

JOHN C. AND THERESA K. BUCHANAN

IBLA 80-920

Decided February 19, 1981

Appeal from decision of the Arizona State Office, Bureau of Land Management, rejecting notices of mining claim locations as untimely filed. A MC 100604 and 100605.

Affirmed.

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

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Location--Mining Claims: Recordation--Words and Phrases

"Date of Location." The date of location of a mining claim is determined in accordance with the law of the state where the claim is situated. Under Arizona law, it is the date specified on the notice of location filed with the local recorder's office.

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Location--Mining Claims: Recordation

The dates of location of mining claims as shown on the notices of location recorded in compliance with State law will be treated as controlling where, after rejection by BLM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are scrivener's errors.

APPEARANCES: John C. Buchanan, pro se; Fritz L. Goreham, Esq., Office of the Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for contestant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

This is an appeal from a decision of the Arizona State Office, Bureau of Land Management (BLM), refusing to accept for filing the location notices for the Buck Mountain Mines lode mining claims Nos. 1 and 2 because they were not timely filed under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(b) (1977).

BLM found that appellants' claims were located on January 10, 1979, based upon the dates entered on the filed certificates of location specifying when the claims were located. Because appellants' certificates of location were not filed with BLM until April 2, 1980, more than 90 days later, the certificates were returned to appellants.

On appeal appellant states that by force of habit he entered "1979" as the year in which the claim was located, rather than "1980" the year in which, he asserts, the claims were actually located.

[1] Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located after October 21, 1976, must file with BLM a copy of the official record of the notice of location within 90 days after the date of location, failing which the claim shall be declared abandoned and void under 43 CFR 3833.4(a). Topaz Beryllium Co. v. United States, Civ. No. 77-0405 (D. Utah 1979) (appeal pending); Carl Dowler, 44 IBLA 192 (1979); M. J. Reeves, 41 IBLA 92 (1979); William E. Rhodes, 38 IBLA 127 (1978); R. Wade Holder, 35 IBLA 169 (1978); and Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (1978), aff'd, Northwest Citizens for Wilderness Mining Inc. v. Bureau of Land Management, Civ. No. 78-46-M (D. Mont. June 19, 1979).

[2, 3] The date of location is determined in accordance with the law of the state where the claim is situated. 43 CFR 3833.0-5(h); P & S Mining Co., 45 IBLA 115 (1980). Under the law of the State of Arizona, where these claims are situated, the date of location is that specified by the locator on the notice of location filed with the record office. Ariz. Rev. Stat. Ann. § 27-202 (1976). In this context we note that the location notice prepared by appellant and recorded in the official record of Pinal County shows that appellant entered as the date of location the "10th day of January 1979." Thus, this is the date of location which determines whether appellant timely filed copies of the notices with BLM. As appellant did not file copies of the notices with BLM until more than a year after the aforementioned date, he clearly did not comply with 43 CFR 3833.1-2(b), and BLM properly declared the claims abandoned and void. This case is virtually identical to the issue presented in Lee Resources Management Corp., 50 IBLA 131 (1980), in which we held:

The dates of location of mining claims as shown on the notices of location recorded in compliance with State Law will be treated as controlling where, after rejection by BLM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are "typographical errors."

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.

Edward W. Stuebing

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

