C. A. GUSSMAN

IBLA 80-423 Decided June 9, 1980

Appeal from a decision of the Sacramento, California, State Office, Bureau of Land Management, refusing to accept for recordation location notices for the Columbia Nos. 1, 2, and 3; Mable Extension Nos. 2 and 3; Golden Eagle Extension Nos. 1, 2, and 3; and K.C. Nos. 1, 2, and 3 lode mining claims.

Affirmed.

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

   Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, within 90 days after the date of location of such claim, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner. The "date of location" is determined by reference to the law of the state in which the claim is situated.

APPEARANCES: Fred W. Burton, Esq., Yreka, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

C. A. Gussman, hereinafter appellant, has appealed from a decision dated January 24, 1980, of the Sacramento, California, State Office, Bureau of Land Management (BLM), for refusing to accept for

recordation location notices for the Columbia Nos. 1, 2, and 3; Mable Extension Nos. 2 and 3; Golden Eagle Extension Nos. 1, 2, and 3; and K.C. Nos. 1, 2, and 3 lode mining claims.

On December 31, 1979, the Sacramento State Office, BLM, received for recordation copies of location notices for the above stated lode mining claims.

The decision appealed from states:

> Your location notices for the above-named mining claims are returned, together with the filing fee, since they were not filed within 90 days after the date of location of the claims, as required by the Federal Land Policy and Management Act of October 21, 1976 (43 USC 1744) and the regulations in 43 CFR 3833.1-2(b); copy enclosed.

43 CFR 3833.1-2(b) states,

> The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal Land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim 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 or if the 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.

On appeal, appellant contends that the date of location was incorrectly determined to be September 9, 1979. He states that this was the date that he posted the mining claim; however, the location was still in the process of being made when he recorded the same in the Office of the County Recorder, Siskiyou County, California. The recording was done on October 10, 1979, which appellant submits as the date of perfecting the location. Appellant states that the returned location notices were stamped by the Sacramento Office as having been received December 31, 1979, which is within 90 days after location was completed. He states that he should have until January 10, 1980, within which time to file the location notices in the BLM office.

43 CFR 3833.05(h), defines "date of location" or "located" as the date determined by State law in the local jurisdiction in which the unpatented mining claim, mill or tunnel site is situated. Jim Spicer, 42 IBLA 288 (1979).

The notices of location reflect that the above stated claims were located on September 9, 1979.

Appellant apparently equates "date of location" with "recordation."

Under Cal. Pub. Res. Code § 2301(d) (West 1972), Location of lode mining claims; persons entitled to locate; notice; contents:

> Any person, a citizen of the United States, or who has declared his intention to become a citizen, who discovers a vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposit, may locate a claim upon such vein or lode, by defining the boundaries of the claim, in the manner hereinafter described, and by erecting at the point of discovery thereon a conspicuous and substantial monument, and by posting in or on the monument a notice of such location. The notice shall contain:
>
> * * * * * * *
>
> (d) The date of location, which shall be the date of posting such notice.

Accordingly, under 43 CFR 3833.05(h), and Cal. Pub. Res. Code § 2301(d), the date of location is September 9, 1979, as indicated by the notice of location signed by C. A. Gussman, the appellant, and stated by him on appeal to be the date the claims were posted. Clearly, it would not be feasible to post on the monument as the date of location the date of recordation, which could not be accomplished until some future date.

Past decisions of this Board reflect a consistent position regarding the importance of timely filing under 43 CFR 3833.1-2(b). Thus, in Jim Spicer, supra, Roy M. Byram, 39 IBLA 32 (1979), Ronald Coulam, 35 IBLA 35 (1978), and Foyle Mason, 35 IBLA 40 (1978), we stated that BLM properly refused to record material submitted beyond the 90-day period. In R. Wade Holder, 35 IBLA 169 (1978), we said:

> [T]he consequences of failing to timely file notices of location are clearly stated in 43 CFR 3833.4(a): "The failure to file such instruments as are required by secs. 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claims, mill site, or tunnel site and it shall be void." Since there is no authority for an exception to enforcement of the 90-day deadline, it must be enforced.

The attempted recordation of the above stated location notices on December 31, 1979, was not timely. The BLM State Office properly refused to record such notices.

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.

Edward W. Stuebing
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joan B. Thompson
Administrative Judge