

Editor's note: Reconsideration granted; decision vacated in part by order dated May 15, 1984 -- See 69 IBLA 95A & B below.

MAUD H. GOEHRING CONWAY, LEWIS CONWAY

IBLA 82-1342

Decided November 30, 1982

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 104739 through N MC 104795.

Affirmed.

1. 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 mining claims are submitted to BLM for recordation on Oct. 9, 1979, and the service fee therefor is not paid to BLM until Dec. 10, 1979, the recordation date of the notices is Dec. 10, 1979.

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

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper office of BLM on or before Oct. 22, 1979, or the claim will be deemed conclusively

abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). Location notices relating to unpatented mining claims located before Oct. 21, 1976, for which the service fees were not paid to BLM by a negotiable check until Dec. 10, 1979, are not timely filed, and the claims are properly declared abandoned and void.

APPEARANCES: William J. Crowell, Esq., Carson City, Nevada, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Maud H. Goehring Conway and Lewis Conway appeal from the decision of the Nevada State Office, Bureau of Land Management (BLM), dated August 20, 1982, which declared unpatented lode mining claims, 1/ N MC 104739 through N MC 104795, abandoned and void for failure to file on or before October 22, 1979, with a negotiable check for the service fees and copies of the official record of location notices for the named claims, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the pertinent regulation, 43 CFR 3833.1-2.

The record shows that on October 9, 1979, A. E. Paar, as agent, submitted to BLM copies of the recorded notices of location for the claims at issue, and his personal check in the amount of \$285 for the service fees. The check was returned by the bank as uncollectible October 31, 1979, and was not replaced with a negotiable check until December 10, 1979.

Appellants state that they are the owners of the claims at issue; that one A. E. Paar, lessee of the claims, filed the necessary instruments with BLM in September 1979; 2/ that they assumed everything was regular because BLM had accepted the evidence of their annual assessment work in 1980 and 1981 with no objection or rejection; that the dishonored check of A. E. Paar was replaced with a cashier's check in December 1979, which BLM accepted and cashed; that they were never informed by BLM of the problem over the service fees; that BLM has taken the position that the December 1979 payment represented a debt due to the United States and was not applied as service fees for the subject claims; that BLM was remiss in not advising appellants of the problem in September 1979, at which time appellants could have made timely payment of the service fees for recordation of their claims; 3/ that the dishonoring of Paar's check was caused by a mixup of accounts by Paar,

1/ See Appendix.

2/ Appellants refer to the initial submission of the location notices as on Sept. 9, 1979, whereas each document shows a BLM date stamp of Oct. 9, 1979.

3/ Advice that the check of Paar was not paid by his bank was received by BLM Oct. 31, 1979, after the deadline for filing set by FLPMA. Notice to appellants at that time would have afforded them nothing.

being drawn on the account of Deseret Minerals; and that after Paar tendered the cashier's check on December 10, 1979, he had been assured by BLM that the recordation of the claims was in order.

[1] Section 314 of the FLPMA and regulation 43 CFR 38337.1-2 require that for mining claims located prior to October 21, 1976, a copy of the official record of the location notice must be recorded with the proper office of BLM within 3 years, i.e., on or before October 22, 1979. All of the claims here at issue were located prior to October 21, 1976. Regulation 43 CFR 3833.1-2(d) states that each claim filed with BLM shall be accompanied by a \$5 service fee. This is a mandatory requirement. Without payment of the service fee, there is no recordation of the claim. As the service fee for the location notices of the subject claims was not paid, in negotiable funds, until December 10, 1979, it must be held that the date of recordation for these claims cannot be considered to have occurred earlier than that date. D. L. Nielsen, 57 IBLA 114 (1981); Fred W. Croxen III, 56 IBLA 318 (1981); Jesse L. Miller, 54 IBLA 187 (1981); Frank Franich, 47 IBLA 332 (1980); Loyal Dee Griggs, 47 IBLA 293 (1980); Charles P. Seel, 47 IBLA 229 (1980); G. H. Monk, 47 IBLA 213 (1980); R. L. Durrant, 47 IBLA 208 (1980); Joe B. Cashman, 43 IBLA 239 (1979). See Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981); Brewery Hill Mining Co., 49 IBLA 197 (1980).

[2] Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice or certificate of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner, and renders the claim void.

The pertinent regulation, 43 CFR 3833.1-2, provides as follows:

§ 3833.1-2 Manner of recordation -- Federal lands

(a) The owner of an unpatented mining claim * * * located on or before October 21, 1976, on Federal lands * * * shall file (file shall mean being received and date stamped by the proper BLM office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim * * * under state law. * * *

* * * * *

(d) Each claim * * * filed shall be accompanied by a one time \$5 service fee which is not returnable. A notice or certificate of location shall not be accepted if it is not accompanied by the service fee and shall be returned to the owner.

As the subject claim notices were not accompanied by the required service fees in a negotiable instrument, and such negotiable instrument was not furnished to BLM until December 10, 1979, the notices cannot be deemed to have been filed, as required by FLPMA and the regulations, on or before October 22, 1979. Such failure to comply must result in a conclusive finding that the claims have been abandoned and are void. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). A notice of location relating to an unpatented mining claim located before October 21, 1976, whose qualifications for recordation is not perfected until December 10, 1979, is not timely filed.

It is unfortunate that BLM did not take earlier action to notify claimants of the deficiency in their filings. However, the authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties. Reliance upon information or opinion of any officer, agent, or employee or on records maintained in BLM offices cannot operate to vest any right not authorized by law. 43 CFR 1810.3. This Board has no authority to excuse lack of compliance with the requirements of FLPMA. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

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:

Will A. Irwin
Administrative Judge

Bruce R. Harris
Administrative Judge

APPENDIX

<u>NAME OF CLAIM</u>		<u>N MC NUMBER</u>
Helen & Helen #1-2		104739-104741
Helen #3-4		104742-104743
Helen #5-7		104744-104746
Helen #8-11		104747-104750
Copper		104751
Copper #1		104752
Copper #2		104753
Copper #3		104754
Copper #4		104755
Copper #5		104756
Copper #6		104757
Copper #7-8		104758-104759
Arlington		104760
Arlington #1		104761
Gold Nugget		104762
Velvet		104763
Jim Fraction		104764
Ajax		104765
Jim		104766
Midas		104767
Midas #1		104768
John #1		104769
Jack		104770
Eldorado		104771
Joe		104772
Crown		104773
John		104774
Pedro Fraction		104775
Pedro Fraction #1		104776
Erwin	104777	
Erwin Fraction		104778
Robust		104779
Central City		104780
Red Rock		104781
September Fraction		104782
September		104783
Sandusky		104784
Jumbo		104785
Jumbo Extension		104786
Boston		104787
Auction		104788
Ohio		104789
Hornet #3		104790
Road Fraction		104791
Ford Fraction		104792
Verden & Verden #1		104793 & 104794
Midas		104795

May 15, 1994

IBLA 82-1342 : N MC 104739 to -59
:
MAUD H. GOEHRING CONWAY : Mining Claims
LEWIS CONWAY :
: Petition for Reconsideration
: Granted
:
: 69 IBLA 91 Vacated in Part;
: Case Remanded

ORDER

On August 20, 1982, the Nevada State Office, Bureau of Land Management (BLM), issued a decision declaring 57 unpatented mining claims, serial numbers N MC 104739 to -95, abandoned and void for failure to comply with the recordation requirements of the Federal Land Policy and Management Act of 1976 (FLPMA). By opinion dated November 30, 1982, this Board affirmed BLM's decision. Maud H. Goehring Conway, 69 IBLA 91 (1982).

On February 28, 1984, Earl E. Loman filed a petition to reconsider the Conway decision insofar as it concerned 21 mining claims, N MC 104739 to -59. Loman states therein that these 21 claims were inadvertently included in BLM's claims addressed by that decision, and that he, as owner of these claims, had no notice of BLM's decision voiding these claims. Loman requests that the case be remanded to BLM so that it may make a determination as to the validity of these 21 claims.

On March 5, 1984, BLM, through counsel, responded, stating that the representations made in Loman's petition are true, and joining in the request for remand.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the above-captioned opinion by the Board is hereby vacated insofar as it concerns mining claims serial numbers N MC 104739 to -59. BLM's decision of August 20, 1982, is also vacated insofar as it declared these 21 claims abandoned and void. The case is remanded to BLM for further consideration.

Wm. Philip Horton
Chief Administrative Judge

69 IBLA 95A

We concur:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge

APPEARANCES:

Earl E. Loman
1065 Crestview Circle
Salt Lake City, Utah 84108

Burton J. Stanley, Esq.
Office of the Regional Solicitor
U.S. Department of the Interior
2800 Cottage Way, Room E-2753
Sacramento, California 95825

William J. Crowell, Esq.
Box 1000
Carson City, Nevada 89702

69 IBLA 95B

