MITSUKO FLICK

IBLA 80-229 Decided May 27, 1980

Appeal from decision of the Arizona State Office, Bureau of Land Management, holding, in effect, that the June Bug lode mining claim is abandoned and void. 3833 (AZ).

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

   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. Where a copy of the notice or certificate of location is on file at the BLM Phoenix District Office in relation to trespass action and the $5 filing fee is not received in the BLM Arizona State Office until after the deadline, the certificate of location 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.

APPEARANCES: John M. Sears, Esq., Community Legal Services, Prescott, Arizona.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Mitsuko Flick appeals the decision of the Arizona State Office, Bureau of Land Management (BLM), dated November 21, 1979, which, in effect, declared the June Bug lode mining claim abandoned and void.

The decision stated that BLM was "unable to accept the location notice because it was not submitted to the proper Bureau of Land Management Office with the required $5 service fee by October 22, 1979, as specified in 43 CFR 3833.0-5(g)." The decision indicated that failure to file within the time limits shall be deemed conclusively to constitute an abandonment of the mining claim and it shall be void.

In her statement of reasons appellant alleges:

> On or about May 24, 1979, Ms. Flick submitted through this office [her attorney's office] to Mr. Robert Archibald of the same office [Bureau of Land Management, Arizona State Office] several documents, among which was the location notice which the above-mentioned C.F.R. provision requires to be submitted. We believe that if you would check with Mr. Archibald, you will find that the location notice was submitted around that date and has been in his possession since that time, which is clearly before the October 22, 1979 deadline.

Appellant further states that on October 19, 1979, a $5 money order was submitted to the BLM State Office in Phoenix along with a map of the claim. It is appellant's position that the submission of the notice of location in May and the $5 filing fee in October satisfied the filing requirements.

[1] Section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice or certificate of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314(c) also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. 43 U.S.C. § 1744(c) (1976).

The pertinent regulation, 43 CFR 3833.1-2(a), reads as follows:

[§] 3833.1-2 Manner of recordation--Federal lands.

> (a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, excluding lands within units of the

> National Park System established before September 28, 1976, but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, 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 [1/] containing the information in paragraph (c) of this section shall be filed. [Emphasis added.]

The map was date stamped by the State Office on October 24, 1979, when the filing fee and map were received by the State Office. Recordation is not complete unless the documents are accompanied by the stated fee, or until the fee is paid. Nevada Pacific Co., Inc., 46 IBLA 208 (1980); Joe B. Cashman, 43 IBLA 239 (1979).

Although appellant alleges that the $5 filing fee and the map were mailed to the BLM Arizona State Office, the case file contains a letter, postmarked October 19, 1979, with appellant's return address, addressed to the Phoenix District Office of BLM. The District Office apparently transmitted the map and fee to the State Office.

Regulation 43 CFR 3833.1-2 (quoted above) states that "file" shall mean being received and date stamped by the proper BLM office. The "proper BLM office" is defined in the regulations at 43 CFR 3833.0-5(g) as the BLM office which has jurisdiction over the area in which the claim is located, as specified in 43 CFR 1821.2-1(d). The latter section states in turn that the office having jurisdiction over lands located in Arizona is BLM's Arizona State Office in Phoenix. The documents had to be received and date stamped by the BLM Arizona State Office by October 22, 1979, in order to be filed timely. C. F. Linn, 45 IBLA 156 (1980). The map was not date stamped by the State Office until October 24, 1979, when the filing fee was paid. At appellant's suggestion, Mr. Archibald was contacted and asked about documents received in May of 1979. Mr. Archibald, Area Manager, Phoenix Resource Area, Phoenix District, Bureau of Land Management, confirmed that he had received a copy of the notice of location along with other documents. The documents were sent to Archibald in connection with a trespass action initiated by the Phoenix District Office against appellant. The notice of location was not accompanied by the required $5 service fee, nor was any mention made in the cover letter

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1/ The bracketed language was inadvertantly omitted from 43 CFR 3833.1-2(a) (1980) upon printing. The correctly promulgated regulation appears at 44 FR 20330 (Apr. 5, 1979).

accompanying the documents that the notice of location was to be transmitted to the State Office for filing pursuant to the recordation regulations. Because the notice of location was transmitted to the District Office for a purpose other than recordation and without the required fee, it cannot be considered as submitted for the recordation provisions of FLPMA.

Failure to meet the requirements of FLPMA for recording the proper documents must result in a conclusive finding that the claim has been abandoned and is void.

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, and the claim is declared abandoned and void.

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Joan B. Thompson
Administrative Judge

We concur:

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Edward W. Stuebing
Administrative Judge

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Joseph W. Goss
Administrative Judge