

ARTHUR A. GOTSCHALL

IBLA 84-772

Decided September 5, 1985

Appeal from decision of the California State Office, Bureau of Land Management, rejecting recordation of mining claim location notice. CA MC 148050.

Affirmed.

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

Failure to submit recording fee either with new location or within 30 days of notice of deficiency results in rejection of the attempted recordation.

APPEARANCES: Arthur A. Gotschall, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Arthur A. Gotschall appeals from a June 12, 1984, decision of the California State Office, Bureau of Land Management (BLM), rejecting for recordation his Great Wall of China placer mining claim, CA MC 148050. The BLM decision recites appellant did not submit a \$ 5 filing fee when he presented his claim location notice to BLM for recording, and also states he did not respond to a certified letter which notified him of the failure to pay the required fee. BLM found appellant to be in violation of regulations found at 43 CFR Part 3833. The Board stayed this appeal pending a Supreme Court ruling on the constitutionality of section 314(a) and (c) of FLPMA, 43 U.S.C. § 1744(a) and (c) (1982). On April 1, 1985, the Supreme Court upheld the validity of this recording statute in United States v. Locke, 105 S. Ct. 1785 (1985).

The record on appeal contains two BLM case files for claims named "Great Wall of China." The case file for CA MC 80559 contains a map and location notice for the Great Wall of China claim, located on December 10, 1980, and recorded with BLM on February 10, 1981. Appellant filed evidence of assessment work for this claim with BLM in 1981 and 1982. No affidavit of assessment work was received in 1983. On April 11, 1984, appellant filed

another location notice and map with BLM. This notice, which BLM designated CA MC 148050, shows March 26, 1984, as the location date for the amended Great Wall of China claim. On April 26, 1984, BLM informed appellant CA MC 148050 could not be recorded unless a \$ 5 fee was paid and allowed appellant 30 days in which to submit the fee. Apparently appellant did not respond to this notice.

In his statement of reasons for appeal, appellant contends he had filed an amended location notice with BLM for the Great Wall of China claim, CA MC 80559, rather than a relocation (i.e., a new location). He contends this amendment was a supplemental document which required no fee. He asserts that BLM's treatment of this filing is inconsistent with its treatment of an amended location notice he filed previously for another unrelated claim. To support this assertion, appellant has furnished a copy of a BLM notice of return remittance which refers to the Retirement Fund mining claim and states no fee was required for the filing of supplemental documents in that case. Appellant reasons that because no fee was required for the Retirement Fund amended filing, he did not need to send a fee with his notice to amend the Great Wall of China claim.

BLM commented upon appellant's argument in a July 27, 1984, letter to appellant which made the observation:

We are forwarding your appeal on to the Interior Board of Land Appeals, but hope the following will clarify our actions:

Your amendment for the Retirement Fund claim was a supplement to an active case file (CA MC 11157). Therefore, no filing fee is required.

However, your amendment for the Great Wall of China Claim is a refile of an abandoned and void claim (CAMC 80559) since a 1983 annual filing was not made with this office. Therefore, another service fee is required for this "new" location under CA MC 148050.

[1] Section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982), requires the owner of a mining claim located after October 21, 1976, to file with BLM a copy of the location notice and a description of the claim within 90 days of location. See also 43 CFR 3833.1-2. The owner is also required to file with BLM evidence of assessment work or a notice of intention to hold the claim prior to December 31 of each year following location. 43 U.S.C. § 1744(a) (1982); 43 CFR 3833.2-1(b). The failure to file any of the required documents with BLM conclusively constitutes abandonment of the claim. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4; United States v. Locke, supra. In addition, Departmental regulations require that a one-time recordation fee of \$ 5 accompany each claim filed. If a location notice is presented without a fee, the mining claimant has 30 days from notification of the deficiency to submit the fee. "Failure to submit the proper fee shall cause the recordation to be rejected and returned to the owner." 43 CFR 3833.1-3. In Topaz Beryllium Co. v. United States, 479 F. Supp. 309, 314-316 (D. Utah 1979), aff'd, Topaz

Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), the District Court upheld as reasonable an earlier version of this regulation, 43 CFR 3833.1-2(d) (1982).

Appellant contends his April 11, 1984, filing should be treated as an amended location notice as was the document he filed earlier to amend his Retirement Fund claim, so that no additional recording fee is required under 43 CFR 3833.1-3. This assertion is in error. The first Great Wall of China claim, CA MC 80559, located on December 10, 1980, was extinguished as a matter of law when no evidence of assessment work was filed with BLM in 1983. 43 U.S.C. § 1744(a) and (c) (1982); 43 CFR 3833.2-1(b); 43 CFR 3833.4; see United States v. Locke, *supra*. Once voided, the claim could not be amended. For an explanation concerning the effect of amendment or relocation of mining claims, see R. Gail Tibbetts, 43 IBLA 210, 86 I.D. 538 (1979) overruled in part on other grounds, Hugh B. Fate, 86 IBLA 215 (1985). Therefore, when appellant filed his location notice on April 11, 1984, BLM correctly treated this document as a new claim location which required a recording fee. After appellant failed to offer the \$ 5 recording fee within 30 days of receipt of the notice of this deficiency, BLM correctly rejected his attempted filing, pursuant to 43 CFR 3833.1-3.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the California State Office is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

