

WALTER T. PAUL
JAMES H. MEYER

IBLA 79-488

Decided September 24, 1979

Appeal from decision of the Idaho State Office, Bureau of Land Management, declaring lode mining claim I MC 10887 abandoned.

Affirmed as modified.

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

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where appellants timely file for record an "amended" location notice, accompanied by the original location notice which is untimely on its face, the mining claim is properly deemed abandoned as to the original location, but not as to the "amended" claim if it is a relocation of the claim under the law.

APPEARANCES: Michael Douglas, Esq., Duffin, Douglas & Crowley, Burley, Idaho, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Walter T. Paul and James H. Meyer appeal the decision of the Idaho State Office, Bureau of Land Management (BLM), declaring lode mining claim I MC 10887 abandoned.

Appellants located the claim, called the Iron Crown Dyke, on June 17, 1977. 1/ The location notice was properly and timely

1/ The claim is situated in SE 1/4 sec. 22, T. 11 N., R. 13 E., Boise meridian.

recorded in Custer County, Idaho. An amended location notice was subsequently executed and recorded in the County on March 1, 1979.

The original and amending location notices, accompanied by appellants' affidavit of assessment work, dated August 16, 1978, were received by BLM on March 16, 1979.

By decision dated June 12, 1979, the location notices were returned to appellants as untimely under the provisions of section 314(b), the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b).

That regulation, the language of which is virtually identical to that used in FLPMA, supra, provides the following:

Section 3833.1-2 Manner of recordation -- other Federal lands.

(b) 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.

In the event a mining claimant fails to comply with the recordation requirements, the regulations further provide:

Section 3833.4 Failure to file.

(a) The failure to file such instruments as are required by §§ 3833.1 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. [Emphasis supplied.]

[1] The mining recordation regulations are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Dale C. DeLor, 40 IBLA 88 (1979); Roy W. Byram, 39 IBLA 32 (1979); R. Wade Holder, 35 IBLA 169 (1978). With regard to the original location notice, BLM properly held the mining claim abandoned, as it was clearly filed for record beyond the 90-day period. However, the timely filing on March 16, 1979, of the "amended" location notice may be considered a relocation of the claim as of March 1, 1979, provided no rights of the United States or of third parties have

intervened, and the requirements of the law pertaining to relocations by the same claimant have otherwise been met. Therefore, although the original claim is deemed to have been abandoned, the relocated claim of March 1, 1979, is not.

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 as modified.

Douglas E. Henriques
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Joseph W. Goss
Administrative Judge

