

JAMES H. WARDLE

IBLA 80-280

Decided May 21, 1980

Appeal from decision of the Colorado State Office, Bureau of Land Management, declining to record notices of location for certain mining claims. C MC 149943.

Affirmed.

1. 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 on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. A certificate of location received after Oct. 22, 1979, at the wrong BLM office is not timely filed and the mining claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

APPEARANCES: Don R. Strong, Esq., Strong & Mitchell, Springville, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

James H. Wardle appeals the decision of the Colorado State Office, Bureau of Land Management (BLM), dated November 29, 1979, declining to accept for recording notices of location for unpatented

mining claims. ^{1/} The decision noted that the claims were located on or before October 21, 1976, and they therefore had to have been filed with BLM on or before October 22, 1979. Appellant's documents were received in the Nevada State Office of BLM on October 26, 1979, and subsequently forwarded to the Colorado State Office where they were received November 19, 1979. All of the mining claims are situated in the State of Colorado.

[1] The provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and the pertinent regulations, 43 CFR 3833.1-2(a), require the owner of an unpatented mining claim located on or before October 21, 1976, to file with 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 on or before October 22, 1979. Failure to file the required documents is deemed conclusively to constitute an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4; Carl Oberg; 46 IBLA 319 (1980).

In his statement of reasons, appellant recognized that the documents were sent to the wrong BLM State Office and arrived late. Appellant states that the envelope containing the documents was mailed before the deadline in sufficient time for it to be delivered. Appellant also states that it would not be fair to penalize him when the delivery is through an agency of the United States Government. In addition, appellant asserts that Mr. Wardle is legally blind and has to have assistance in completing and reading the forms. However, there was a mixup in the envelopes.

The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979); Amanda Mining and Manufacturing Assoc., 42 IBLA 144 (1979). Filing is accomplished when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). There is no provision in the law for ameliorating extenuating circumstances causing the late filing.

^{1/} The claims are identified as Pogo #1 through #5, Last Chance, Hot Spot #1 through #6, Hot Spot Fraction #1 through #4, Isotope #1 through #6, Bingo #1 through #5, Civet Cat #1 through #6, Civet Cat Fraction #2, Golden Eagle #14 through #16, Long Draw #1 through #5, Flume Creek #1 through #5, Valley #1 through #12, Spring #1 through #8, Devide Creek #1 through #5, and Ridge #1 through #7.

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

47 IBLA 347

