

ANN M. WARNKE

IBLA 80-118

Decided February 6, 1980

Appeal from refusal of Bureau of Land Management Arizona State Office to accept tender of payment and submission of mining claim notices for recordation.

Vacated and remanded.

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

If a mining claim is not timely recorded in accordance with the recordation provisions in the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744, it is conclusively deemed abandoned and is void as a matter of law. A claimant who has no interest in maintaining a mining claim should not record it with the Bureau of Land Management.

2. Accounts: Fees and Commissions -- Accounts: Payments -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Where a mining claimant timely tendered payment to cover service fees for recording 70 mining claim notices of location, but also included four additional mining claim notices which she did not intend to maintain but filed merely for informational purposes, and on appeal she clarifies her intent concerning the four claims and unclear markings on maps which were to show that the four claims were "canceled," the payment and filing will be deemed to have

been timely made as to the 70 claims if payment is subsequently made pursuant to a notice given.

APPEARANCES: Ann M. Warnke, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

This appeal arises from the attempted recordation by Ann M. Warnke of certain mining claims located prior to the enactment of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701, on October 21, 1976. By letter dated October 26, 1979, the Arizona State Office, Bureau of Land Management (BLM), returned to Warnke two checks in the amount of \$175 each, affidavits of labor performed, maps and location notices. The reason given for returning the checks and documents was that a \$5 service fee was not submitted for all 74 claims submitted for recordation as required by 43 CFR 3833.1-2(d). The letter also noted that the October 22, 1979, deadline for filing claims located before October 21, 1976, had passed, and that the regulations provide that if the instruments are not filed as required this failure must be deemed conclusively to constitute an abandonment of a mining claim and the claim is void.

In her appeal Warnke contends that the proper amount of money accompanied the claims she intended to have recorded. She states that four claims were included with maps noting that "we no longer intended holding these four as part of the group and the maps were marked cancelled." She explains that the four claims were included because it had been her understanding that recordation was to clarify the records for better management of public lands. She contends that loss of the 70 claims in this manner is an injustice.

The claims filed by appellant and listed in the BLM decision are:

Apache Sea Nos. 1-10, 13-44
 Golden Sands Nos. 1-13
 Eureka Nos. 1-8
 Ortega Nos. 1-4
 Golver Inn Nos. 1-5
 Tomah Nos. 1 & 2

Appellant lists the claims involved in her appeal as:

Apache Sea Nos. 1-10, 13-44
 Golden Sands Nos. 1-10, 12
 Eureka Nos. 1-8
 Ortega Nos. 1-4
 Golver Inn Nos. 1-5

[1] Although appellant does not expressly identify the four claims she is no longer interested in maintaining, it is apparent from a comparison of these two lists that they are: Golden Sands Nos. 11 and 13 and Tomah Nos. 1 and 2. The photocopies of the maps she submitted which are in the record do not give adequate notice of appellant's intent in this matter. It would be very difficult, if not impossible, for BLM personnel receiving these documents to understand her intent. There is only a slight indication on one of the maps which suggests that Golden Sands Nos. 11 and 13 are "cancelled." The Tomah Nos. 1 and 2 claims are handwritten on the margin of the map but there is no obvious explanation concerning them. The problem in this case has arisen because appellant failed to communicate her intent in this matter clearly to BLM. It is true that one of the purposes of the recordation provision in FLPMA, section 314, 43 U.S.C. § 1744 (1976), was to help clarify the records so that BLM can more properly manage the public lands with knowledge of the existence of mining claims. Appellant's unnecessary filing of the four claims was apparently well-intended, but was misguided because it created the confusion here. The recording provisions in FLPMA automatically make the failure to file the required material to be a conclusive abandonment of a mining claim. Thus, if a claimant has no interest in maintaining a claim, it should not be recorded with BLM. If a claim is not timely recorded in accordance with the provisions of FLPMA it is deemed void as a matter of law.

[2] We turn to what effect appellant's explanation should have on the 70 claims appellant desires to maintain. Regulation 43 CFR 3833.1-2(d) states that each claim "shall be accompanied by a one time \$5 service fee which is not returnable. A notice or certificate of location shall not be accepted if it is not accompanied by the service fee and shall be returned to the owner."

The important fact in this case is that a service fee did accompany the submissions sufficient to cover 70 claims. The fee was tendered timely. Regulation 43 CFR 3833.1-2(a), as amended in 1979, 44 FR 9720 (Feb. 14, 1979) and 44 FR 20428 (Apr. 5, 1979), requires the filing of the proper documents with the proper BLM office "on or before October 22, 1979." ^{1/} The submission and the checks to cover the service fees were received by the BLM office on October 22, 1979.

There is no specific requirement in section 314 of FLPMA, 43 U.S.C. § 1744 (1976), pertaining to filing or service fees for recording the mining claim documents. Section 304(a) of FLPMA,

^{1/} October 21, 1979, fell on a Sunday, a day the BLM office would not be open, therefore, October 22, 1979, would be the last day a document would be deemed timely filed. 43 CFR 1821.2-2(e).

43 U.S.C. § 1734 (1976), however, authorizes the Secretary to establish reasonable filing and service fees "with respect to applications and other documents relating to the public lands." The regulation requiring the service fee was promulgated under this separate authority. Although the regulation mandates that a notice or certificate of location is unacceptable for filing if it is not accompanied by the service fee, it need not be interpreted to have the strict and harsh consequence as that presented in this case. 2/

BLM could not accept an attempted filing for recordation for claims for which there was no payment. However, in the circumstances presented in this case it could have requested clarification from the claimant as to which of the claims the payment should be applied to. We realize that the administrative burden upon BLM in receiving these and hundreds of thousands of other filings is onerous. Nevertheless, because appellant did, in fact, tender the payment for the 70 claims, albeit she confused the matter here, she should not be so harshly penalized for her failure to make her intent clear as to the other four claims until this appeal was made.

In somewhat comparable equitable circumstances where a payment or filing has been timely tendered to BLM, but refused, the payment or filing is deemed to have been made at the time of the original tender if the payment is subsequently made pursuant to a notice given. Cf. Brown Land Company, 17 IBLA 368, 81 I.D. 619 (1974); H. E. Stuckenhoff, 67 I.D. 285 (1960); see also James Milton Cann, 16 IBLA 374 (1974). The basic principle of those cases applies here. 3/

Upon remand of this case to the BLM Arizona State Office, it should apprise appellant of a time within which to resubmit the required payment and any other materials.

Because appellant did not tender payment for service fees for the Golden Sands Nos. 11 and 13 and Tomah Nos. 1 and 2 mining claims, they are deemed abandoned and are hereby declared void.

2/ In an opinion upholding the Department's regulations implementing the recording provisions of FLPMA, a Federal District Judge states: "The court will not assume * * * that the Secretary will apply the regulations as harshly as possible." Topaz Beryllium Co. v. United States, 479 F. Supp. 309, 315 (D. Utah 1979).

3/ This case should not be compared with other situations arising out of the application of the Mineral Leasing Act, 30 U.S.C. § 188 (1976), especially pertaining to oil and gas leasing, where the regulations and consistent Departmental decisions, policies, and practices have mandated more strict and harsh adherence to the very letter of regulatory requirements.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the BLM is vacated and the case is remanded to BLM's State Office in Arizona for action consistent with this opinion.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

