

CECIL V. CLIFFORD, JR.

IBLA 80-435

Decided May 13, 1980

Appeal from decision of the Colorado State Office, Bureau of Land Management, declaring mining claims abandoned and void. C MC-153781.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Federal Land Policy and Management Act of 1976: Rules and Regulations -- Mining Claims: Recordation

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where certificates of location of mining claims are submitted to BLM for recordation on Oct. 18, 1979, and the filing fee therefore is not paid to BLM until Feb. 25, 1980, the recordation date of the notices of location is Feb. 25, 1980. In the circumstances, under 43 CFR 3833.1-2 appellant's filing was not completed until Feb. 25, 1980, which is after the cutoff date of Oct. 22, 1979, for mining claims located prior to Oct. 21, 1976, and the mining claims must be deemed abandoned and void.

APPEARANCES: Edwin F. Moats, Esq., Leadville, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated February 1, 1980, by the Colorado State Office, Bureau of Land Management (BLM), declining to record appellant's unpatented mining claims (C MC-153781) and declaring them abandoned and void for failure to remit the filing fee on or before October 22, 1979, as required by 43 CFR 3833.1-2(d).

Appellant's claims were located on August 10, 1971. His certificates of location and affidavit of assessment work were filed with BLM on October 18, 1979. Under the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, owners of mining claims located prior to October 21, 1976, must file copies of the official notices or certificates of location with BLM on or before October 22, 1979.

The controlling regulation, 43 CFR 3833.1-2(d), provides: "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."

In his statement of reasons appellant concedes that the fee did not accompany the documents submitted for recordation. Appellant apparently tendered the fee together with his statement of reasons which was filed with BLM on February 25, 1980. ^{1/} Appellant asserts that BLM erred in receiving his documents since the regulation specifically mandates that a certificate of location shall not be accepted if it is not accompanied by the service fee. Appellant asks that the late filed fee be accepted and that his certificates be counted properly recorded as of October 18, 1979.

[1] Both sentences of 43 CFR 3833.1-2(d), supra, refer to the requirement that the service fee must accompany the document filed and the second sentence mandates rejection and return to its owner of a filing not accompanied by the fee. In a recent decision, Joe B. Cashman, 43 IBLA 239 (1979), we construed that regulation in a manner which controls the disposition of this case. We stated at 43 IBLA 240:

43 CFR 3833.1-2 requires that, for mining claims, millsites, or tunnel sites located prior to October 21, 1976, a copy of the location notice must be recorded with the proper office of BLM within 3 years, or before

^{1/} Appellant asserts in his statement of reasons: "Attached hereto as Exhibit D is the appellant's check number 385 in the amount of \$20 for the requested service fee." Since the check is not in the case file we assume it was retained by the State Office.

October 22, 1979. For such claims or sites located after October 21, 1976, the location notice must be recorded in the proper BLM office within 90 days following date of location. 43 CFR 3833.1-2(d) states that each claim or site filed with BLM shall be accompanied by a \$5 service fee. This is a mandatory requirement. Without payment of the filing fee, there is no recordation. Thus, as the filing fee for the notices of Apex No. 1 and Apex No. 2 millsites was not paid until February 10, 1978, it must be held that the date of recordation of these claims with BLM cannot be considered to have occurred earlier than that date. [Emphasis in original.]

In Cashman, although the filing fee did not accompany the location notice, it was remitted on February 10, 1978, prior to the cutoff date of October 22, 1979, for mining claims located prior to October 21, 1976. Under the Cashman rationale, the recordation date in the case at bar would be February 25, 1980, 4 months after the cutoff date. In the circumstances appellant's filing was not timely and the mining claims must be deemed abandoned and void as required by FLPMA. Nevada Pacific Co., Inc., 46 IBLA 208 (1980).

It is regrettable that BLM apparently failed to respond timely to appellant's letter of October 11, 1979, which response may well have triggered compliance with regulatory requirements as to fees. However, since 43 CFR 3833.1-2(d) is clear, the failure of BLM, if any, did not have the consequence of creating a right against the Government.

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.

Frederick Fishman
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

