

WILLIAM K. MOORE

IBLA 79-505

Decided November 20, 1979

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, declaring placer mining claims Ox Spring Nos. 1 through 12 abandoned and void.

Reversed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

A copy of a recorded instrument which includes all of the information required by statute and regulation for the Federal recordation of mining claims and which is timely filed in the proper BLM office will be deemed sufficient to avert the conclusive presumption that the claims are abandoned and void, notwithstanding that the instrument is styled "Affidavit of Discovery," rather than "Notice" or "Certificate" of location.

APPEARANCES: William K. Moore, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

William K. Moore has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated June 19, 1979, which declared Ox Spring Placer Nos. 1 through 7 (located January 8, 1979), and Ox Spring Placer Nos. 8 through 12 unpatented mining claims (located January 9, 1979), abandoned and void as a result of untimely filing of the notices of location. Appellant's notices of location are stamped to indicate their receipt by the New Mexico BLM on April 23, 1979. The New Mexico State Office, BLM, refused to accept these notices of location because they were filed after the 90-day time requirement provided for by regulation 43 CFR 3833.1-2(b) and 43 U.S.C.A. § 1744 (West. Supp. 1978). The regulation states:

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 facts are that appellant filed with BLM two instruments for each of the claims at issue here. The first of these was a copy of a recorded "affidavit of discovery" which included a map showing the sites of the claims. This was filed within a period of 90 days from the dates of location of all the claims involved. Subsequently, he filed copies of the recorded notices of location for each of the claims, but these reached BLM a few days after the 90-day statutory period had lapsed in each instance. It is appellant's contention that the "affidavit of discovery," with the map, is sufficient to meet the requirements of the law and implementing regulations. We agree that, at least in this case, it is sufficient.

The statute refers to "a copy of the official record of the notice of location or certificate of location, including a description of the mining claim * * * sufficient to locate the claimed lands on the ground." The pertinent regulation, 43 CFR 3833.1-2, requires such notices or certificates "be supplemented by the following additional information unless it is included in the copy," and calls for: the name and/or number of the claim; the name and mailing address of the owner(s); the type of claim; the date of location; the legal description of the land claimed; a map, narrative, or sketch accurately describing the claim with reference to some typographic, hydrographic, or man-made feature, or alternatively, an approved mineral survey.

The New Mexico statutes require the sinking of a "discovery shaft," or the opening of a cut, or the drilling of a discovery hole on each claim within 90 days after the date of location, and provide that the drilling of a discovery hole shall be made a matter of record by filing an affidavit in the office of the county clerk within 90 days of the date of location. N.M. Stat. § 63-2-3.1 (1953; Rev. thru 1978 Session Laws).

Appellant prepared and filed with the county clerk's office an affidavit which contained all of the information which is required to be on a "notice of location" or "certificate of location." He then filed a copy of the recorded affidavit in the proper office of BLM within the 90 days of his location of the claims. He states that in New Mexico such an affidavit acts as a certificate of location. He

further states that subsequent to the submission of this affidavit to BLM he was contacted by a BLM employee 1/ who advised him that although this procedure was correct, BLM would also like to have copies of the notices of location as well for its files. Accordingly, he submitted separate notices of location, but these were received by BLM after the lapse of the 90-day period.

[1] We are of the opinion that these circumstances do not raise the conclusive presumption that the claims are abandoned and void. The form of the "notice" or "certificate" of location is not prescribed by Federal statute or regulation, although the essential contents of such instruments are. So long as the instrument filed provides all of the requisite information, we do not consider it material that it is styled "Affidavit of Discovery" rather than "notice" or "certificate" of location.

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 reversed.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Newton Frishberg
Chief Administrative Judge

1/ Appellant provided the name of the BLM employee who so advised him, but this individual no longer is employed there.

