

JOHN WALTER CHANEY

IBLA 80-351

Decided March 27, 1980

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting mining claim filings. 3833 (N).

Affirmed.

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, under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file a notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, the mining claim is properly declared abandoned and void.

APPEARANCES: John Walter Chaney, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

John Walter Chaney appeals from a decision dated December 19, 1979, by the Nevada State Office, Bureau of Land Management (BLM), which rejected 1/ his mining claim filings because he failed to submit

1/ Under 43 U.S.C. § 1744 (1976), 43 CFR 3833.1-2(a), and 43 CFR 3833.4 the BLM decision has the effect of deeming the failure to file the notices of location timely with BLM to constitute an abandonment of the claims and declaring them void.

certificates of location on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and the regulation, 43 CFR 3833.1-2(a).

Appellant's claims were located on October 10, 1969. Appellant acquired these claims by warranty deed in 1974. The pertinent regulation, 43 CFR 3833.1-2(a), provides in relevant part:

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, 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. If 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 shall be filed.

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.]

Appellant states on appeal to this Board that he was advised filing requirements would be met if "proof of original filings of the * * * location * * * and/or [a] showing of the assignment of the present ownership" were submitted. Appellant points out that his warranty deed was received by BLM on August 31, 1979. Appellant has also submitted copies of his location certificates with the appeal, suggesting that perhaps difficulties with the mails may have prevented these from timely reaching their proper destination.

[1] None of the location certificates 2/ submitted by appellant bears a BLM "Received" date stamp, nor are copies of such certificates

2/ Although appellant asserts that "[b]oth of these certificates were mailed to your office in Reno, Nevada shortly after July 15, 1979 * * *," there is nothing in the record to evidence receipt thereof by BLM. Moreover, the only evidence in the record of filing fees tendered is a reference to a check dated November 30, 1979, after the crucial date of October 22, 1979.

contained in the file. We can only conclude, therefore, that the documents were not timely submitted, as required under FLPMA and the regulation, supra. The mining recordation requirements are mandatory and failure to comply therewith must result in a finding that the claim has been abandoned and is void. Walter T. Paul, 43 IBLA 119 (1979), Dale C. Delor, 40 IBLA 88 (1979); Roy W. Byram, 39 IBLA 32 (1979); R. Wade Holder, 35 IBLA 169 (1978). Appellant's submission to BLM of his proof of labor and warranty deed did not satisfy the filing requirements.

Appellant may, however, relocate his claims and file the notices required by 43 CFR 3833.1, subject to any intervening rights of third parties and assuming no intervening closure of the land to mineral 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 affirmed.

Frederick Fishman
Administrative Judge

I concur:

Anne Poindexter Lewis
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

Appellant has submitted evidence that on July 15, 1979, the County Recorder of White Pine County gave a receipt for making copies of the 20 certificates of location. Appellant also alleges that the notices were mailed to Bureau of Land Management shortly thereafter. Under the facts now before the Board, however, it is not necessary to inquire into the allegation of mailing and the possible applicability of a presumption of receipt if the filing was properly addressed, posted and postpaid. Appellant has not shown submission of the required fees prior to the October 22, 1979, deadline. Under 43 CFR 3833.1! 2(d), 44 FR 9722 (Feb. 14, 1979), even if the certificates were received by October 22 they could not be accepted if not accompanied by the service fee. Section 3833.1! 2(d) mandates:

(d) Each claim or site filed 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.

Joseph W. Goss
Administrative Judge

