

SUNSHINE MINING CO.  
SILVER SYNDICATE, INC.

IBLA 82-568

Decided June 17, 1982

Appeal from decisions of Idaho State Office, Bureau of Land Management, canceling recordation of a mining claim, and rejecting the recordation of a mining claim location notice submitted without a service fee. I MC 21239 and I MC 72466.

Affirmed.

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

Recordation of an unpatented mining claim is effected by filing a copy of the official record of the location notice with the proper BLM office and paying a service charge of \$5 per claim.

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

43 U.S.C. § 1744 (1976) requires the recordation of unpatented mining claims, and where a patented mining claim inadvertently was recorded with BLM, it is proper to cancel the recordation.

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

The recordation in 1981 of an amended location notice for a pre-FLPMA mining claim, where the original claim had never been recorded with BLM, cannot confer any earlier right to the claim than the date of the amended location.

APPEARANCES: Merrily Munther, Esq., Boise, Idaho, for appellant.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On March 8, 1982, Sunshine Mining Co., and Silver Syndicate, Inc., filed a notice of appeal from the two decisions dated February 5, 1982, by the Idaho State Office, Bureau of Land Management (BLM), one of which rejected the recordation of the Merit Fraction No. 2 lode mining claim, I MC 21239, because the claim was patented August 12, 1943, patent number 1117181, so that the recordation under the provisions of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), was improper, and the other rejected the recordation of the Merit Fraction No. 1 lode mining claim, I MC 72466, because the amended notice of location filed with BLM September 4, 1981, was not accompanied by a service fee of \$5.

After the notice of appeal was filed, BLM by decision of March 11, 1982, purported to vacate the February 5, 1982, decision relating to the Merit Fraction No. 1 lode mining claim, stating that a pending refund to the appellant had been identified in the suspense fund and would be applied as the service fee for the recordation of this location notice. That decision by BLM was unauthorized, as the jurisdiction over the case passed to the Board of Land Appeals when the notice of appeal was filed. We hereby vacate the BLM decision of March 11, 1982.

[1] Section 314 of FLPMA requires the recordation of unpatented mining claims. For claims located prior to October 21, 1976, a copy of the official record of the location notice was required to be filed in the proper office of BLM on or before October 22, 1979, and under the implementing regulation, a service fee of \$5 was required before the recordation could be made. Fred W. Croxon III, 56 IBLA 318 (1981). The decision of February 5, 1982, declining to accept the amended location notice of the Merit Fraction No. 1 lode mining claim because it was unaccompanied by the required service fee was correct. That decision is hereby affirmed.

Accepting, however, the BLM statement that there was \$5 in a suspense fund awaiting refund to Sunshine Mining Co., and which could be applied as the service charge for I MC 72466, we will remand that case to BLM for appropriate action consistent with this decision.

[2] As section 314 of FLPMA requires only information about unpatented mining claims, the recordation of information anent the Merit Fraction No. 2 lode claim was unnecessary inasmuch as that claim had been patented in 1943. The BLM decision canceling the recordation of the Merit Fraction No. 2 claim is affirmed.

[3] The attempted recordation of Merit Fraction No. 1 lode claim raises the question of what is able to be recorded. The notice tendered to BLM September 17, 1981, recites it as an amended location made in conformity with the original location made February 1, 1923. Inasmuch as there had been no recordation of the Merit Fraction No. 1 claim on or before October 22, 1979, as required by section 314 of FLPMA, that location must be deemed abandoned and void as provided by FLPMA. Modoc Gem and Mineral Society, 58 IBLA 142 (1981). The amended location notice recites that if the original location is void, then the amended location should be considered as an original location, and the certificate of location as an original certificate. The certificate

states that the location was made September 4, 1981, so whatever rights may accrue to the locators from the location will be considered to run from September 4, 1981.

The records of BLM indicate that the land embraced in the Merit Fraction No. 1 claim is within the Aubert Fraction lode mining claim, I MC 59888, located March 22, 1981.

The ascertainment of the paramount right to the land is not within the jurisdiction of the Department of the Interior; it is a matter for a court of competent 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 canceling the recordation of claim I MC 21239 is affirmed, the decision rejecting the recordation of location notice I MC 72466 is affirmed, and the cases are returned to BLM for appropriate action consistent herewith.

Douglas E. Henriques  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

