

ELSWORTH AND DOLORES LOVELAND

IBLA 83-597

Decided October 25, 1985

Appeal from a decision of Idaho State Office, Bureau of Land Management, determining that certain claims must meet size requirements for lode claims and requiring map depicting proper size and placement of lode claims. I MC 31512, I MC 31513.

Vacated and remanded.

1. Mining Claims: Location--Mining Claims: Tunnel Sites

Where one asserts the location of a tunnel site claim and meets the recordation requirements for such a claim, it will be considered a tunnel site claim. However, where the claimant later seeks to "amend" the tunnel site claim into lode claims, such claims must be considered null and void because a tunnel site cannot be amended into lode claims since a tunnel site is not a mining claim, rather it is a right-of-way.

APPEARANCES: Elsworth Loveland for appellants.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Elsworth and Dolores Loveland appeal from a letter decision of the Idaho State Office, Bureau of Land Management (BLM), dated April 4, 1983, determining that appellants' claims, Last Chance (I MC 31512) and Loveland (I MC 31513), are lode claims which must meet the size requirements for lode claims. BLM required appellants to submit a map depicting the proper size and placement of their lode claims.

Both claims were located on October 17, 1979, in secs. 18 and 19, T. 2 N., R. 5 E., and secs. 13 and 24, T. 2 N., R. 4 E., Boise Meridian, Elmore County, Idaho. Copies of the notices of location were filed with BLM on the same day in compliance with section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982). Each notice of location specified the dimensions of the claim as 3,000 feet by 3,000 feet. Affidavits of assessment work for the years 1979 through 1982 were also filed with BLM. ^{1/}

^{1/} We note that there is no requirement for the filing of annual assessment work for a tunnel site claim. See L. Mall, Public and Mining Law 218 (3rd ed. 1981).

By letter of March 10, 1983, Elsworth Loveland informed BLM that appellants wished to "amend" their tunnel site claims to lode claims. He asserted that under the provisions of the tunnel site law a locator may file lode claims to cover the tunnel site. Appellant sought to cover the tunnel site claim area by locating 10 lode claims on the area of each tunnel site claim.

Loveland explained that the claims located on October 17, 1979, were tunnel site claims; that lode mining claim notices of location were used since there were no notices for tunnel sites; that the basic information required for a tunnel site was contained in such forms; and that these location notices were duly recorded by BLM.

Loveland referred to notices of transfer of interest in these claims to Pacific Rim Mines, Inc. (PRMI), dated January 4, 1981, and October 8, 1981, and from PRMI to Financial Designs Development Corporation (FDDC), dated October 16, 1981. In their agreements with PRMI, which were extended to FDDC, appellants required that the company survey the tunnel claims and make amended lode claims in the Lovelands' name, as well as continue the development and mining work. By notice dated April 2, 1982, appellants informed both companies that they had defaulted under the agreements.

Accompanying appellants' request to "amend" the claims was a map depicting the boundaries of the claims as established by a survey.

In its letter decision of April 4, 1983, BLM stated that it had determined the original claims to be lode claims, rather than tunnel site claims, and it required appellants to submit a map depicting the proper size and placement of these claims. BLM noted that since a lode claim could only be 1,500 by 600 feet, two claims would not cover the 3,000- by 3,000-foot area involved in the original locations. 2/ BLM advised that the remaining lands could be "relocated" if currently open to mineral entry, subject to valid intervening rights of third parties or the United States, and based upon the new location date, the instruments could be refiled within the time periods prescribed by the regulations.

In their statement of reasons, appellants reiterate that the location notices for the tunnel sites were properly filed. Appellants contend that BLM advised them to file their notices of location for tunnel sites on forms for lode claims since there were no prescribed forms for tunnel sites; that BLM reviewed their file numerous times since October 17, 1979, and never advised them to correct their notices; that BLM agreed that their tunnel sites were valid; and that they could file lode claims after finding blind veins along the tunnel site.

Appellants assert that they have met all the requirements for a tunnel site location and have provided all the basic information in their notices of location. They emphasize that they specified in their notices of location that the monument corners were 3,000 feet apart, as is appropriate for tunnel site locations. Appellants state that the filing of the documents shows that

2/ Actually, each location by appellants was for an area, 3,000 by 3,000 feet.

they clearly intended to locate tunnel sites and that the omission of the word "tunnel" was by inadvertence. According to appellants, they have maintained continuous work during every 6 month period since the location of the claims and have never abandoned the claims.

[1] Recordation of a tunnel site is required by section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1982) and 43 CFR 3833.1-2. Appellants filed location notices for these claims on October 17, 1979. For purposes of recordation requirements, appellants properly recorded their tunnel site claims, even if the location notice did not specifically identify the claims as tunnel site claims. The location notices described the claims as being 3,000 by 3,000 feet, much too large for the maximum size lode claim of 1,500 by 600 feet. At the time of recordation and in subsequent years appellants filed affidavits of assessment work for the claims, even though there is no requirement to perform annual assessment work on a tunnel site claim. The recordation regulations do, however, require the owner of a tunnel site to file in the proper BLM office on or before December 30 of each year following the year of recordation, a notice of intent to hold the tunnel site. 43 CFR 3833.2-1(c). Appellants' affidavits of assessment work must be considered as satisfying that requirement of 43 CFR 3833.2-1. 3/

Clearly there are inconsistencies in the record regarding whether these claims are, in fact, tunnel site claims, 4/ but appellants assert that they are, and the recordation requirements regarding tunnel sites were satisfied by appellants. Thus, for purposes of FLPMA recordation, we accept appellants' contention that the two claims are tunnel site claims.

Since they are tunnel site claims, they cannot be amended into lode claims because tunnel sites are not mining claims; rather they are rights-of-way. See Creede and Cripple Creek Mining and Milling Co. v. Uinta Tunnel Mining and Transportation Co., 196 U.S. 337, 355 (1905). 5/ Thus, appellants' lode claims covering the tunnel site areas can only be new locations.

3/ The filing of a notice of intent to hold a tunnel site claim is not a statutory requirement but is mandated only by regulation. Even if we were to hold that the affidavits did not satisfy the regulations and that appellants were required to file notices of intent to hold, they would be entitled to notice of deficiency and an opportunity to comply. Where a recordation requirement is imposed only by regulation, the failure to comply with that regulation is subject to curative action. Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Heidelberg Silver Mining Co., 58 IBLA 10 (1981).

4/ In an agreement dated Oct. 16, 1981, between PRMI and FDDC, PRMI stated that the "Last Chance and Loveland are located and filed as either Lode Claims or Tunnel Claims the exact nature of which is not certain." It was also stated in this agreement that the locations may be defective and possibly void and that the claims should be relocated and refiled.

5/ The Tunnel Site Act, 30 U.S.C. § 27 (1982), provides as follows:

"Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in

Whether rights under such locations relate back to the date of the tunnel site location or commenced at the date of location of the "amended" claims is dependent upon whether appellants discovered blind veins in the course of driving tunnels on each of their claims. ^{6/} However, that question is not of concern to us in this appeal. In either situation appellants were required by section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1982), to record their claims with BLM and submit \$5 per claim within 90 days of location of those claims, regardless of whether or not they relate back. There is no evidence of compliance with these recordation requirements.

Accordingly, we find that appellants' two tunnel site claims continue to exist insofar as they have been properly recorded with BLM under FLPMA. Any purported lode claim amendments of the tunnel site claims must be considered null and void since, by law, tunnel site claims may not be converted to lode mining claims. Further, any purported lode amendments must be treated as original locations and declared abandoned and void for a failure to comply with the mining recordation requirements of FLPMA. Assuming the land in question remains open to location, appellants may locate new mining claims over the tunnel sites in conformity with either 30 U.S.C. § 23 or § 27, (1982), whichever is appropriate.

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 vacated and the case is remanded.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

fn. 5 (continued)

such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel."

The Federal requirements for location of a tunnel site claim are set forth at 43 CFR 3843.2.

^{6/} Under the tunnel site law, the owner of a tunnel site would have the right to locate a lode mining claim based on the discovery of any blind veins found in the course of driving the tunnel and such claim would relate back to the date of location of the tunnel site claim. United States v. Parker, 82 IBLA 344, 381-82, 91 I.D. 271, 293 (1984).

