

H. B. LAYNE, CONTRACTOR, INC.

IBLA 84-254

Decided July 10, 1985

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void. N MC 22457 through N MC 22479.

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 a copy of the notice of location was not filed with BLM within 90 days after the date of location of the claim, in accordance with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982).

APPEARANCES: Shirley J. Harlan, Beatty, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

H. B. Layne, Contractor, Inc., has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated December 13, 1983, declaring the Golden Eagle Nos. 1 through 4 and Golden Age Nos. 1 through 19 mining claims, N MC 22457 through N MC 22479, abandoned and void for failure to file copies of the notices of location with BLM within 90 days after the date of location of the claims, 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 claims were originally located on March 22 and 23, 1978, in Nye County, Nevada, and recorded with the county recorder on June 2, 1978. 2/ On June 23, 1978, BLM received a written "message" concerning location of the claims stating that the claims had been recorded with the

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).

2/ The claims were located by Joe Stocks and Marion Birch, on behalf of Kelly Minerals, Inc. (Kelly Minerals). However, on Sept. 26, 1978, BLM received a message from Kelly Minerals which stated that Stocks and Birch had failed to file the claims "in the name of Kelly Minerals, Inc., for whom they were

county and that: "Photo-copies of the certificates have not yet been received from the County Recorder's Office, but we will send them to you as soon as received." The message was accompanied by maps of the claims and the appropriate filing fee.

By letters dated August 23, 1978, BLM required Kelly Minerals to submit copies of the notices of location for the claims involved herein "within 30 days of receipt of this letter" or BLM would reject the filings. On September 26, 1978, Kelly Minerals filed copies of the location notices, stating:

These forms were not filed with the fee and maps, because they had not returned from the recorder's office and, subsequently, upon the advice of your employee, Mrs. Pam Quellette, we amended them and re-recorded them [on September 6, 1978], because the locators did not file them in the name of Kelly Minerals, Inc., for whom they were working at the time.

In its December 1983 decision, BLM recognized June 23, 1978, as the date appellant had recorded the claims involved herein but declared the claims abandoned and void because the notices were not filed within 90 days after the date of location, as required by section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1982).

In its statement of reasons for appeal, appellant states that it talked to the BLM Office in Reno, Nevada, "prior to and immediately after" recording its claims with BLM, but it was never advised that such recordation "did not come within the 90-day deadline." Appellant questions why it was "permitted to presume our claims were valid for over five years."

[1] 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 official record of the notice of location" within 90 days after the date of location. 43 U.S.C. § 1744(b) (1982). At the time appellant's mining claims were located, the applicable Departmental regulation, 43 CFR 3833.0-5(i) (1977), defined "[o]fficial record of the notice or certificate of location" as the "official document of recordation and all accompanying maps, papers or other documents filed for record" with the county recorder. Effective March 16, 1979, the Department amended the regulation to provide that the

fn. 2 (continued)

working at the time" and that, upon the advice of a BLM employee, Kelly Minerals "re-recorded" the claims with the county on Sept. 6, 1978. The copies of the location notices in the record have two sets of book and page numbers, indicating a re-filing with the county. In a subsequent message dated Aug. 13, 1980, appellant informed BLM that the claims are actually owned by appellant and that Kelly Minerals had only been operating under a lease-option agreement, which "failed to take place," at the time it located and recorded the claims. Whether these 40-acre locations violated the rule limiting corporate locators or those acting on a corporation's behalf to 20-acre locations we need not now decide. But see Alumina Development Corp. of Utah, 77 IBLA 366 (1983).

copy of the official record of the notice of location means the instrument "which was or will be filed" with the county recorder, thereby recognizing that in some cases there is not sufficient time to obtain a copy of the instrument, as recorded with the county, to meet the statutory filing deadline with BLM. 44 FR 9722 (Feb. 14, 1979).

In the present case, appellant's mining claims were located on March 22 and 23, 1978. Although maps of the claims were filed with BLM on June 23, 1978, copies of the notices of location were not filed until September 26, 1978. We conclude that the latter date is the date of recordation of the claims with BLM under section 314(b) of FLPMA. ^{3/} Thus, appellant's claims were clearly not filed timely with BLM. Even if we assume, *arguendo*, that the date of recordation with BLM is June 23, 1978, the filing was untimely, as the maps, cover message, and filing fees were received 92 and 93 days after location of the claims.

Failure to file a copy of a notice of location with BLM within 90 days after the date of location of a claim "shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner." 43 U.S.C. § 1744(c) (1982). In such circumstances, the claim "shall be void." 43 CFR 3833.4(a).

We conclude that BLM properly declared appellant's mining claims abandoned and void for failure to file timely under section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1982). *Amigo Mining, Inc.*, 68 IBLA 305 (1982). While the lengthy delay in notifying appellant its claims were deemed abandoned and void is regrettable, we have long held that the statute is self-operative and that Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. *Homestake Mining Co.*, 77 IBLA 235 (1983), and cases cited therein.

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:

James L. Burski Will A. Irwin
Administrative Judge

Administrative Judge

^{3/} The date of recordation with BLM is the date on which a copy of a notice of location or certificate of location is filed with BLM in accordance with section 314(b) of FLPMA. If appellant had filed an unrecorded copy of the notice of location with BLM within 90 days of location, we could have given appellant the benefit of the amended regulation, in the absence of any intervening rights, and held that the claims were recorded with BLM on that date.

