

GEORGE D. DUFFY

IBLA 79-521

Decided February 29, 1980

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting notices of location for the Bud, Violet, Marigold, Aster, Daisy, Tulip, Rosebud, and Goldenrod mining claims. N MC-2976 through 2983.

Affirmed.

1. Mining Claims: Determination of Validity -- Mining Claims: Recordation

If a mining claim is located after Oct. 21, 1976, and the locator fails to record the claims with the proper State Office of the Bureau of Land Management within 90 days afterward, the Department must conclusively deem the claims abandoned and declared them null and void. The fact that the claimant was not notified of the rejection of his filings soon enough to enable him to relocate the claims prior to a time when any intervening claims of right may have arisen does not permit the Department to withhold the consequences of invalidity mandated by the statute.

APPEARANCES: George D. Duffy, pro se.

## OPINION BY ADMINISTRATIVE JUDGE THOMPSON

George D. Duffy appeals from a decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting his certificates of location for the Bud, Violet, Marigold, Aster, Daisy, Tulip, Rosebud, and Goldenrod mining claims because the certificates of location for those claims (N MC-2976 through 2983) were not filed within 90 days after January 18, 1977, the date of location. The certificates were submitted to BLM on April 25, 1977. The decision rejecting those certificates was dated July 13, 1979. 1/

[1] Section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), requires the owner of a mining claim located after October 21, 1976, to file a notice of location with the Bureau within 90 days after the date of location of the claim. If such notice is not filed within the 90-day period, the Department has no choice but to deem the claim conclusively abandoned. 43 U.S.C. § 1744(c) (1976). See Carl Dowler, 44 IBLA 192 (1979). The statute contains no provision under which the Department may consider a late filing to be timely. Id. at 195.

According to appellant's statement of reasons, it appears that the January 18, 1977, notice served to relocate claims which had been previously located by others but on which no assessment work had been performed the previous year. Appellant claims that if he had been notified promptly that his April 25, 1977, submissions were not timely, he still would have been able to relocate the claims, thereby preventing the prior owners from reestablishing their rights by doing current assessment work. We do not deem it necessary to consider the nature of any possessory rights appellant could have established by such relocation or the rights of conflicting claimants; that is a matter of state law. We only note that the fact that the Department did not notify appellant of its decision until after the time that intervening rights may have arisen so as to prevent his relocation of the claims provides no legal basis for withholding the mandatory consequences of the statute which arise from the failure to record the claims timely. To the extent that any intervening claims of right may have arisen, it can only be attributed to appellant's failure to file timely in the first place.

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1/ By letter decision dated August 11, 1977, addressed to Limerick Canyon Mine, Ltd., the Nevada State Office rejected certificates of location for claims having the same names and serial numbers as those of appellant. That decision also indicated the date of location as being January 18, 1977. Appellant, the locator named on the certificates of location, was not notified until almost 2 years later. The BLM Office acknowledged that it had mistakenly sent the decision to Limerick rather than Duffy.

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.

Joan B. Thompson  
Administrative Judge

We concur:

Joseph W. Goss  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

