

ALLEN B. CLARK

IBLA 84-144 Decided June 18, 1985

Appeal from a decision of the California State Office, Bureau of Land Management, declaring a placer mining claim abandoned and void. CA MC 136580.

Affirmed.

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

BLM may properly declare an unpatented mining claim located after Oct. 21, 1976, abandoned and void where the notice of location was not filed with BLM until after the statutory deadline for filing that document, i.e., 90 days after the date of location, regardless of the fact that it was mailed on the deadline.

APPEARANCES: Allen B. Clark, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Allen B. Clark has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated October 18, 1983, declaring the Kanaka No. 3 placer mining claim, CA MC 136580, abandoned and void for failure to file a copy of the notice of location of the claim with BLM within 90 days after the date of location, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982). 1/

Appellant's mining claim was located July 12, 1983, in Sierra County, California. A copy of the notice of location of the claim was filed with the Sierra County Recorder on October 4, 1983, and with BLM on October 13, 1983.

1/ Consideration of this appeal was stayed pending judicial review of the mining claim recordation provisions of FLPMA. The constitutionality of these provisions was recently upheld by the Supreme Court. United States v. Locke, 105 S. Ct. 1785 (1985).

Section 314(b) of FLPMA requires the owner of an unpatented mining claim located after October 21, 1976, to file with BLM a copy of the location notice "within ninety days after the date of location of such claim." Accordingly, the statutory deadline for filing appellant's notice of location was October 10, 1983. However, because the deadline fell on a holiday, appellant had until October 11, 1983, to file a copy of his notice of location. 43 CFR 1821.2-2(e).

In his statement of reasons for appeal, appellant contends that the late filing of his location notice was caused in part by the delay in BLM's response to an inquiry regarding the status of the land. Appellant explains he was informed by letter dated October 20, 1982, from BLM that the previous placer mining claim encompassing the land, Ambrosia (CA MC 66113), was probably "abandoned," and that appellant would have to research claim records and status plats in order to determine whether the land was "open to location." Appellant further explains that in "early 1983," he learned the case file concerning the Ambrosia claim had been "closed," and that he thereupon located his claim and recorded it with the county. Appellant states he could not "legally file my recorded Notice of Location" with BLM until it was confirmed that the Ambrosia case file had been closed. By letter dated September 19, 1983, appellant inquired of BLM whether "the term 'case closed' indicate[s] that the final status of the claim in question, the Ambrosia, is in fact no longer on your active file and is actually available for filing." By letter dated October 7, 1983, BLM advised appellant that the case file was, indeed, "closed." Appellant states that he received the October 7, 1983, BLM letter on October 8 (Saturday) and that he was unable to mail the copy of the location notice until October 11 (Tuesday).

[1] Section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1982), provides that failure to file a copy of a notice of location "as required by" section 314(b) of FLPMA "shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner." In such circumstances, the claim is rendered void. 43 CFR 3833.4(a). Thus, it is well established that where the owner of an unpatented mining claim fails to file a copy of the notice of location of the claim within 90 days after the date of location, BLM properly declares the claim abandoned and void. B. Rigby Young, 69 IBLA 88 (1982), and cases cited therein.

In the present case, appellant mailed the copy of his notice of location on October 11, 1983, the statutory deadline for filing the document. However, depositing a document in the mails does not constitute filing under Departmental regulations. 43 CFR 1821.2-2(f). File is defined to mean "being received and date stamped by the proper BLM office." 43 CFR 3833.0-5(m). 2/ Accordingly, appellant failed to file timely where the copy of the notice of location was not received until October 13, 1983.

2/ We note that for purposes of annual filing of evidence of assessment work or notice of intention to hold mining claims previously recorded, "timely filed" includes documents received by Jan. 19 but postmarked on or before the Dec. 30 deadline. However, the regulation expressly provides that this does not apply to the recording of location notices pursuant to 43 CFR 3822.1-2.

Appellant asserts that the filing was delayed by BLM's failure to respond timely to his September 19, 1983, request for confirmation of the closure of the Ambrosia case file. In actuality, it is appellant who was responsible for the delay in filing. Although the status of an unrelated mining claim has no relevance to the statutory deadline for recording appellant's claim once it has been located, appellant admittedly knew in "early 1983" that the Ambrosia file had been closed and, indeed, located his claim on July 12 and filed with the county on October 4, 1983, prior to being assured by BLM that the file was closed. Moreover, appellant located the claim in July 1983 after being informed that a previous claim might be considered "abandoned."

Furthermore, it was not necessary that the Ambrosia case file be closed before appellant recorded his claim. The Ambrosia claim was apparently deemed "abandoned" in 1981 for failure to file either evidence of annual assessment work or a notice of intention to hold the claim prior to December 31, 1981, in accordance with 43 U.S.C. § 1744(a) and (c) (1982). The statute is self-operative. Therefore, appellant was not precluded, by virtue of the Ambrosia claim, from locating and recording his own claim at any time in 1983. Appellant had no justifiable reason to wait until October 11, 1983, before mailing a copy of his notice of location. Appellant must bear the consequences of his delay in recording the claim with BLM.

In any case, as we said in B. Rigby Young, *supra* at 89:

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).

We conclude that BLM properly declared appellant's mining claim abandoned and void.

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.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Will A. Irwin
Administrative Judge

