

FLOYD R. MOODY

IBLA 80-133

Decided January 21, 1981

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring lode mining claims abandoned and void. 3833 (UT).

Set aside and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Federal Land Policy and Management Act of 1976: Service Charge --Mining Claims: Recordation

Where a mining claimant attempts to file notices of location for 24 claims pursuant to 43 CFR 3833.1-2 and tenders payment for filing costs in an amount sufficient to cover only 23 of those claims, BLM shall require the claimant to select 23 claims to which the money tendered shall be applied. The remaining one claim is properly declared abandoned and void in accordance with 43 CFR 3833.4.

APPEARANCES: Floyd R. Moody, pro se.

OPINION BY ACTING ADMINISTRATIVE JUDGE HARRIS

Floyd R. Moody appeals from a decision of the Utah State Office, Bureau of Land Management (BLM), dated November 2, 1979, declaring

abandoned and void the Great Eagle, Great Eagle Nos. 1-5, 7-12 (inclusive), Crystal Rose, and Crystal Rose Nos. 1-11 (inclusive) lode mining claims. 1/

On October 16, 1979, notices of location for the subject mining claims were submitted to BLM for recordation, accompanied by a check in the amount of \$115. BLM, relying upon section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the corresponding regulations, 43 CFR 3833.1-2(a) and (d), found the filing to be unacceptable because "they were not accompanied by the required filing fee, \$5 for each claim to be recorded." 2/ BLM declared the mining claims abandoned and void, returned the documents, and authorized a refund.

[1] The applicable regulation, 43 CFR 3833.1-2(d), specifically provides: "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." This is a mandatory requirement. Without payment of the filing fee, there can be no recordation. Phyllis Wood, 46 IBLA 311 (1980); Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979) (appeal pending).

Regulation 43 CFR 3833.4(a) states: "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." Thus, failure to submit a required document with the appropriate filing fee, in a timely fashion will result in the mining claim being declared abandoned and void. Phyllis Wood, supra, Joe B. Cashman, 43 IBLA 239 (1979). However, in Robert L. Steele, 46 IBLA 80 (1980), we held that where a mining claimant attempted to file notices of location for six claims and tendered payment for filing costs in an amount sufficient to cover only four of those claims, BLM should require the claimant to select four claims to which the money tendered should be applied. The two remaining claims would be properly declared abandoned and void. That case is dispositive of the present appeal.

1/ It is not clear from the record whether Mr. Moody is appealing only on his own behalf or for all or some of the others--Lamar R. Moody, Jerry L. Moody, Jay R. Moody, and Edward B. Erekson--listed in the BLM decision. 2/ Certificates of location for 24 claims were filed. The \$115 check covered the filing fee for only 23 claims.

The decision appealed from is set aside. BLM shall notify Floyd R. Moody and the others listed in the decision below that the \$115 filing fee should be resubmitted and that the fee will be applied to the 23 claims of their preference. The remaining claim should be declared abandoned and void.

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 set aside and remanded for further action not inconsistent with this opinion.

Bruce R. Harris

Acting Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

