

G. R. MARQUARDSON

IBLA 80-245

Decided July 28, 1980

Appeal from a decision of the Utah State Office, Bureau of Land Management, holding mining claims abandoned and void.

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 prior to 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, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The statute and regulations governing recordation of mining claims are mandatory and where a mining claimant contends that he mailed his notices of location along with other documents which were received by the Bureau of Land Management 1 day after the filing date, the claims are properly declared abandoned and void.

APPEARANCES: G. R. Marquardson, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

G. R. Marquardson ^{1/} appeals from a decision of the Utah State Office, Bureau of Land Management (BLM), holding mining claims ^{2/} abandoned and void.

BLM cited 43 CFR 3833.1-2 implementing section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA) (Oct. 21, 1976), 43 U.S.C. § 1744 (1976), which requires the filing of a copy of the official record of the notice or certificate of location of the claim on or before October 22, 1979. BLM noted that a map and a quitclaim for the claims were filed on October 23, 1979, but no notices of location were filed in connection with the claims. BLM stated that under 43 CFR 3833.4, failure to file these instruments is deemed conclusively to constitute an abandonment of the mining claims and declared the claims void.

Appellant's statement of reasons reads as follows:

As to your decision, "Mining claims deemed abandoned and void," paragraph #1 and #2, my check was dated October 15, 1979, the day the documents were mailed to you. If, indeed, you did receive them on the 23rd it was beyond my control and this should be taken into consideration. The delay was the Post Office or your's.

Notices of location were filed along with the map and quit claim deed, paragraph #2 and #3. Again, the error is your's inasmuch as I was sent other people's documents it seems probable you sent mine to someone else.

I now refer to your letter, copy enclosed, which says: Notice of location was filed.

[1] Section 314(b) 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 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 also provides that failure to timely

^{1/} BLM also lists J. H. Marquardson and Myrtle F. Marquardson in its decision, but neither of these persons has filed an appeal.

^{2/} The claims involved in this appeal are as follows: Sego Lily Nos. 2-10 (inclusive); Thanksgiving; Thanksgiving Nos. 1, 2, 4-7 (inclusive); Lucky Strike; Lucky Strike Nos. 1-7 (inclusive); Golden Roof No. 1; Marque; Marque Nos. 1-4 (inclusive); and Explorer, Explorer Nos. 1-5 (inclusive) lode mining claims.

file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

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 land, * * * 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 3/] containing the information in paragraph (c) of this section shall be filed.

The statutory and regulatory mining recordation requirements are mandatory and failure to comply with them must result in a finding that the claims are void. Robert Alameda, 48 IBLA 178 (1980); John Walter Chaney, 46 IBLA 229 (1980); Walter T. Paul, 43 IBLA 119 (1979). 4/ There is no evidence in the file other than appellant's assertion to indicate that appellant did, in fact, file the notices of location. 5/

Regarding the late filing of the other documents, the envelope in which appellant sent the documents bears a postmark dated October 20, 1979. The BLM date stamp reads October 23, 1979, 1 day past the filing date. Failure to timely file the required documents constitutes abandonment of the claims and this Board has no authority to excuse a late filing. The Board has repeatedly held that the mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Johnnie Finnegan, 48 IBLA 79 (1980); Everett Yount, 46 IBLA 74

3/ The bracketed language was inadvertently omitted from 43 CFR 3833.1-2(a) (1979) upon printing. The correctly promulgated regulation appeared at 44 FR 20430 (Apr. 5, 1979).

4/ The fact that BLM in its "Notice of Return of Remittance," sent to appellant, stated "Notice of Location was filed with this claim" cannot cure the late receipt.

5/ We note that appellant submitted only \$5 in service fees for 36 claims. 43 CFR 3833.1-2(d) requires that a location notice for each claim filed for recordation be accompanied by a \$5 service fee. Failure to submit the required fee is, in itself, reason to declare all but one of the claims abandoned and void.

(1980). Filing is accomplished when a document is delivered to and received by the proper office. 43 CFR 1821.2-2(f). Appellant states that his notices of location were filed along with the other documents. The fact remains that the other documents were received late, October 23, 1979. Thus even assuming appellant's contention that he mailed all the documents together, this does not help him because the documents that were received were late.

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.

Anne Poindexter Lewis
Administrative Judge

We concur.

Joan B. Thompson
Administrative Judge

Douglas E. Henriques
Administrative Judge

