining Claims: Recordation – Words and Phrases

"Date of Location." Under 43 CFR 3833.0-5(h), for claims located in Nevada, "date of location" is the date indicated in the notice of location or discovery posted on an unpatented mining claim.

APPEARANCES: Jim Spicer, pro se

OPINION BY ADMINISTRATIVE JUDGE GOSS

This is an appeal from a decision dated May 16, 1978, of the Nevada State Office, Bureau of Land Management (BLM), refusing to accept for filing a mining claim location notice because of noncompliance with 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(b). The applicable regulations provide as follows:

§ 3833.0-5 Definitions.

As used in this Subpart:

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(h) "Date of location" means the date indicated on the notice of location or discovery posted on an unpatented mining claim . . . under state law, or, if state law does not require the posting of a notice of location or discovery for unpatented mining claims . . . the date that the notice of location of the claim was posted in accordance with 43 CFR Parts 3830 and 3840

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§ 3833.1-2 Manner of recordation – other Federal lands.

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(b) The owner of an unpatented mining claim . . . 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.

BLM found that appellant's claim was located on February 2, 1978, based upon the date entered in a space provided on the certificate of location to indicate when the claim was located. It further found that appellant's certificate of location was not filed with BLM until May 15, 1978, more than 90 days later.

The certificate of location states in part, "THIS IS TO CERTIFY that the Future 12 lode mining claim was located by: Jim Spicer Box 278, Beatty, Nev. 89003 on the 2 day of Feb., 1978 . . ." Since February 2 was recited in the certificate of location as the date appellant located the claim, that is the controlling date.

Appellant's sole argument in this appeal is that his date of location was on February 18, 1978, and that filing was therefore within the 90-day period. The February 18 date appeared on the certificate of location in a space provided to indicate the date monumentation and marking of the corners was completed, just prior to the words

"(must be within 20 days of posting notice of location)." The certificate of location was dated "2/18/78."

[1] The Board has repeatedly held that a mining claim located after October 21, 1976, for which a notice of recordation has not been filed within 90 days from the date of location, is void, and no force and effect can be given to a notice of recordation filed after the 90-day period. E.g., Northwest Citizens for Wilderness Mining Co., 33 IBLA 317 (1978); Southwest Exploration Associates, 33 IBLA 240 (1977). Neither the statute nor regulations contain any provisions allowing for a waiver of the 90-day requirement or the granting of extensions. 43 U.S.C. § 1744 (1976). On the contrary, the consequences of failing to timely file notices of location are stated in 43 CFR 3833.4(a): "The failure to file such instruments as are required by secs. 3888.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site and it shall be void."

[2] In response to appellant's argument that his date of location was February 18, 1978, the fact that appellant's claim is located in Nevada is controlling. Nevada law requires posting of a notice of location or discovery on the site. Nev. Rev. Stat. § 517.010 (1973). ^{1/} For this reason, "date of location" is the date indicated in the notice

^{1/} The Nevada statute provides in part:

"517.010 Location of lode claim: Persons entitled to locate; posting of notice; contents of notice. Any person who is a citizen of the United States, or who is a lawful permanent resident of the United States, who discovers a vein or lode may locate a lode mining claim thereon by:

- "1. Defining the boundaries of the claim in the manner and within the time prescribed by NRS 517.030; and
- "2. Erecting or constructing at the point of such discovery a monument of the size and character of any of the several monuments prescribed in NRS 517.030; and
- "3. Posting in or upon such discovery monument a notice of such location, which must contain:
 - "(a) The name of the claim.
 - "(b) The name of the locator or locators, together with the post office address of such locator or locators.
 - "(c) The date of location.
 - "(d) The number of linear feet claimed in the length along the course of the vein, each way from the point of discovery, with the width claimed on each side of the center of the vein and the general course of the lode or vein, as near as may be."

of location or discovery posted on the unpatented mining claim. 43 CFR 3833.0-5(h), supra. Because the notice of location shows February 2 as the date of location, the Board is without authority to grant the relief requested. See Belton E. Hall, 33 IBLA 349 (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.

Joseph W. Goss
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge

