

GERALD B. BANNON

IBLA 82-524

Decided April 2, 1982

Appeal from a decision of the Oregon State Office, Bureau of Land Management, returning a notice of mining claim location. OR MC 1663(WA).

Affirmed.

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

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

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

Appellant has not complied with the statutory and regulatory rules for recordation of mining claim locations where the document filed with BLM bears a location date that the document filed with the county does not. Moreover, State of Washington law, which governs determination of the location date in this case, contemplates recordation of a location notice with the county only after certain prerequisites have been accomplished on the claim to locate it. Thus, the declaration that location occurred on Nov. 11, 1981, or on Feb. 3, 1982, is incorrect when the location

notice was recorded with the county Nov. 10, 1981. Where it is impossible for BLM to ascertain whether the mining claimant has timely filed, because the location date is clearly incorrect or missing, the filing is properly rejected.

APPEARANCES: Gerald B. Bannon, pro se; Eugene A. Briggs, Esq., Office of the Solicitor, Portland, Oregon, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of January 28, 1982, the Bureau of Land Management's Oregon State Office (BLM) returned to Gerald B. Bannon a notice of location he had submitted to BLM apparently for relocation of the Squaw Hut Lode mining claim, OR MC 1663(WA). Bannon appeals. The BLM decision states in part:

Your notice of location and proof of labor for the Squaw Hut Lode OR MC 1663 mining claim cannot be accepted and must be returned to you because the claim was previously declared null and void, and the notice of location is not acceptable as a relocation of the void claim.

The claim was declared null and void ab initio by decision of this office dated December 21, 1977, and that decision was affirmed by the Interior Board of Land Appeals. Gerald Byron Bannon, 40 IBLA 162 (1979).

The notice of location is not acceptable as a relocation of the claim because no date of location is specified as such on the notice as required by applicable law of the State of Washington, Section 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(b)), and 43 CFR 3833.1-2(b).

You dated the notice of location November 11, 1981 at the top of your notice of location but this date obviously conflicts with the earlier November 9, 1981, date of acknowledgment of the statement appearing at the bottom of the notice.

The Board decision referred to in the BLM decision held Bannon's Squaw Hut claim, OR MC 1663(WA), situated in the unsurveyed SE 1/4 NW 1/4, sec. 27, T. 35 N., R. 17 E., Willamette meridian, Washington, null and void ab initio, because the land had been previously withdrawn from appropriation under the mining laws by Public Land Order No. 3794, 30 FR 10894, 10895 (Aug. 21, 1965). Although the land description of the claim given by appellant on his inventive "Mining Claim Notice of Location Form and Proof of Labor Form," created by his splicing together at least two documents, is not clear, the description seems to put his claim within the land already been withdrawn.

Even if his claims were found to be on land open to appropriation for mining location, appellant's attempted filing must be rejected for other reasons. Appellant's document, filed with BLM November 17, 1981, states, "Proof of Labor Form not applicable due to legal impediments; therefore, I am

filing an intention to hold claim or site." Unfortunately, appellant sought to file a notice of intention to hold a claim which has not been validly located. Claim location must be accomplished before a claim exists for which a notice of intention to hold can be filed.

If appellant's filed document was an expression of his intent to locate or relocate a claim, other problems must be considered. At the top of the document is "November 11, 1981," while notarization occurred November 9, 1981, and filing with Chelan County, Washington, November 10, 1981. In his notice of appeal, appellant states: "I don't assume my dating to be in error unless you would like to bring me up to date. If so, make it Feb. 3, on the location notice and consider that you received it as dated so you say." With his notice of appeal, appellant submitted a copy of the original document, adding February 3, 1982, as the asserted location date. Therefore, this latest location notice bears all of the various dates mentioned in this paragraph. The only clear expression of a location date, February 3, 1982, came after BLM had rejected the initial filing.

[1, 2] Section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1976), provides in part:

The owner of an unpatented lode or placer mining claim or mill or tunnel site located after October 21, 1976, shall, within ninety days after the date of location of such claim, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground.

The accompanying regulation, 43 CFR 3833.1-2(b), provides:

The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim 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 * * *.

43 CFR 3833.1-2(c) provides that the copy of the notice filed with BLM shall be supplemented by the date of location, if said date is not included in the copy. In this case, the copy of the notice of location did not contain a date of location. Appellant's insertion of the date "Feb. 3, 1982" at the time of appeal does not cure this defect, as February 3 obviously is not the real date of location of the claim filed with the county on November 10, 1981. Moreover, the new document, bearing the new location date, is no longer a "copy" of the filing made with the county. Nor could November 11, 1981, have been the date of location. Washington State law, which here governs determination of the location date (43 CFR 3833.0-5(h)), contemplates recordation with the proper county only after certain prerequisites have been accomplished on the claim to locate it. See Wash. Rev. Code Ann. § 78.08.050. Therefore, appellant's filing with BLM and his submissions on appeal could effect no location or relocation.

The requirement to file a proper notice of location is imposed by statute. Failure to file the required instruments is conclusively presumed to constitute an abandonment of the claim. 43 U.S.C. § 1744(c) (1976). The Department has no authority to waive compliance with statutory requirements. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). The statute mandates that a claimant file a notice of location within 90 days of the date of location. Where it is impossible for BLM to ascertain whether that has been done, because the claimant failed to give the date of location or gave a date of location that is clearly incorrect, the filing is properly rejected.

For the reasons stated, the documents appellant filed with BLM do not afford him any rights in the claimed land that can be affirmed by the Department of the Interior, 1/ and the BLM decision is correct.

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 is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

1/ Appellant's document and notice of appeal also intimated that he may have, or believe to have, a lease on the land in question and other Forest Service land. We, of course, do not comment on the validity of any right that may have been granted by the Forest Service, which is part of the Department of Agriculture.

