

MRS. GEORGE G. WAGNER ET AL.

IBLA 82-133

Decided April 6, 1982

Appeal from decisions of the Colorado State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. C MC 184059.

Affirmed.

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

Although 43 CFR 3833.0-5(h) provides that the date of location of a mining claim shall be determined by state law in the jurisdiction where the claim is located, where the location certificate, as recorded with the county recorder's office as required by state law, recites a specific date of location of the claim, that date will be used as the inception of the 90-day period allowed for recordation by 43 U.S.C. § 1744 (1976), as that is the date upon which the claimant asserts he located the claim and entered upon the public land.

2. 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.

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

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM for recordation on Oct. 9, 1981, and the filing fees therefor are not paid to BLM until Oct. 20, 1981, the recordation date of the notices is Oct. 20, 1981.

APPEARANCES: James M. King, Esq., Denver, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Mrs. George G. Wagner, Ronald G. Chadwick, and LaDean E. Chadwick located the La Rosa Extension Nos. 1 through 3 lode mining claims in July 1981 on Federal land. On October 9, 1981, they submitted copies of the certificates of location for the claims to the Colorado State Office, Bureau of Land Management (BLM), for recordation pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2(b). 1/ By decision dated October 13, 1981, BLM

1/ Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), states in relevant part:

"The owner of an unpatented lode or placer mining claim * * * 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 * * * sufficient to locate the claimed lands on the ground."

43 CFR 3833.1-2(b) states in relevant part:

"The owner of an unpatented mining claim * * * 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 or, if the state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section."

43 CFR 3833.4 declares that a failure to so file "shall be deemed conclusively to constitute an abandonment of the mining claim * * * and it shall be void."

returned the filings because the claimants had not furnished the \$5 per claim service fee required by 43 CFR 3833.1-2(d). This decision noted that recordation with BLM must be made within 90 days of the date of location of the claims. Claimants resubmitted the certificates of location with the appropriate fees to BLM on October 20, 1981. On the same day, BLM declared the claims abandoned and void pursuant to section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976) because the certificates of location for the claims were not filed for recordation within the required 90 days.

Appellants allege that on July 11, 1981, they discovered the lode on which the three locations were made. The location certificates indicate July 20, 1981, as the date of location of the La Rosa Extension Nos. 1 and 2 lode mining claims, and July 18, 1981, as the date of location of La Rosa Extension No. 3 lode mining claim. BLM used these dates in determining that appellants had not timely complied with FLPMA. Appellants, however, assert that BLM has erred with respect to the actual date of location of each claim. They refer to 43 CFR 3833.0-5(h), which states that the date of location or an unpatented mining claim * * * is situated." They assert that under Colorado law the location of their claims did not occur until July 27, 1981, when the certificates of location and accompanying map were filed for recordation in San Miguel County, Colorado, and that their filing with BLM on October 20, 1981, was only 85 days later, and therefore timely under FLPMA.

Section 34-43-106 of the Colorado Revised Statutes (1973) provides, pertinently, appellants argue:

Manner of locating claims. (1) Before filing such location certificate, the discoverer shall locate his claim by:

(a) Sinking a discovery shaft upon the lode to the depth of at least ten feet from the lowest part of the rim of such shaft at the surface, or deeper if necessary, to show a well-defined crevice;

(b) Posting at the point of discovery on the surface a plain sign or notice, containing the name of the lode, the name of the locator, and the date of discovery;

(c) Marking the surface boundaries of the claim.

(2) The locator of any mining claim, in lieu of sinking a discovery shaft as required in paragraph (a) of subsection (1) of this section, may at his option, within the period allowed for recording of the location certificate as provided in section 34-43-103, file in the office of the county clerk and recorder of the county in which such claim is located, a map which shall be attached to said location certificate * * * and shall show the following: [various requirements concerning the map are then stated].

Appellants opted to locate their claims in part by following the mapping procedure instead of sinking a discovery shaft. Each location

certificate and its appropriate map were filed at the recorder's office of San Miguel County, Colorado, on July 27, 1981, at which time, appellants argue, the locations were first complete and accomplished. Appellants assert that BLM's decision must be reversed as erroneous because they filed with BLM within 90 days of July 27, 1981.

Colo. Rev. Stat. § 34-43-106 cannot be looked at in isolation from other provisions of the Colorado location statutes. Colo. Rev. Stat. § 34-43-103, provides:

Lode claim certificate - contents. (1) The discoverer of a lode within three months from the date of discovery, shall record his claim in the office of the recorder of the county in which such lode is situated, by a location certificate, which shall contain:

- (a) The name of the lode;
- (b) The name of the locator;
- (c) The date of location;
- (d) The number of feet in length claimed on each side of the center of the discovery shaft;
- (e) The general course of the lode as near as may be.

Colo. Rev. Stat. § 34-43-104 states:

Location certificate void - when. Any location certificate of a lode claim which shall not contain * * * the date of location, * * * shall be void.

[1, 2] This Board has issued several decisions concerning analogous situations. In C. B. Shannon, 55 IBLA 312 (1981), and Lee Resources Management Corp., 50 IBLA 131 (1980), we examined California mining law to determine the date of location. Arizona law was operative in John C. Buchanan, 52 IBLA 387 (1981), Washington State law in P & S Mining Co., 45 IBLA 115 (1980), and Utah law in Larry Lahusen, 48 IBLA 43 (1980). In each of these cases, the Board determined that State law did not support the appellants' assertions that their filings had been timely made within the periods set forth in FLPMA. The date of location under California law is the date of posting the location notice on the claim (Cal. Pub. Res. Code § 2301 (West 1972)) and the date of location under Arizona and Washington law is that specified by the locator in the notice of location filed with the recording office. See Ariz. Rev. Stat. Ann. § 27-202 (1976); Wash. Rev. Code Ann. § 78.08.050 (1977). We recognize that under Colorado law the locators can elect to submit a map instead of digging a discovery shaft, and to record the map with the location certificate in the appropriate county recorder's office, but we cannot accept the date of recordation with the county recorder as the date of location of the mining claim within the context of FLPMA.

"Location" is the inception of the miner's title to the public land claimed in the location notice or certificate, and it is the date of such

"location" from which the miner's title runs. If all the statutory requirements for "location," including discovery of a valuable mineral deposit, are not met before the named date of location, then, in the absence of intervening rights, the title of the miner will relate back to the named date of location once all of the statutory requirements have been accomplished. It is immaterial as to the order in which the requirements are completed in the absence of any third party intervention. The date on which the miner states that he went onto the public land and asserted a claim thereto, and which he thereafter acknowledges on his certificate of location, is the date of "location" which FLPMA contemplates. In the case before us, both the location certificates and the maps recite the dates of location as July 18, 1981, for the La Rosa Extension No. 3, and July 20, 1981, for the La Rosa Extension Nos. 1 and 2.

We concede that Colorado mining law is substantially different from the relevant law of other states that we have considered. However, we conclude that we must adhere to our holding in C. B. Shannon, *supra* at 314:

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, * * * [52 IBLA 387 (1981)], Lee Resources Management Corp., 50 IBLA 131, 133 (1980); P & S Mining Co., 45 IBLA 115 (1980).

That is a correct statement of the law. It clearly applies where, as in the previously cited cases, the governing state location law establishes some procedure that explicitly or implicitly presumes the date of location to be the one entered on the location notice or certificate itself. We believe the same rule must apply here, as well, where the appellants have indicated the dates of location on the location certificate and on the accompanying map to be July 18 and 20, 1981, respectively. 2/ The option provided by Colo. Rev. Stat. 34-43-106(2) intends filing the location certificate and appropriate map to be essential to a valid location, but the date of filing of the certificate for recordation in the county cannot be considered as the location date. Colorado law allows 3 months after the date of location of a lode mining claim on the ground to complete the statutory requirements for a valid location, but in no place does Colorado law suggest that the "date of location" is other than that shown on the recorded certificate of location, nor that the date of recordation with the county is to be considered the "date of location" of the mining claim.

BLM's recordation of mining claim location certificates within 90 days of the claimant's declared date of location cannot reasonably be taken as a comment on the underlying validity of the location. "The recordation of an

2/ Can there be any doubt that appellants would expect their July 27 County filing to relate back to the two earlier location dates if, for example, some third party had in the meantime filed with both the County and BLM on the same claims, showing July 22 and 24 as its location dates?

unpatented mining claim by itself does not render valid any claim which would not otherwise be valid under applicable law and does not give the owner any rights he is not otherwise entitled to by law." William C. Reiman, 54 IBLA 103, 106 (1981). BLM has no duty to determine a claim's validity under the United States mining laws at the time of recordation. 43 CFR 3833.5(f). BLM has only the duty to record a location notice which on its face is filed within the time constraints of FLPMA, but it has absolutely no duty to record a location notice or certificate not filed within the statutory period. See Lester L. Learned, 54 IBLA 147 (1981). We concede state law is to be considered by BLM in determining the date of location of a mining claim for purposes of recordation under FLPMA. The operative information must appear on the documents filed with BLM, as it does on the documents filed with the county. BLM correctly accepted the assertion on the location certificates in the present case that the date of location was that shown on the certificates. BLM had no duty under 43 CFR 3833.0-5(h) to check the certificates for evidence of the date of recordation with the county, which would have no bearing on the date of location as contemplated by FLPMA.

[3] Alternatively, appellants argue that their failure to submit service fees for the recordation of their mining claim location certificates with BLM should have been construed as a curable defect because there is no statutory requirement for such a service charge in section 314 of FLPMA. They concede that section 304 of FLPMA, 43 U.S.C. § 1734 (1976), authorizes the Secretary to set reasonable fees with respect to applications and other documents relating to public lands. They argue that Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), does not support the Board's holding in Fred W. Croxon III, 56 IBLA 318 (1981), that both the location certificate and the service fee must be received by BLM within the time prescribed in FLPMA.

The Department of the Interior has long adhered to the policy that an application or other instrument requiring a filing fee under an applicable regulation must be rejected if the required fee is not paid when the application is first filed. See Christian G. Wiegner, 65 I.D. 402 (1958). In considering notices of location for unpatented mining claims submitted to BLM for recordation pursuant to FLPMA, this Board has merely perpetuated the hoary practice of the Department; a location notice submitted without the required service fee must be returned unrecorded or, said another way, a location notice cannot be considered as filed with BLM until the service fee is paid, and if the fee is not received within the period prescribed by FLPMA, there can be no recordation of that claim and it must be deemed abandoned. See, e.g., Park City Chief Mining Co., 57 IBLA 346 (1981); Fred W. Croxon III, *supra*; Jesse L. Miller, 54 IBLA 187 (1981); Edward J. Szykowski, Jr., 53 IBLA 310 (1981); Ben Martensen, 52 IBLA 253 (1981); Philip I. Griner, 52 IBLA 179 (1981); Robert W. Miller, 51 IBLA 364 (1980); John J. Dunsmore, 51 IBLA 297 (1980); Eva Holmes, 51 IBLA 140 (1980); Weldon Mead Kennedy, 49 IBLA 180 (1980); Lawrence Jacob, 49 IBLA 137 (1980).

In Topaz Beryllium Co. v. United States, 479 F. Supp. 309, 316 (D. Utah 1979), the court held that the \$5 filing fee for recordation of mining claim notices was authorized by section 304 of FLPMA, and was "reasonable," and there is nothing wrong in its imposition under 43 CFR Subpart 3833. On appeal, the court in Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), held that the regulatory requirement for

filing "instruments" not required by 43 U.S.C. § 1744 (1976) was curable where such instruments were not timely filed in connection with unpatented mining claims of which the Secretary had prior notice. The circuit court did not discuss the question of filing or service fees. We adhere to the position set out in Park City Chief Mining Co., supra, and in the other cases it cites.

Therefore, 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.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

