

DON R. BIRD ET AL.

IBLA 80-540

Decided July 22, 1980

Appeal from decision of Utah State Office, Bureau of Land Management, declining to record notices of location for unpatented mining claims, Early Bird and Early Bird Nos. 1 through 215 (inclusive), 3833, U 952.

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 sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

APPEARANCES: Tim Mulville, Farmington, New Mexico, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

An appeal has been taken from a decision dated February 28, 1980, by the Utah State Office, Bureau of Land Management (BLM), declining to record notices of location for unpatented mining claims Early Bird and Early Bird Nos. 1 through 215, on the basis that the notices were not filed within 90 days after the date of location as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the corresponding regulation 43 CFR 3833.1-2(b).

The notices of location show that the claims were located on behalf of the appellants between November 11, and November 18, 1979. BLM received copies of the notices on February 21, 1980. There is no dispute that the copies of the location notices were not filed within 90 days after location of the claims.

Section 314, FLPMA, 43 U.S.C. § 1744 (1976), requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice or certificate of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of the location. It also provides that failure to timely file such documents shall be deemed conclusively to constitute an abandonment of the mining claim by the owner and renders the claim void.

The pertinent regulation, 43 CFR 3833.1-2(b), provides as follows:

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 * * *.

Tim Mulville states that the three mining claimants contracted with him to stake the claims which are the subject of this appeal. The claimants provided Mulville with sufficient funds to record the notices or certificates of location for the Early Bird and Early Bird Nos. 1 through 215. However, Mulville needed and used the money for his personal use and was, therefore, unable to file certificates of location on the lode mining claims until February 21, 1980. The certificates of location, a map, and a check for \$1,080 reached BLM 95 days after the last lode claims were located on November 18, 1979.

[1] Under FLPMA and the regulations the requirements for filing are clear. The Board has repeatedly held that when a notice of location of a mining claim is not filed with BLM within 90 days from the date of location it has no force and effect and must be returned to the appellant. Faith C. Hartman, 44 IBLA 310 (1979); M. J. Reeves, 41 IBLA 92 (1979); William E. Rhodes, 38 IBLA 127 (1978). The claim must be deemed conclusively to have been abandoned and void under the terms of the statute. 43 U.S.C. § 1744(c) (1976); Faith C. Hartman, *supra*; Phillip M. Gardiner, 41 IBLA 391 (1979).

Mulville contends that the fact he needed the funds for an immediate personal use should not be used to penalize the claimants, and that it will create a financial hardship if he has to stake, and refile with the county and BLM. The statute, however, gives no

authority to this Department to excuse lack of compliance with the strict recording requirements.

The claimants may relocate their claims, if for locatable minerals, and file the notice required by 43 CFR 3833.1, subject to any intervening rights of third parties, and assuming no intervening closure of the land to mineral location.

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.

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

