

C. B. SHANNON

IBLA 81-107

Decided June 26, 1981

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting mining claim location notices as untimely filed, and declaring the claims abandoned and void. CA MC 33456 through CA MC 33463.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- 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 California law, it is the date of posting location notice on the claim.

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 notice 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 in error.

APPEARANCES: C. B. Shannon, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This is an appeal from a decision of the California State Office, Bureau of Land Management (BLM), rejecting and returning the location notices for Chrome Quartz lode mining claim Nos. 5 through 12 because they were not timely filed under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b). The claims were then declared abandoned and void.

Appellant contends in his statement of reasons for appeal that the notices were mailed to BLM within the time limit. Alternatively, he asserts that the 90-day time limit commenced with the completion of staking the claims which was June 11 rather than the June 1 date of location shown on the notices of location. Appellant further alleges that entry of the date of June 1 was a typographical error and that the date of June 11 should have been entered as the date of location.

[1] Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located after October 21, 1976, on Federal land must file with the proper BLM office within 90 days after the date of location a copy of the official record of the notice or certificate of location of the claim filed under state law. If this record of the notice of location is not filed within 90 days, the claim is conclusively presumed to be abandoned by statute, 43 U.S.C. § 1744(c) (1976), and properly declared abandoned and void under 43 CFR 3833.4(a). John C. Buchanan, 52 IBLA 387 (1981). Filing is defined by the applicable regulation to mean being received and date stamped by the proper BLM office. 43 CFR 3833.1-2(b).

[2] The date of location is governed by the law of the state where the claim is situated. 43 CFR 3833.0-5(h); John C. Buchanan, supra. The lode claims of appellant lie within the State of California. Under California law, the date of posting location notice on the claim is the date of location. Cal. Pub. Res. Code § 2301 (West 1972). 1/

1/ Claimant asserts on appeal that the date of location of the claim is the date when staking of the claims was completed on June 11. Marking the boundaries of the claim is a part of the process of locating a claim which under California law must be completed within 60 days of the date of location, but staking does not establish the date of location. Cal. Pub. Res. Code § 2302 (West 1972).

The BLM decision evoking this appeal rejected copies of appellant's location notices filed with the recorder's office in Sierra County, California, because they were not filed within 90 days after the date of location of the claims. Appellant's notices of location recorded with the county recorder's office and BLM each expressly state the date of location as June 1, 1979, while the filing with BLM did not occur until September 4, 1979, more than 90 days thereafter.

[3] The date of location of the claims disclosed on the notice of location filed for record in the county recorder's office under state law is controlling in determining whether the notice of location has been timely recorded with BLM under section 314 of FLPMA, 43 U.S.C. § 1744 (1976), and allegations that the true date of location is other than that recorded on the notice of location cannot dictate a different result. John C. Buchanan, supra; Lee Resources Management Corp., 50 IBLA 131, 133 (1980); P & S Mining Co., 45 IBLA 115 (1980).

Accordingly, 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.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

