

GEORGE W. COLE

IBLA 80-216

Decided July 28, 1980

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring lode mining claims null and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment – Mining Claims: Determination of Validity – Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official notice of location for the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. Failure to so file is deemed conclusively an abandonment of the claim by the owner.

APPEARANCES: George W. Cole, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

George W. Cole appeals from a decision of the Utah State Office, Bureau of Land Management (BLM), dated December 6, 1979, declaring his mining claims 1/ abandoned and void for failure to timely file the notices of location as required by section 314, Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the corresponding regulation, 43 CFR 3833.1-2(a).

1/ The claims involved are the North Star Nos. 1 through 32 and Hobo Nos. 1 through 18.

On November 8, 1979, appellant filed proof of labor and a map for North Star Nos. 1 through 32 and Hobo Nos. 1 through 18 lode mining claims with the Utah State Office, BLM. No notices of location had been filed in connection with the above claims. The State Office accordingly rejected appellant's filings as incomplete and untimely.

In his statement of reasons appellant states:

I regret that I passed the regulations to my secretary whom I thought was sufficiently competent to handle the matter. Obviously she was not, and, apart from filing late, she prepared the wrong documents for filing. I realize now that, as owner of the claims, I should have made sure that all was in order, but at the time my business was having staffing problems, resulting in extra pressure for me.

Accompanying appellant's statement of reasons were location notices for North Star Nos. 1 through 32 claims, located March 17, 1976, and Hobo Nos. 1 through 18 claims, located February 19, 1976. Under section 314 of FLPMA, therefore, the deadline for filing the notices of location fell on October 22, 1979. 43 CFR 3833.1-2(a).

[1] Section 314(b) of 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 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 in relevant part as follows:

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, a copy of the official record of the notice or certificate of location of the claim or site filed under state law.

The statute and pertinent regulations state clearly that where a notice of location of a mining claim located prior to October 21, 1976, is not filed on or before October 22, 1979, the claim shall be deemed conclusively to be abandoned. 43 CFR 3833.4(a). There is no authority in the Department to waive this requirement. A. J. Grady, 48 IBLA 218 (1980); John F. Sherwood, 48 IBLA 180 (1980).

Appellant may relocate these claims, if for locatable minerals, and file notices of location as provided by 43 CFR 3833.1, subject to any intervening rights of third parties, and assuming no intervening closure of the land to mining 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.

James L. Burski
Administrative Judge

We concur.

Anne Poindexter Lewis
Administrative Judge

Joan B. Thompson
Administrative Judge

