

LOWELL L. PATTEN

IBLA 80-899

Decided June 3, 1981

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring the Corky No. 1 and Rams Horn No. 1 lode mining claims abandoned and void. AA 39604 and AA 39605.

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 Section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), 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 the owner of an unpatented mining claim in Alaska, located 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 to determine with substantial accuracy in which district the mining claim lies, the timely filing of the notice of location 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: Lowell L. Patten, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Lowell L. Patten appeals from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated August 11, 1980, declaring the Corky No. 1 and the Rams Horn No. 1 lode mining claims, AA 39604 and AA 39605, 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 Subpart 3833. The Corky No. 1 lode mining claim was located on October 13, 1949, while the Rams Horn No. 1 lode mining claim was located on July 30, 1954. The claims were located within T. 13 N., R. 9 E., Copper River meridian, Alaska.

On October 12, 1979, the Fairbanks District Office received copies of notices of location for the Corky No. 1 and Rams Horn No. 1 lode mining claims. These were subsequently forwarded to the Alaska State Office and received there on April 9, 1980.

In its August 11, 1980, decision, BLM stated that the proper BLM office for the filing of appellant's copies of notices of location was the Alaska State Office in Anchorage, Alaska, citing 43 CFR 1821.2-1(d). That regulation states that claims located in "Southern Alaska" should be filed for recordation with the Alaska State Office and provides a map indicating the boundary line between "Southern Alaska" and "Northern Alaska." As appellant's copies of notices of location were not received at the Alaska State Office until April 9, 1980, BLM concluded that they had not been timely filed and declared the mining claims abandoned and void.

[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 his statement of reasons for appeal, appellant asserts the following:

Because the original claims were recorded in the Fairbanks District records, I assumed that the required notice should be filed in the Fairbanks District Office of the Bureau of Land Management. This was done * * * . * * *

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2. The ten days between receipt of the notice by the Fairbanks Office and the expiration of the filing period was sufficient for forwarding of the notice to the proper office and also time to notify me of the deficiency.

3. The fact that the notice was received by the Bureau of Land Management, although at the wrong location, was because of a misconception, not intent to abandon, and such act contradicts the assumption of abandonment.

Appellant's mining claims are located near the dividing line depicted on the map in 43 CFR 1821.2-1, separating the State of Alaska into two districts. We dealt with a similar situation in a recent case, Inspiration Development Co., 54 IBLA 390, 88 I.D. (1981). In that case we found that 43 CFR 1821.2-1, as it relates to filings in Alaska, was inherently ambiguous. We held that where an unpatented mining claim is located near the dividing line such that from the map it is virtually impossible to determine with substantial accuracy in which office to file, the timely filing of a notice of location 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. Id.

That rationale is dispositive of this case. Appellant's timely filing in the Fairbank's District Office satisfies the requirement of 43 CFR 3833.1-2(a).

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.

Bruce R. Harris
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

