

CARL DOWLER  
ROY STEWART

IBLA 79-164

Decided November 30, 1979

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting as untimely notices of location for 23 mining claims. Spectrum Nos. 6-22 and 25-30.

Affirmed.

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

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, 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. A notice must be received and date stamped in the BLM office within the 90-day period to be timely filed.

APPEARANCES: Carl Dowler and Roy Stewart, pro se.

## OPINION BY ADMINISTRATIVE JUDGE LEWIS

Carl Dowler and Roy Stewart have appealed from a decision dated December 7, 1978, of the Nevada State Office, Bureau of Land Management (BLM), rejecting their mining claim location notices because they had not been filed within 90 days after the date of location as required by section 314, Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the corresponding regulation, 43 CFR 3833.1-2. The record shows that when the location notices of the 23 claims in question first were filed by appellants with the Nevada State Office all of the claims appeared to be recorded within the 90-day period prescribed by law. However, when the State Office obtained certified copies of the location notices for these same claims from the County Recorder, Nye County, Nevada, the dates of location "differed from" the original dates as shown by appellants. The State Office determined that the location notices filed with BLM had been altered to reflect timely filing within 90 days of location and were not "copies of the official record of notice of certificate of location of the claim or site filed under state law."

Section 314 of FLPMA requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of the location. It also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(b), provides as follows:

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 \* \* \*.

The true location data for the rejected claims involved is summarized as follows:

| <u>Claim</u> | <u>Serial No.</u> | <u>Loc. Date</u> | <u>Loc. Date+90</u> | <u>Filing Date</u> |
|--------------|-------------------|------------------|---------------------|--------------------|
| Spectrum #6  | NMC-26632         | 4/18/78          | 7/17/78             | 8/11/78            |
| Spectrum #7  | NMC-26633         | 4/18/78          | 7/17/78             | 8/11/78            |
| Spectrum #8  | NMC-26634         | 4/18/78          | 7/17/78             | 8/11/78            |
| Spectrum #9  | NMC-26635         | 4/18/78          | 7/17/78             | 8/11/78            |
| Spectrum #10 | NMC-26636         | 4/18/78          | 7/17/78             | 8/11/78            |
| Spectrum #11 | NMC-26637         | 4/18/78          | 7/17/78             | 8/11/78            |
| Spectrum #12 | NMC-26638         | 4/19/78          | 7/17/78             | 8/11/78            |
| Spectrum #13 | NMC-26639         | 4/19/78          | 7/17/78             | 8/11/78            |
| Spectrum #14 | NMC-26640         | 4/19/78          | 7/17/78             | 8/11/78            |
| Spectrum #15 | NMC-26641         | 4/19/78          | 7/17/78             | 8/11/78            |
| Spectrum #16 | NMC-26642         | 5/4/78           | 8/1/78              | 8/11/78            |
| Spectrum #17 | NMC-26643         | 5/4/78           | 8/1/78              | 8/11/78            |
| Spectrum #18 | NMC-26644         | 5/4/78           | 8/1/78              | 8/11/78            |
| Spectrum #19 | NMC-26645         | 5/4/78           | 8/1/78              | 8/11/78            |
| Spectrum #20 | NMC-26646         | 5/4/78           | 8/1/78              | 8/11/78            |
| Spectrum #21 | NMC-26647         | 5/4/78           | 8/1/78              | 8/11/78            |
| Spectrum #22 | NMC-26648         | 5/4/78           | 8/1/78              | 8/11/78            |
| Spectrum #25 | NMC-26649         | 4/19/78          | 7/17/78             | 8/11/78            |
| Spectrum #26 | NMC-26650         | 4/19/78          | 7/17/78             | 8/11/78            |
| Spectrum #27 | NMC-26651         | 4/19/78          | 7/17/78             | 8/11/78            |
| Spectrum #28 | NMC-26652         | 4/19/78          | 7/17/78             | 8/11/78            |
| Spectrum #29 | NMC-26653         | 4/19/78          | 7/17/78             | 8/11/78            |
| Spectrum #30 | NMC-26654         | 4/19/78          | 7/17/78             | 8/11/78            |

It is clear that the 90-day statutory deadline for these claims occurred before the dates the notices were filed in the Nevada State Office.

Appellants assert in their statement of reasons that they had difficulty in locating these claims because of a dispute with a third party. They contend they were advised on August 9, 1978, by BLM personnel in Reno that:

[S]ome of our claims had gone over the 90 day period, so they gave us an extension [sic] on time to have resurveyed and re-dated by our surveyor. We had the resurveying done, and returned with the revised certificates Aug. 11, 1978 and paid for them and they accepted them. The also gave an extension [sic] on time to have new maps made.

An affidavit dated January 26, 1979, from the Chief, Branch of Records and Data Management (BLM) indicating the circumstances under which appellants filed these location notices makes no mention of such extension. It states in pertinent part:

(3) That when Messrs Stewart and Dowler first presented certificates of location for the mining claims, employees working under my supervision pointed out to them the fact that certain certificates were being presented for recordation with BLM more than ninety days after the date of location shown on the aforesaid certificates of location.

(4) Messrs Stewart and Dowler requested that their certificates which did not meet the ninety day requirement be returned and they were returned.

(5) A few days later Messrs Stewart and Dowler again presented their certificates of location for recordation.

(6) The employees under my supervision noted that the location dates had been changed. It was also noted that certain certificates that were presented the second time still bore the BLM date stamp which had been placed on the certificates when they had first been presented.

[1] This Board has held numerous times that when a notice of a mining claim is not filed with BLM within 90 days from the date of location as required by the statute and regulation, it has no force and effect. M. J. Reeves, 41 IBLA 92 (1979); William E. Rhodes, 38 IBLA 127 (1978); R. Wade Holder, 35 IBLA 169 (1978); and Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (1978). Under the regulation, the requirements for filing are clear. The documents must be received and date stamped in the proper BLM office. 43 CFR 3833.1-2(b). There is no proper basis for extension of this requirement and in view of the questionable circumstances surrounding the change in the location dates, these notices were properly rejected.

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

Anne Poindexter Lewis  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Frederick Fishman  
Administrative Judge

