

PRECIOUS MINERALS UNLIMITED, INC.

IBLA 82-114

Decided January 15, 1982

Appeal from the decision of the Oregon State Office, Bureau of Land Management, returning notices of location for various mining claims.

Reversed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

Where a mining claimant records in the county recording office notices of location for mining claims which reflect the month and year of location but omit the day, and thereafter submits to the Bureau of Land Management for recordation copies of the notices with the day filled in, BLM should accept such filing for the purpose of recordation under section 314 of the Federal Land Policy and Management Act on the assumption that the claimant will refile the corrected documents with the county in order to protect its interests.

APPEARANCES: Scott Knepper, President, Precious Minerals Unlimited, Inc.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Precious Minerals Unlimited, Inc., has appealed the decision of the Oregon State Office, Bureau of Land Management (BLM), dated November 13, 1981, returning notices of location for the Chrome Mountain #216 through Chrome Mountain #327 mining claims filed with BLM for recordation on October 28, 1981.

BLM rejected the notices of location even though timely filed because appellant had inserted the date of location on the notices

after having recorded those notices in the county recording office on September 14, 1980. ^{1/} The decision elaborated as follows:

Although omission of the date of location on the notices filed at this office on October 28, 1981, seems to be readily corrected by simply adding the date, insertion of the date raises legal questions which present risk of loss to the time and money that you will invest in the claim. The legal questions allow opportunity for third parties or the government to attack your rights under the claim.

Oregon mining regulations governing documentation and notice of mining claim locations require the date of location to appear on the notice posted at the claim discovery upon discovery, and also on the copy recorded with the county. The Oregon law is incorporated with the Federal mining regulations.

In appellant's statement of reasons, its president explains that his assistant failed to insert the specific day of the month on the forms filed with the county although the month and year, July 1981, was designated. He reports that the forms filed on the land reflect the specific day, and that the proper date was inserted on the forms filed with BLM. He argues that State law permits locators to amend defective location notices and thus BLM should have simply required appellant to amend its county filings.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the proper BLM office within 90 days after the date of location. See 43 CFR 3833.1-2(b). Failure to so file conclusively constitutes abandonment of the claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c). See 43 CFR 3833.4.

Departmental regulation, 43 CFR 3833.0-5(i), defines "copy of the official record of the notice or certificate of location" to mean:

[A] legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim, mill or tunnel site which was or will be filed in the local jurisdiction where the claim or site is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. It also includes an exact reproduction, duplicate or other acceptable evidence, except microfilm, of an amended instrument which may change or

^{1/} The notices of location each reflect a location date of July 31, 1981, and were filed with BLM on Oct. 28, 1981.

alter the description of the claim or site. [Emphasis added.]

Thus, it is not required that the instrument filed with BLM already be recorded with the appropriate local office. The purpose of section 314 of FLPMA is to have a record of mining claims located on Federal lands. Therefore, even though the documents submitted to BLM had already been filed in the county office in a defective form, BLM should have accepted them when presented to BLM in the corrected form, on the assumption that the corrected documents would be refiled properly with the county office by the claimant to protect its interest. BLM should not speculate as to potential legal problems that might occur as a result of a claimant's local filings but should leave the adjudication of such issues to those with proper jurisdiction.

Therefore, 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 Oregon State Office is reversed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

