

INSPIRATION DEVELOPMENT CO.

IBLA 80-606

Decided May 20, 1981

Appeal from decision of Alaska State Office, Bureau of Land Management, declaring lode and placer mining claims abandoned and void in full and in part. F-57497, et al.

Vacated and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment--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(a), the owner of an unpatented mining claim located before Oct. 21, 1976, must file on or before Oct. 22, 1979, in the proper BLM office, a copy of the notice of location or the claim will be conclusively deemed to have been abandoned and declared void.

Where an unpatented mining claim is located in Alaska near the dividing line separating the Anchorage and Fairbanks districts, indicated on the map in 43 CFR 1821.2-1, such that it is virtually impossible from the map to determine with substantial accuracy in

which district the mining claim lies, the timely filing of the location notice by the owner of the claim in either the Alaska State Office or the Fairbanks District Office will be considered as satisfying the requirement of 43 CFR 3833.1-2(a) of filing in the proper BLM office.

APPEARANCES: Stephen M. Ellis, Esq., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Inspiration Development Company 1/ has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated March 26, 1980, declaring certain lode and placer mining claims abandoned and void for failure to file copies of notices of location in the proper BLM office pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR 3833.

All of appellant's mining claims were located between May 4, 1970, and June 17, 1972, and copies of the notices of location were filed for recordation with the Fairbanks District Office on August 30, 1979.

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1/ On Oct. 10, 1980, BLM was notified pursuant to 43 CFR 3833.3 that appellant had conveyed its interest in various lode mining claims, involved herein, situated in T. 5 N., R. 14 E., Copper River meridian, Alaska, to Pacific Coast Mines, Inc. This conveyance, however, does not affect the result in this case.

The record indicates that some or all of the copies of the notices of location were forwarded to the Alaska State Office, Anchorage, but were received after the filing deadline. The claims listed in Appendix A were located within Ts. 5 and 6 N., R. 14 E., Copper River meridian, Alaska, and the claims listed in Appendix B were located partially within T. 5 N., R. 14 E., Copper River meridian, Alaska, and partially within T. 5 N., R. 15 E., Copper River meridian, Alaska.

Relying on 43 CFR 1821.2-1(d), which states that claims located in "Southern Alaska" should be filed for recordation with the Alaska State Office in Anchorage, Alaska, and providing a map indicating the boundary line between "Southern Alaska" and "Northern Alaska," BLM concluded that appellant should have filed in the Alaska State Office. <sup>2/</sup> BLM noted that "[b]oth T. 5 N., R. 14 E., and T. 6 N., R. 14 E., Copper River Meridian lie within the Anchorage district of BLM." Accordingly, (153) claims located entirely within those townships were deemed abandoned and declared void in full. See Appendix A. However, (11) claims located partially within T. 5 N., R. 14 E., Copper River meridian, and partially within T. 5 N., R. 15 E., Copper River meridian, were "deemed abandoned and declared void in part, to the extent that they lie within T. 5 N., R. 14 E., Copper River Meridian (Anchorage District)." (Emphasis in original.) See Appendix B.

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<sup>2/</sup> Reference to 43 CFR 1821.2-1(d) reveals that Alaska is unique in that it is the only State in which more than one BLM office has jurisdiction to receive mining claim recordation filings.

[1] The applicable regulation, 43 CFR 3833.1-2(a) provides in relevant part:

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. [Emphasis added.]

43 CFR 3833.4(a) specifies the penalty for failure to satisfy the filing requirements of 3833.1-2(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."

In its statement of reasons for appeal, appellant contends that it was fully aware of the filing requirement and of the distinction between "Northern Alaska" and "Southern Alaska" for purposes of filing copies of notices of location, but that, "it was impossible to ascertain that fact [i.e., that the dividing line between 'Northern Alaska' and 'Southern Alaska' bisects the subject claims between T. 5 N., R. 14 E., and T. 5 N., R. 15 E.] from the map set forth in 43 CFR § 1821.2-1 \* \* \*. Indeed, the dividing line depicted on the map carves out a path approximately 20 miles wide." Accordingly, appellant sent a representative to Alaska with instructions to file in the

appropriate BLM office. This representative traveled to both the Anchorage and Fairbanks offices, filing the subject claims (known as the Bond Creek Project) with the Fairbanks office "53 days prior to the October 22, 1979 deadline" and filing other claims (not relevant here) with the Anchorage office. In an affidavit submitted by appellant, dated May 15, 1980, its representative indicates the nature of the filing in the Fairbanks office: "I submitted all of the Certificates of Location for the Bond Creek Claims to BLM personnel in Fairbanks for their review. \* \* \* Fairbanks BLM personnel then personally inspected each such Certificate of Location as well as the maps which were filed therewith. \* \* \* All of the documents were accepted as filed."

Appellant makes three principal arguments, namely: (1) It is entitled to equitable adjudication pursuant to 43 CFR 1871.1-1 because it has satisfied all of the prerequisites therefor; (2) BLM is estopped to deny that appellant filed in the proper BLM office because it has satisfied all of the prerequisites therefor; and (3) 43 CFR 1821.2-1(d), as it pertains to Alaska, is ambiguous and unreasonable and, therefore, void or, in the alternative, timely filing in the Fairbanks office must be deemed to have been full compliance with the filing requirements of FLPMA and its implementing regulations. 3/

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3/ Appellant indicates that the subject land was withdrawn in part from the location of mining claims pursuant to Public Land Order No. 5654 (Nov. 17, 1978), 43 FR 59756 (Dec. 21, 1978).

Under the circumstances of this case, appellant's filing in the Fairbanks District Office is deemed to constitute timely compliance with the filing requirement of 43 CFR 3833.1-2(a) for notices of location. See Richard E. Forsgren, 54 IBLA (1981) (Judge Burski concurring). The regulation, 43 CFR 1821.2-1(d), which appellant relied on is inherently ambiguous in certain respects. The map indicating the dividing line between "Northern Alaska" and "Southern Alaska" for purposes of filing in either the Fairbanks or Anchorage offices is approximately 4 inches by 5 inches with only the barest minimum of reference points and with no indication of scale. <sup>4/</sup> It results in a gross division of Alaska into two districts. Appellant's problem of determining in which district its claims lay was compounded by the fact that some of its claims straddle the dividing line. There is no possibility that a mining claimant with claims near this line could determine with substantial accuracy, from the map published in 43 CFR, in which district filing should be made.

The Administrative Procedure Act (APA), 5 U.S.C. § 552(a) (1976), provides that "[e]xcept to the extent that a person has actual and

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<sup>4/</sup> The map was changed to its present form by publication in the Federal Register, 39 FR 5633 (Feb. 14, 1974), effective Mar. 4, 1974. The purpose of the change was stated to be:

"[T]o make the boundaries of the Bureau of Land Management land districts in Alaska correspond with the Bureau of Land Management's administrative districts. The administrative boundaries conform to natural topographic features which influence the travel and trade patterns of Alaskans. The Administrative boundary will facilitate filing of selection applications pursuant to the Alaska Native Claims Settlement Act. The change will therefore better serve the convenience of the Alaskan public as well as promote administrative efficiency."

timely notice of the terms thereof, a person may not in any manner \* \* \* be adversely affected by, a matter required to be published in the Federal Register and not so published." Matters required to be published include "descriptions of \* \* \* the established places at which \* \* \* the public may \* \* \* make submittals." 5 U.S.C. § 552(a)(1)(A) (1976).

This requirement of publication has not been adequately satisfied with regard to mining claimants whose claims are near the dividing line between "Northern" and "Southern" Alaska, such that it is virtually impossible to determine with substantial accuracy in which district to file location notices. Accordingly, pursuant to the APA, supra, appellant cannot be adversely affected by BLM's failure to publish a map of sufficient detail to allow such a claimant to determine the correct office in which to file. This inherent ambiguity of the regulation must be construed in appellant's favor. See generally Wallace S. Bingham, 21 IBLA 266, 282, 82 I.D. 377, 384 (1975); A. M. Shaffer, 73 I.D. 293 (1966). 5/

It could be argued that appellant, in order to protect its interests, should have filed in both offices. We do not agree. Appellant made a good faith effort to comply with the filing requirements in

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5/ The fact that appellant cannot be adversely affected does not absolve it completely from complying with the filing requirements of FLPMA and its implementing regulations. If appellant had not bothered to file timely in the Fairbanks office, its claims would properly have been deemed abandoned and declared void.

this instance. Moreover, the Fairbanks District Office received appellant's notices of location well before the filing deadline (53 days). Arguably that office should have either returned the notices of location to appellant for filing in the proper BLM office or forwarded them to the Alaska State Office before the filing deadline. See Richard L. Rosenthal, 45 IBLA 146 (1980). However, we do not so hold because of our discussion, supra.

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 vacated and the case remanded to BLM for further action not inconsistent herewith.

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Bruce R. Harris  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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James L. Burski  
Administrative Judge

APPENDIX AT. 5 N., R. 14 E., Copper River Meridian, Alaska

<u>Claim Name</u>	<u>BLM Serial No.</u>	
NAN EXTENSION #1	F-57537	
NAN EXTENSION #2	F-57538	
NAN FRACTION #1	F-57543	
NIKE 14	F-57545	
NIKE #15A	F-57546	
NIKE #16A	F-57547	
NIKE #17A	F-57548	
NIKE 18A	F-57549	
NIKE 19A	F-57550	
NIKE 20A	F-57551	
NIKE 21A	F-57552	
NIKE 22A	F-57553	
NIKE 23A	F-57554	
NIKE 24A	F-57555	
NIKE 25A	F-57556	
NIKE 26A	F-57557	
NIKE 27A	F-57558	
NIKE 28A	F-57559	
NIKE #29	F-57560	
NIKE #30	F-57561	
NIKE 42A	F-57562	
NIKE 43A	F-57563	
NIKE 44A	F-57564	
NIKE 45A	F-57565	
NIKE 46A	F-57566	
NIKE 47A	F-57567	
NIKE 48A	F-57568	
NIKE 49A	F-57569	
NIKE 50A	F-57570	
NIKE #51A	F-57571	
NIKE 52A	F-57572	
NIKE #53A	F-57573	
NIKE #54A	F-57574	
NIKE #55A		F-57575
NIKE #56A		F-57576
NIKE #57		F-57577
NIKE #58		F-57578
NIKE #59		F-57579
NIKE 60	F-57580	
NIKE 61	F-57581	
NIKE 62	F-57582	
NIKE 63	F-57583	
NIKE 64	F-57584	
NIKE 65	F-57585	



NIKE 66	F-57586	
NIKE 67	F-57587	
NIKE 68	F-57588	
NIKE 69	F-57589	
NIKE 70A	F-57590	
NIKE 71A	F-57591	
NIKE 72A	F-57592	
NIKE 73A	F-57593	
NIKE 74A	F-57594	
NIKE 75A	F-57595	
NIKE 76A	F-57596	
NIKE 77A	F-57597	
NIKE 78A	F-57598	
NIKE 79A	F-57599	
NIKE 80A	F-57600	
NIKE 81A	F-57601	
NIKE 82A	F-57602	
NIKE 83A	F-57603	
NIKE 84A	F-57604	
NIKE #85	F-57605	
NIKE #86	F-57606	
NIKE #87	F-57607	
NIKE #88	F-57608	
NIKE #89	F-57609	
NIKE 90	F-57610	
NIKE 91	F-57611	
NIKE 92	F-57612	
NIKE 93	F-57613	
NIKE 94	F-57614	
NIKE 95	F-57615	
NIKE 96	F-57616	
NIKE 97	F-57617	
NIKE 98A	F-57618	
NIKE 99A	F-57619	
NIKE 100A	F-57620	
NIKE 101A	F-57621	
NIKE 102A	F-57622	
NIKE 103A	F-57623	
NIKE 104A	F-57624	
NIKE 105A	F-57625	
NIKE 106A	F-57626	
NIKE 107A	F-57627	
NIKE 108A	F-57628	
NIKE 109A	F-57629	
NIKE 110A	F-57630	
NIKE 111A		F-57631
NIKE 112A		F-57632
NIKE 113		F-57633
NIKE 114		F-57634
NIKE 115		F-57635



NIKE 116	F-57636
NIKE 117	F-57637
NIKE 118	F-57638
NIKE 119	F-57639
NIKE 120	F-57640
NIKE 121	F-57641
NIKE 122	F-57642
NIKE 123	F-57643
NIKE 124	F-57644
NIKE 125	F-57645
NIKE 126	F-57646
NIKE 127	F-57647
NIKE 128	F-57648
NIKE 129	F-57649
NIKE 130	F-57650
NIKE 131	F-57651
NIKE 132	F-57652
NIKE 133	F-57653
NIKE 134	F-57654
NIKE 135	F-57655
NIKE 136	F-57656
NIKE 137	F-57657
NIKE 138	F-57658
NIKE 139	F-57659
NIKE 140	F-57660
NIKE 141	F-57661
NIKE 142	F-57662
NIKE 143	F-57663
NIKE 144	F-57664
NIKE 145	F-57665
NIKE 147	F-57667
NIKE 148	F-57668
NIKE 149	F-57669
NIKE 150	F-57670
NIKE 151	F-57671
NIKE 152	F-57672
NIKE 153	F-57673
NIKE 154	F-57674
NIKE 155	F-57675
NIKE 156	F-57676
NIKE 160	F-57680
NIKE 161	F-57681
NIKE 162	F-57682
NIKE 163	F-57683
NIKE 164	F-57684
NIKE 165	F-57685
NIKE 166	F-57686
NIKE 167	F-57687
NIKE EXTENSION #2	F-57688
NIKE EXTENSION #3	F-57689

NIKE EXTENSION #4	F-57690	
BECKY #1		F-57691
BECKY #2		F-57692
BECKY #3		F-57693
BECKY #4		F-57694
BECKY #5		F-57695
BECKY #6	F-57696	

T. 6. N., R. 14 E., Copper River Meridian, Alaska

Claim Name

BLM Serial No.

SMOKIN' JOE No. 1	F-57697
SMOKIN' JOE No. 2	F-57698

APPENDIX B

T. 5 N., R. 14 E., Copper River Meridian, Alaska  
T. 5 N., R. 15 E., Copper River Meridian, Alaska

<u>Claim Name</u>	<u>BLM Serial No.</u>
NAN #1	F-57497
NAN #2	F-57498
NAN #3	F-57499
NAN #16	F-57512
NAN EXTENSION #3	F-57539
NAN EXTENSION #4	F-57540
NAN FRACTION 2	F-57544
NIKE 146	F-57666
NIKE 157	F-57677
NIKE 158	F-57678
NIKE 159	F-57679

