

Editor's note: Decision vacated by order dated Dec. 22, 1980 -- See 50 IBLA 381A & B below.

WAYNE E. CLUTIS

IBLA 80-545

Decided October 22, 1980

Appeal from decision of Idaho State Office, Bureau of Land Management, returning, unrecorded, notice of location for Patsie 1 and 2 and Twin Apex No. 1 millsites.

Affirmed as modified.

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 millsite 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. The owner of an unpatented millsite, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim. The statute and regulations governing recordation of millsite claims are mandatory and where BLM has not received a notice of location, the claim is properly declared abandoned and void.

APPEARANCES: Wayne E. Clutis, pro se.

50 IBLA 379

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Wayne E. Clutis appeals from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated March 5, 1980, which returned, unrecorded, the location notice for the Patsie 1 and 2 and Twin Apex millsite claims.

BLM stated that appellant's notice/certificate of mining claim recordation was returned to him because "Evidence of Annual Assessment work/Notice of Intent to hold a claim or site" filing and was not filed with that office by October 22, 1979, as required under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2(a).

Appellant contends that he went to considerable expense having maps and other information prepared and that he thought that he had complied with all the necessary requirements.

[1] Section 314(b), FLPMA, 43 U.S.C. § 1744 (1976), requires the owner of an unpatented millsite 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. The same section requires the owner of an unpatented millsite claim located after 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 90 days after the date of location of such claim. 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 regulations, 43 CFR 3833.1-2(a) and 43 CFR 3833.1-2(b) read 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 1/] containing the information in paragraph (c) of this section shall be filed. * * *

1/ 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).

(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 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.

There is no evidence in the file, other than appellant's assertion that he thought he had complied with all the requirements to indicate that appellant did, in fact, timely file a copy of certificate of his notice of location of each millsite claim for recordation with BLM on or before October 22, 1979.
2/

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. G. R. Marquardson, 49 IBLA 114 (1980); Robert Alameda, 48 IBLA 178 (1980); John Walter Chaney, 46 IBLA 229 (1980); Walter T. Paul, 43 IBLA 119 (1979).

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 as modified.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Frederick Fishman
Administrative Judge

2/ Although the BLM decision held that the mining claims are properly deemed abandoned for failure to file evidence of assessment work of intention to hold the claims, the real basis of the decision rests upon the failure to timely file copies of the notices or certificates of location with BLM. Assessment work is not required on millsites either by United States mining laws or FLPMA.

December 22, 1980

50 IBLA 379
IBLA 80-545 : IMC 15297 through 15299
:
WAYNE F. CLUTIS : Mining Claim Recordation
:
: Board Decision set aside and
: remanded

ORDER

The Idaho State Director, Bureau of Land Management (BLM) has petitioned this Board to vacate our decision of October 22, 1980, in which we affirmed as modified a decision of the Idaho State Office, BLM, holding the above-identified mill site claims abandoned and void for failure to file timely copies of notice or certificates of location pursuant to 43 CFR 3833.203.

The BLM requests that we vacate this decision and remand the case for further appropriate consideration in light of evidence that timely notices or certificate of location were in fact filed in the State Office and inadvertently overlooked. BLM states these notices were received in the State Office on October 19, 1979, and were misfiled with another group of unpatented mining claims filed by Mr. Clutis.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the Board's previous decision in this matter is hereby vacated and the original BLM decision is appealed from is set aside. The case is remanded to the BLM Idaho State Office for further consideration. In view of our determination herein, we need not rule on Appellant's request for reconsideration by this Board.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bernard V. Parrette
Chief Administrative Judge

50 IBLA 381A

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50 IBLA 381B

