

NEQUOIA ASSOCIATION

IBLA 82-113

Decided December 23, 1981

Appeal from refusal of Utah State Office, Bureau of Land Management, to grant a motion to overturn its decision of December 18, 1980, holding unpatented mining claims situated within the Glen Canyon National Recreation Area abandoned and void. U MC 148069 through U MC 148185.

Appeal dismissed.

1. Appeals -- Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Timely Filing

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

APPEARANCES: Ken Chamberlain, Esq., Richfield, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On September 28, 1976, the Mining in the Parks Act (MPA), 16 U.S.C. §§ 1901-1912 (1976), became law. It is an Act to provide for the regulation of existing mining activity in, and to repeal the application of the general mining laws to, areas of the national park system, and for other purposes. Pursuant to section 8 of MPA, 16 U.S.C. § 1907 (1976), notice was given on October 20, 1976, at 41 FR 46357, of the requirement that unpatented mining claims within the boundaries of units of the national park system must be recorded on or before September 28, 1977, with the Superintendent of the unit in which they are located.

Comprehensive regulations, 36 CFR Part 9, governing mining and mining claims within the units of the national park system were published at 42 FR 4835 (Jan. 26, 1977). Section 9.5 sets forth the information required to effect recordation of an unpatented mining

claim within a unit of the national park system. 1/ Section 9.5(c) states that, pursuant to section 8 of MPA, any unpatented mining claim not so recorded shall be conclusively presumed to be abandoned and shall be void.

Because the National Park Service (NPS) had no record of location notices and ancillary information for the Ladrone, Fort, Canon, and Brea groups of placer mining claims, by memorandum of October 14, 1980, NPS requested that the Utah State Office, Bureau of Land Management (BLM), issue a decision declaring the claims abandoned and void. NPS pointed out that the claims had been recorded with BLM under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), on October 16, 1979, in an apparent attempt to circumvent the NPS requirements, but that no evidence of assessment work or a notice of intention to hold the claims had been filed for 1978, as required by 36 CFR Part 9, and 43 CFR 3833.2-1(b).

BLM, by decision of December 18, 1980, declared the unpatented Ladrone, Fort, Canon, and Brea groups of placer mining claims, 2/ situated within the Glen Canyon National Recreation Area or the Canyonlands National Park, abandoned and void because the claims had not been recorded with NPS within 1 year after September 28, 1976, as required by section 8 of MPA.

The decision was served on Nequoia Association (Nequoia) on December 20, 1980, granting a right of appeal to this Board for a period of 30 days thereafter. No appeal was taken, so BLM closed the cases, with notice to Nequoia by memorandum dated February 27, 1981.

On September 16, 1981, Nequoia filed with BLM a motion to vacate the December 18, 1980, decision on the grounds that the decision was without authority of and was contrary to law, regulations, and the United States Constitution for these specific reasons:

1/ The requirements for recording unpatented mining claims within units of the national park system called for a certified copy of the notice of location, including book and page number with the county recording date, a plat showing the location of the claim, preferably on a Geological Survey topographical map, and copies of all recorded proofs of labor on the claim.

2/ The claims had been located in May 1917 in Ts. 27, 28, 29, and 30 S., Rs. 16 and 17 E., Salt Lake meridian. The claims involved are the Ladrone #1 through #5, Fort #1 through #5, Canon #1 through #34, and Brea, Brea #2 through #71, #74, and #81. Serial numbers U MC 148069 through U MC 148185 were assigned following the recordation with BLM.

1. Failure to observe the Administrative Procedure Act (APA), 5 U.S.C. § 554 (1976), and 43 CFR 4.451-2 and 4.452.2, relating to the need for a hearing.

2. The decision falsely declares that a diligent search was made of NPS and BLM records to determine if the claims had been recorded under 43 CFR 3822.1-1. [Appellant obviously is referring to 43 CFR 3833.1-1, but followed the citation erroneously set out in the BLM decision.]

3. The decision was prepared by an employee of BLM to whom authority was unlawfully delegated.

4. The cited Act, P.L. 94-429, does not place land in the Glen Canyon National Recreation Area within a unit of the National Park System.

By letter of October 16, 1981, BLM refused to recognize the motion to vacate, reiterated that a notice of appeal from the December 18, 1980, decision was required to have been filed within 30 days, and stated that the mining claims remained abandoned and void. This appeal followed.

[1] The regulations require that a notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. 43 CFR 4.411(a). This Board has held that the timely filing of a notice of appeal is required to establish the jurisdiction of the Board to review the decision below and that the failure to file the appeal within the time allowed mandates dismissal of the appeal. Ilean Landis, 49 IBLA 59 (1980); Lavonne E. Grewell, 23 IBLA 190 (1976); see Browder v. Director, Ill. Dept. of Corrections, 434 U.S. 257, 264 (1978); Pressentin v. Seaton, 284 F.2d 195, 199 (D.C. Cir. 1960). Although this Board is generally reluctant to take any action which would preclude review of appeals on the merits, the purpose of the rule is to establish a definite time when administrative proceedings regarding a claim are at an end, in order to protect other parties to the proceedings and the public interest, and strict adherence to the rule is required. See Browder v. Director, Ill. Dept. of Corrections, *supra* at 264.

Since Nequoia did not file a notice of appeal of the December 18, 1980, BLM decision within the 30-day period for appeal, the BLM decision became final, the mining claims are considered abandoned and void, and this proceeding must be dismissed.

Nevertheless, we wish to respond briefly to Nequoia's assertions.

Notice and an opportunity for hearing is required only where there is a disputed question of fact. Where the given facts of record concerning unpatented mining claims show that no recordation of copies of location notices had been made as required by statute,

no hearing is required. Guy A. Matthews, 58 IBLA 246 (1981); John C. Thomas, 53 IBLA 182 (1981). NPS reported that no copies of location notices for the claims were filed for recordation within the time period prescribed by MPA. Appellant has not alleged that it did file such instruments with NPS. The NPS letter of November 10, 1977, which appellant has submitted as evidence that it had complied with the recordation requirements of MPA clearly states that appellant submitted only rough plats on which the claims were marked, and that appellant must submit copies of the location notices and accurate maps with the claims clearly marked and identified. There is nothing in the record that shows any response by appellant, nor that appellant ever submitted the required documents. No hearing was required under these circumstances.

The presumption of abandonment which attends the failure to file the instruments required by 36 CFR 9.5, implementing section 8 of MPA, 16 U.S.C. § 1907 (1976), is imposed by the statute itself and would operate even without the regulations. Cf. Northwest Citizens for Wilderness Mining Co., Inc. v. BLM, Civ. No. 78-46M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self operative and does not depend upon any act or decision of an administrative official. In enacting MPA, Congress did not vest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Cf. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

The subsequent recordation of these claims with BLM pursuant to FLPMA does not change the result. Pursuant to 43 CFR 3833.1-1, an unpatented mining claim in any national park system unit in existence on September 28, 1976, which was not recorded on or before September 28, 1977, in accordance with the Federal Register notice (41 FR 46357 (Oct. 20, 1976)), or 36 CFR 9.5, is, pursuant to section 8 of MPA, conclusively presumed to be abandoned and void. Gordon L. Cooper, 51 IBLA 191 (1980). Mining claims located within units of the National Park System were required to be recorded with NPS within 1 year of the September 28, 1976, enactment date of MPA, rather than within 3 years of the October 21, 1976, enactment date of FLPMA. Eldon A. LeRoy, 49 IBLA 320 (1980).

The BLM officer who signed the December 18, 1980, decision did so under authority properly delegated to him pursuant to BLM Order 701, as amended. See 37 FR 22997 (Oct. 27, 1972). The signing officer did not act as a hearing officer in the performance of his official duties in issuing the decision, nor did he violate any statute or the Constitution in the issuance of that decision.

Appellant asserts that the Glen Canyon National Recreation Area is not a unit of the national park system. This assertion is incorrect. The definition of "National Park System," found in 16 U.S.C. § 1c (1976), reads: "The national park system shall include any area of land and water now or hereafter administered by the Secretary of

the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes." The Glen Canyon National Recreation Area, established by the Act of October 27, 1972, 16 U.S.C. § 460dd (1976), is a unit of the national park system. See 36 CFR Part 7. Unpatented mining claims existing within the boundaries of the Glen Canyon National Recreation Area on September 28, 1976, were required to be recorded with its Superintendent on or before September 28, 1977, or be conclusively presumed to be abandoned and void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal of Nequoia Association is dismissed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

