

CAJEN MINERALS

IBLA 82-739

Decided June 2, 1982

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 124830 through N MC 124868.

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 in the proper BLM office within the time period prescribed by statute constitutes an abandonment of the mining claim by the owner. Regulation 43 CFR 3833.1-2(d) requires each location notice filed for recordation to be accompanied by a service fee of \$5. This is a mandatory requirement, so there is no recordation of a mining claim where the check tendered as payment of the service fee is never honored by the drawer's bank. Therefore, when the location notices are filed with BLM Oct. 22, 1979, but the service fee is not paid with a negotiable check until June 3, 1980, the recordation date of the claims is June 3, 1980. For claims located prior to Oct. 21, 1976, where the effective date of recordation of the location notices with BLM is June 3, 1980, sec. 314 of FLPMA compels the conclusive determination that the claims are abandoned.

APPEARANCES: C. Allen Jensen, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On October 22, 1979, Cajen Minerals filed, in the Nevada State Office, Bureau of Land Management (BLM), copies of the location notices for the Little Worm Nos. 1 through 4, and Cajen Nos. 1 through 29, and Nos. 31 through 36 placer mining claims, N MC 124830 through N MC 124868, in an attempt to comply with the mining claim recordation requirements of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The claims were located in 1974, each for 160 acres, but naming only CAJ Corporation or Cajen Minerals as locator. The checks tendered as service fees for the recordation were not honored by the drawer's bank and were returned to BLM as uncollectible. By BLM decision of May 5, 1980, the 39 claims were declared abandoned and void.

Subsequently, on June 3, 1980, Cajen Minerals submitted a cashier's check for \$195 to cover the service fees for the 39 claims. BLM, by decision of December 24, 1980, vacated its decision of May 5, 1980, and reinstated the recordation of the 39 claims.

On September 28, 1981, amended location notices for the Cajen Nos. 1 through 36 were filed with BLM; each notice named eight locators for the 160 acres claimed.

By decision of March 22, 1982, BLM stated it had vacated the decision of May 5, 1980, in error because there is no recordation of a mining claim when the check for the service fee is not honored upon presentation. The decision contained an erroneous reference to mining claims with serial numbers N MC 234511 through N MC 234534. An amendatory decision was issued April 6, 1982, reaffirming the rejection of the recordation for the Little Worm Nos. 1 through 4, and Cajen Nos. 1 through 29, and Nos. 31 through 36 placer mining claims, correctly identified as N MC 124830 through N MC 124868. A second decision of April 6, 1982, vacated the decision of March 22, 1982, with the erroneous serial numbers.

Cajen appealed the April 6 decision rejecting the claim, stating the serial numbers were incorrect, and that no dishonored check was ever involved with the claims having serial numbers N MC 234511 through N MC 234534.

Examination of the case record discloses that the notices of location for the Little Worm Nos. 1 through 4, and Cajen Nos. 1 through 29, Nos. 31 through 36, were assigned serial numbers N MC 124830 through N MC 124868 when the notices of location were filed with BLM October 22, 1979. The check given as payment for the service fees of \$195 was not honored upon presentation. Several bills and letters were sent by BLM to C. Allen Jensen of Cajen Minerals between December 1979 and April 1980. As no response was made by Cajen Minerals, the BLM decision of May 5, 1980, was finally written. Thereafter on June 3, 1980, Cajen Minerals made payment of the \$195 by a cashier's check.

This Board has consistently held that no recordation of a mining claim location notice pursuant to FLPMA is effected until the service fee has been paid. Park City Chief Mining Co., 57 IBLA 346 (1981); Fred W. Croxon III,

56 IBLA 318 (1981); Philip Griner, 52 IBLA 179 (1981); Virginia Edwards, 47 IBLA 301 (1980); Brewery Hill Mining Co., 49 IBLA 197 (1979).

The validity of the \$5 filing fee for recordation of mining claim notices was considered in Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981). The court held that the \$5 does not violate the "reasonable" requirements of FLPMA, being both modest and moderate.

Where mining claims were located prior to October 21, 1976, copies of the location notices were required by section 314 of FLPMA to be filed in the proper office of BLM within 3 years, or by October 22, 1979. This Board has consistently held that no recordation of a mining claim notice is accomplished until the service fee is paid. Where, as in this case, the service fee was not paid by negotiable funds until June 3, 1980, there could be no recordation of the claims prior to that date. Because the claims were located prior to October 21, 1976, recordation of the claims on June 3, 1980, was not in compliance with FLPMA. As FLPMA also provides in 43 U.S.C. § 1744(c) (1976), where the instruments relating to mining claims are not filed properly within the statutory time periods, the claims are conclusively deemed to be abandoned.

The BLM decision of May 5, 1980, was correct when it declared the claims abandoned and void. BLM was in error, and without authority, to vacate that decision when the service fees were paid at a later date.

Appellant has not shown any error in the April 6, 1982, action by BLM to reinstate its original decision of May 5, 1980, holding these claims to be abandoned and void.

Accordingly, pursuant to the authority delegated by the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of April 6, 1982, is affirmed, and the Little Worm Nos. 1 through 4, and Cajen Nos. 1 through 29, Nos. 31 through 36, N MC 124830 through N MC 124868, are declared abandoned and void.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

