

GEORGE B. FLEWELLING

IBLA 80-193

Decided May 30, 1980

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring abandoned and void appellant's mining claim, Friendship placer group, I MC 45042.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Federal Land Policy and Management Act of 1976: Service Charges -- Mining Claims: Abandonment -- Mining Claims: Location -- Mining Claims: Recordation

The owner of a mining claim located on or before Oct. 21, 1976, had until Oct. 22, 1979, to record a copy of the location notice with Bureau of Land Management and pay the required service fee, and where the fee was not paid 43 CFR 3833.1-2(d) requires that the notice of location be returned as unacceptable.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment -- Mining Claims: Location -- Mining Claims: Recordation

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to timely file an instrument required by 43 CFR 3833.1-2 constitutes an abandonment of the mining claim, and it is deemed to be void.

APPEARANCES: George B. Flewelling, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

George B. Flewelling, appeals from a November 14, 1979, decision of the Idaho State Office, Bureau of Land Management (BLM), declaring appellant's placer mining claim void. 1/

The claim was located on June 16, 1973. BLM received appellant's filing fee and map on October 31, 1979. Appellant alleges that he submitted copies of the recorded notice of location, affidavit of assessment and quit claim deed prior to October 22, 1979. He argues that relief should be granted because the intent of the statute was satisfied with his original filing.

[1, 2] Departmental regulations provide in part 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, * * * 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, [2/] a copy of the official record of the notice or certificate of location of the claim or site filed under state law. * * * [Emphasis added.]

* * * * *

(c) The copy of the notice or certificates filed in accordance with paragraphs (a) and (b) of this section shall be supplemented by the following additional information unless it is included in the copy:

* * * * *

(5) For all claims or sites located on surveyed or unsurveyed lands, a description shall be furnished. This description shall recite, to the extent possible, the section(s), the approximate location of all or any part of the claim or site to within a 160 acre quadrant of the section (quarter section) or sections, if more than one is involved. In addition, there

1/ Appellant's mining claim was referred to in the BLM decision as the Friendship placer group, I MC 45042. It was originally located as the Coffee Pot Placer.

2/ Appellant's original filing was incorrectly made with the BLM District Office in Salmon, Idaho.

must be furnished the township, range, meridian and State obtained from an official survey plat or other U.S. Government map showing either the surveyed or protracted U.S. Government grid, whichever is applicable;

(6) For all claims or sites located on surveyed or unsurveyed land, either a topographic map published by the U.S. Geological Survey on which there shall be depicted the location of the claim or site, or a narrative or sketch describing the claim or site with reference by appropriate tie to some topographic, hydrographic or man-made feature. Such map, narrative description or sketch shall set forth the boundaries and positions of the individual claim or site with such accuracy as will permit the authorized officer of the agency administering the lands or the mineral interests in such lands to identify and locate the claim on the ground. More than one claim or site may be shown on a single map or described in a single narrative or sketch if they are located in the same general area, so long as the individual claims or sites are clearly identified; and

(7) In place of the requirements of paragraphs (c)(5) and (6) of this section, an approved mineral survey may be supplied.

(8) Nothing in the requirements for a map and description found in this section shall require the owner of a claim or site to employ a professional surveyor or engineer.

(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.

For claims located on or before October 21, 1976, the requirements of 43 CFR 3833.1-2 apply and the owner has until October 22, 1979, to record the location notice and related documents with BLM and pay the service charge.

Appellant has argued that the regulations are unclear. He does not allege, however, that a filing fee accompanied his original filing. For lack of filing fee alone, the BLM decision must be

affirmed. ^{3/} Section 3833.1-2(d) is mandatory--it would have been beyond BLM authority to accept the original filing. Since the filing was not timely made, 43 U.S.C. § 1744 (1976), mandates that the claim be declared abandoned and void. L. Leon Jennings, 47 IBLA 47 (1980).

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.

Joseph W. Goss
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

James L. Burski
Administrative Judge

^{3/} The propriety of the requirement for the filing fee was judicially sustained in Topaz Beryllium Co. v. United States, 479 F. Supp. 309, 316 (D. Utah 1979).