

WELDON MEAD KENNEDY
ELMER DEVORE

IBLA 80-666

Decided July 31, 1980

Appeal from decision of Arizona State Office, Bureau of Land Management, returning, unrecorded, notice of location for Big Goldie lode mining claim. 3833 AZ.

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.

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

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a \$5 service fee, which is not returnable. A notice or certificate of

location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

APPEARANCES: Weldon Mead Kennedy and Elmer Devore, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Weldon Mead Kennedy and Elmer Devore appeal from the May 20, 1980, decision of the Arizona State Office, Bureau of Land Management (BLM), which returned, unrecorded, the location notice for Big Goldie lode mining claim because the notice was not filed for recordation and the service fee paid within 90 days after the date of location.

The location notice indicates February 8, 1980, as the date of location. The copy of the location notice was received in the BLM office May 8, 1980. Although this was the 90th day after location, the service fee was not paid until May 19, 1980.

Section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim located on Federal lands after October 21, 1976, to file a copy of the official record of the location notice in the proper BLM office, as designated by the Secretary of the Interior, within 90 days after the date of location. The statute also provides that failure to file timely such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

[1, 2] Pertinent regulations are contained in 43 CFR Subpart 3833.

§ 3833.1 Recordation of mining claims.

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[§] 3833.1-2 Manner of recordation – Federal lands.

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(b) 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. *
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(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.

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§ 3833.4 Failure to file.

(a) The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void.

Appellants argue that the location notice was recorded in Mohave County, Arizona, records on February 19, 1980, which should be considered as the date of location. Apparently appellants equate "date of location" with "date of recordation." 43 CFR 3833.0-5(h) defines "date of location" as the date determined by State law in which jurisdiction the mining claim is located.

Arizona Rev. Stat. 27-202, Method of locating lode, placer or millsite claims; monument; location notice; amendments, provides:

A. Location of a lode, placer or millsite claim shall be made by erecting on the surface at one corner within the boundaries of the claim a conspicuous monument of stones not less than three feet in height, or an upright post securely fixed and projecting at least four feet above the ground, in or on which there shall be posted a location notice, signed by the name of the locator. The location notice shall contain:

* * * * *

3. The date of the location.

Accordingly, under 43 CFR 3833.0-5(h) and the Ariz. Rev. Stat. 27-202, the date of location of the Big Goldie claim is February 8, 1980, as indicated by the notice of location signed by Weldon M. Kennedy and Elmer Devore, the appellants.

This Board has consistently held that mining claim location notices must be filed within the statutory time period, and that BLM properly refuses to accept material submitted beyond the 90-day period for claims located since October 21, 1976. As we said in R. Wade Holder, 35 IBLA 169 (1978):

[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.

Furthermore, the regulation requires a service fee to accompany each location notice submitted to BLM for recordation. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stipulated fee, or until it is paid. Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), appeal pending. Therefore, where a notice of location is submitted to BLM for recordation on May 8, 1980, and the filing fee therefor is not paid to BLM until May 19, 1980, the recordation of the location notice is May 19, 1980. Beth Mallory, 47 IBLA 296 (1980); Loyal Dee Griggs, 47 IBLA 293 (1980); Joe B. Cashman, 43 IBLA 239 (1979).

The attempted recordation of the location notice of the Big Goldie claim was not timely. The BLM State Office properly refused to record the notice.

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.

Douglas E. Henriques
Administrative Judge

We concur.

Anne Poindexter Lewis
Administrative Judge

Frederick Fishman
Administrative Judge

