

FRED A. DUNHAM

IBLA 80-72

Decided May 6, 1980

Appeal from decision of the Utah State Office, Bureau of Land Management, holding Wikiup Nos. 1-9 lode mining claims abandoned and void. U-052.

Affirmed as modified.

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

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

APPEARANCES: Fred A. Dunham, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Fred A. Dunham appeals from a decision dated October 30, 1979, by the Utah State Office, Bureau of Land Management (BLM), declaring each of the Wikiup Nos. 1-9 lode mining claims abandoned and void for failure to submit certificates of location on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulation 43 CFR 3833.1-2(a).

BLM's decision refers to the Wikiup Nos. 1-9, instead of Wikiup Nos. 1-19 referred to by appellant. All of the documents submitted by

appellant refer to Nos. 1-19 and the check submitted by appellant in the amount of \$95 is consistent with the service charge for filing 19 claims at \$5 per claim. The discrepancy appears to have resulted from an inadvertent typographical error. In different circumstances it would be appropriate to remand the matter to BLM to correct the discrepancy. However, where appellant has had an opportunity to address the issues presented by the decision and referred to all 19 claims, a remand would only delay resolution of the appeal without benefiting appellant. To avoid unnecessary delay, the BLM decision is modified to embrace the remaining claims.

On October 22, 1979, BLM received from appellant a proof of labor affidavit for 19 claims, a check for \$95, and a request that the claims be recorded. BLM returned the documents and the check to appellant.

[1] Appellant states on appeal that he intends to hold the 19 claims as he has performed the assessment work and development work since the claims were located in 1950. Appellant further alleges that proof of labor certificates have been filed with the Emery County Recorder since 1950. <sup>1/</sup> The pertinent regulation, 43 CFR 3833.1-2(a), implementing section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), 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. [Emphasis supplied.]

The case file does not contain a copy of the official record of the notice or certificate of location of the claims and appellant has not alleged that one was filed with BLM. Failure to file the required notice of location timely must result in a conclusive finding that the claims have been abandoned and are void. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a).

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<sup>1/</sup> By letter of January 19, 1980, appellant inquired of this Board regarding the time and place of a hearing. Appellant was informed, by letter of January 31, 1980, that hearings are not provided for in appeals of this nature. Appellant was allowed extra time within which to submit further reasons to show error in BLM's decision. Appellant did not avail himself of the opportunity.

Appellant's submission of the proof of labor affidavit and the check for \$95 satisfies the requirements of 43 CFR 3833.2-1 and 43 CFR 3833.1-2(d) respectively. However, the submission of these documents does not cure the failure to file timely notices of location as required by 43 CFR 3833.1-2(a), quoted above. Therefore, the 19 Wikiup claims must be conclusively deemed abandoned and void under the specific mandate of the statute and regulation.

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 as modified to embrace all 19 Wikiup claims.

Joan B. Thompson  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Frederick Fishman  
Administrative Judge

