

MODOC GEM AND MINERAL SOCIETY

IBLA 81-895

Decided September 25, 1981

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring unpatented mining claim, N MC 140638, abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and 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, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

APPEARANCES: Janet K. Hill, Secretary-Treasurer, Modoc Gem and Mineral Society.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Modoc Gem and Mineral Society has appealed the decision of the Nevada State Office, Bureau of Land Management (BLM), dated June 29, 1981, declaring the Raven placer mining claim, N MC 140638, abandoned and void for failure to file timely with BLM the notice of location for the claim.

In its notice of appeal, appellant states that it had complied with all necessary paperwork and requirements of BLM.

Examination of the case file reveals that on October 15, 1979, appellant submitted to BLM a copy of a 1979 proof of labor for the Raven Opal mining claim located in sec. 2, T. 45 N., R. 26 E., Virgin Valley mining district, Humboldt County, Nevada. On January 14, 1980, BLM returned the proof of labor to appellant indicating that it did not reflect the BLM serial number assigned to the claim upon recordation. Appellant responded by sending a copy of a notice of location for the Raven placer mining claim, situated in "Virgin Valley adjacent to the South of W. A. & Katie Howe's 'Grand View' claim" in Humboldt County, Nevada. The Raven claim was located on April 18, 1962. BLM then assigned serial No. N MC 140638 to the claim. ^{1/}

On September 24, 1980, appellant submitted a 1980 proof of labor for the Raven claim identifying the same section and township as the Raven Opal claim. By letter to appellant dated April 24, 1981, BLM reported that it was unable to determine the location of the claim based on the information submitted. BLM requested that the location be indicated on an enclosed map and returned to BLM and indicated that failure to do so would result in the rejection of appellant's filings. The map was returned on May 26, 1981.

[1] The owner of an unpatented mining claim located prior to October 21, 1976, had until October 22, 1979, to record the location notice with BLM and to provide certain ancillary information. Section 314, Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The pertinent regulations are 43 CFR 3833.1-2 and 3833.2-1. Recordation is effected only by filing in the proper BLM office a copy of the official record of the notice or certificate of location filed under state law, 43 CFR 3833.1-2(a), and 3833.1-2(d). Failure to comply with the regulations governing recordation of information relating to unpatented mining claims must result in a conclusive finding that the claim has been abandoned and that it is void. Walter Schivo, 55 IBLA 40 (1981); Edwin Forsberg, 47 IBLA 235 (1980); Joe B. Cashman, 43 IBLA 239 (1979); Walter T. Paul, 43 IBLA 119 (1979); section 314(c), FLPMA, 43 U.S.C. § 1744(c) (1976). This Board has no authority to waive the statutory and regulatory requirements. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

^{1/} This was clearly improper. When appellant failed to respond with an assigned BLM serial number, BLM should have determined at that time that this claim was abandoned and void because of a failure to record the claim on or before Oct. 22, 1979.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Nevada State Office is affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

