

DEARYL RILEY

IBLA 83-200

Decided January 7, 1983

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 256604 through N MC 256607.

Affirmed.

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

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

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), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: Dearyl Riley, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Dearyl Riley appeals the Nevada State Office, Bureau of Land Management (BLM), decision of November 29, 1982, which declared the H & R Nos. 1 through

4 placer mining claims, N MC 256604 through N MC 256607, abandoned and void, and returned without recordation the location notices of the claims. The claims were located August 18 and 25, 1982. BLM received copies of the location notices November 26, 1982.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires the owner of a mining claim located on public land after October 21, 1976, to file a copy of the official record of the notice of location in the proper BLM office within 90 days after the date of location. The section further provides that failure to file timely such record shall be deemed conclusively to constitute an abandonment of the claim by the owner, and renders the claim void. Donald C. Strong, 63 IBLA 195 (1982); Prudential Mining & Exploration, Inc., 60 IBLA 363 (1981); Faith C. Hartman, 44 IBLA 310 (1979).

The pertinent 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 * * *. [Emphasis added.]

The consequence of failure to file timely is spelled out in 43 CFR 3833.4(a), which provides: "The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site and it shall be void."

[2] Where the owner of an unpatented mining claim located after October 21, 1976, fails to file a location notice with BLM within 90 days after the date of location, his claim is properly deemed conclusively to be abandoned and to be null and void. Donald C. Strong, *supra*; Prudential Mining & Exploration, Inc., *supra*; Tod Anderson, 50 IBLA 66 (1980). The Board has consistently held that the statute permits no exception to the requirements of timely filing of the notice of location with BLM, and that it has no authority to excuse a late filing or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Northwest Citizens for Wilderness Mining Co, Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979).

Appellant does not allege that the location notices were received within the required 90-day period. He contends only that the notices were mailed in what he thought was sufficient time to meet the 90-day deadline. He suggests the 10-day grace period provided by 43 CFR 4.401 should be applicable to his case as the location notices were received by BLM within 10 days after the 90th day following the location of the claims.

Regulation 43 CFR 4.401 applies only to notices of appeal and statements of reason for appeal. It has no relationship or applicability to filings of location notices under 43 CFR 3833.1-2.

As BLM has indicated, appellant may relocate these claims and then file the notices of location within the time period set forth in FLPMA. Any such relocation will be subject to any intervening rights of third parties and to possible closure of the land to operation of the mining laws. Appellant should consult with BLM before any relocation is attempted.

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:

Anne Poindexter Lewis
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

