

WALDRON ENTERPRISES MINING

IBLA 84-333

Decided July 16, 1985

Appeal from a decision of Colorado State Office, Bureau of Land Management, declaring placer mining claims abandoned and void for failure to meet the requirements for recordation of mining claims. CMC-201319.

Reversed in part; affirmed in part.

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

The owner of an unpatented mining claim located after Oct. 21, 1976, is required to file a copy of the official record of the notice of location or certificate of location of the mining claim with the proper BLM office within 90 days after the date of location. The failure to file the required document shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

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

Under 43 CFR 3833.1-2(a) the owner of an unpatented mining claim located after Oct. 21, 1976, must file with BLM within 90 days after the date of location of the claim a copy of the official record of the notice or certificate of location of that claim that was or will be filed under state law. Where a single certificate of location for more than one claim is void under Colorado law as to all claims except the first, if properly described, the first claim of 13 claims included in a single certificate of location should be accepted by BLM for recordation under 43 CFR 3833.1-2(a).

APPEARANCES: Murl J. Waldron for Waldron Enterprises Mining.

## OPINION BY ADMINISTRATIVE JUDGE HARRIS

Waldron Enterprises Mining appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated October 21, 1983, declaring placer mining claims Nos. 1 through 13 (CMC-201319) abandoned and void for failure to meet the requirements for recordation of mining claims under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), and 43 CFR Subpart 3833. <sup>1/</sup>

Appellant filed a copy of an amended notice of location for placer mining claims Nos. 1-13 with BLM on October 20, 1983. In this notice appellant stated that the 13 placer claims, embracing 1,040 acres, are situated in secs. 17, 18, 20, and 21, T. 10 N., R. 80 W., Sixth Principal Meridian, and described each claim's location within the sections. A map showing the location of the claims was attached to the copy of the notice of location.

In its form letter decision of October 21, 1983, BLM informed appellant that it was returning its documents because they did not meet the requirements of section 314 of FLPMA, and 43 CFR Subpart 3833 for the following reasons: "Notice or certificate of location not filed (See 3833.1-2(a))." Under the category of "Other" BLM typed, "Each claim filed requires a separate location certificate."

In its statement of reasons, appellant contends that there is an apparent conflict between 43 CFR 3833.1-2(a) (requiring that a copy of the official record of the notice or certificate of location be filed) and 43 CFR 3833.1-2(b)(5)(iii) (permitting more than one claim to be shown on a single map).

[1, 2] Under section 314 of FLPMA, the owner of an unpatented mining claim located after October 21, 1976, must file a copy of the official record of the notice or certificate of location in the proper BLM office within 90 days after the date of location of the claim.

The implementing regulation, 43 CFR 3833.1-2(a), provides in pertinent part:

(a) The owner of an unpatented mining claim, \* \* \* located after October 21, 1976, \* \* \* shall file within 90 days after the

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<sup>1/</sup> On Oct. 21, 1983, the United States District Court for the District of Nevada issued a decision declaring section 314(a) and (c) of FLPMA, 43 U.S.C. § 1744(a) and (c) (1982), unconstitutional insofar as they provide for a conclusive presumption of abandonment of mining claims for a failure to provide timely annual filings with BLM. Locke v. United States, 573 F. Supp. 472 (D. Nev. 1983). The United States appealed that decision to the Supreme Court.

During the pendency of that case before the Supreme Court, the Board suspended consideration of mining claim recordation appeals. On Apr. 1, 1985, the Supreme Court issued its decision in United States v. Locke, 105 S. Ct. 1785 (1985), reversing the decision of the district court and upholding the constitutionality of the recordation provisions of FLPMA.

date of location of that claim \* \* \* in the proper BLM office, a copy of the official record of the notice or certificate of location of that claim \* \* \* that was or will be filed under state law. [Emphasis added.]

The Colorado Revised Statutes contain the following provision regarding the number of claims which may be included in the certificate of location:

§ 34-43-105. Certificate shall contain but one location.

No location certificate shall claim more than one location, whether the location is made by one or several locators. If it purports to claim more than one location it shall be absolutely void, except as to the first location therein described, and if they are described together, or so that it cannot be determined which location is first described, the certificate shall be void as to all.

Colorado Revised Statutes § 34-43-105 (1973). Appellant's certificate of location filed with BLM describes 13 claims. Therefore, in accordance with Colorado law, it is void, except as to the location for claim No. 1, which is clearly described in the certificate.

Appellant properly filed with BLM a copy of the official record of the certificate of location filed under state law. <sup>2/</sup> Since this certificate of location is valid as to claim No. 1 under Colorado law, it is acceptable for recordation under 43 CFR 3833.1-2, notwithstanding the fact that it was not a separate location certificate.

As for the remaining claims, Nos. 2 through 13, the certificate of location is "absolutely void" under Colorado law. In effect, then, no copies of certificates of location were filed for these claims under section 314 of FLPMA and 43 CFR 3833.1-2(a). Failure to file the required instrument in accordance with the statute "shall be deemed conclusively to constitute an abandonment of the mining claim \* \* \* by the owner." 43 U.S.C. § 1744(c) (1982); Max Lair, 87 IBLA 106 (1985). In such circumstances, the claim is thereby rendered "void." 43 CFR 3833.4(a).

The case file will be returned to BLM for recordation of claim No. 1 provided all requirements of section 314 of FLPMA and 43 Subpart 3833 are met.

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<sup>2/</sup> Handwritten at the bottom of the copy of the certificate is the statement, "Recorded Jackson Co. Courthouse 10-19-83." We presume for purposes of this decision that the original of this document was filed with Jackson County on Oct. 19, 1983.

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 reversed as to claim No. 1 and affirmed as to claims Nos. 2 through 13.

Bruce R. Harris  
Administrative Judge

We concur:

Wm. Philip Horton  
Chief Administrative Judge

Will A. Irwin  
Administrative Judge

