

JOE OSTRENGER
JACK STACY

IBLA 85-574

Decided November 10, 1986

Appeal from a decision of the California State Office, Bureau of Land Management, holding the White Cliffs No. 1 through White Cliffs No. 12 mining claims abandoned and void. CAMC 160401 through CAMC 160412.

Affirmed.

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

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1982) and 43 CFR 3833.1-2 require that a mining claimant file with BLM a description of the location of the mining claim sufficient to locate the claimed lands on the ground. This description shall recite, to the extent possible, the section(s), the approximate location of all or any part of the claim to within a 160 acre quadrant of the section (or sections, if more than one is involved), and the township, range, meridian, and State obtained from an official survey plat or other U.S. Government map showing either the surveyed or protracted U.S. Government grid, whichever is applicable. Where a mining claimant fails to provide such a description with the recordation of the claim, BLM may properly require the filing of such a description within a certain period of time. The failure by the mining claimant to comply with such a request may be considered grounds for declaring the claim abandoned and void in accordance with 43 CFR 3833.4(b).

APPEARANCES: Joe Ostrenger and Jack Stacy, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Joe Ostrenger and Jack Stacy appeal from a decision of the California State Office, Bureau of Land Management (BLM), dated March 29, 1985, declaring

mining claims CAMC 160401 through CAMC 160412 located in T. 11 S., R. 39 E., Mount Diablo Meridian, Inyo County, California, abandoned and void. 1/ Appellants' location notices, recorded with BLM on December 18, 1984, did not indicate section numbers for the mining claims. 2/ BLM notified Ostrenger of this deficiency by certified letter received by him January 5, 1985, and on February 5, 1985, a copy of the same letter was sent to Stacy. He received it on February 8, 1985. Those letters informed appellants that BLM was unable to accomplish the recordation of the mining claims because the location notices did not contain a description that recites the "section, quarter-section, township, range, meridian and state." (Emphasis in originals.) Each letter stated that if BLM did not receive the required information within 30 days from receipt of the letter, the recordation of the claims would be rejected. Neither claimant responded, and BLM consequently issued the March 29, 1985, decision.

Appellants admit in their statement of reasons that the location notices did not show section numbers, but argue that BLM's declaration that their claims were abandoned and void for that reason amounts to a "procedural injury." They assert that "it was the intent of Congress with the passage of FLPMA [Federal Land Policy and Management Act of 1976] to limit the ability of the Secretary of the Interior to remove large tracts of Public Land from the operation of Public Land laws by generalized use of his discretion authorized under such laws." They characterize BLM's failure to record the location notices as "administrative inaction," and the requirement that they submit additional information as "unnecessary filing incumbrances [sic]."

1/ We note the record reflects two different spellings for the name of each appellant: Joe Ostrenger/Joe Ostringer and Jack Stacy/Jack Stacey. The first spellings appear to be the correct ones.

2/ The case file discloses the White Cliff mining claims were originally located by H. E. Ward in 1960. On Sept. 1, 1969, H. E. Ward executed a quitclaim deed conveying the mining claims to appellants. On Nov. 5, 1984, BLM received a copy of the quitclaim deed, an affidavit of assessment work for the 12 claims, and copies of the location notices filed in 1960 by H. E. Ward. By letter dated Nov. 9, 1984, BLM notified appellants that it had researched its records and could not find evidence that the subject claims had been previously filed with BLM. On Dec. 18, 1984, appellants filed with BLM amended notices of location for each of the claims. Neither the original notices of location, quitclaim deed, affidavit of assessment work, nor the amended notices of location indicated the section number wherein the claims are situated.

The White Cliff claims located in 1960 apparently were never recorded with BLM as required by 43 U.S.C. § 1744(b) (1982). Therefore, those claims were by law deemed conclusively abandoned and void. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.1-1. As such, they were not subject to amendment or relocation in 1984. See Fairfield Mining Co., 89 IBLA 209, 213 (1985). Appellants' "amended" locations would be effective only as original locations. See id. at 214. We will treat them as such for purposes of this decision.

[1] By statute, recorded location certificates must contain "a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim." 30 U.S.C. § 28 (1982). The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1982), requires a mining claimant to file with BLM "a description of the location of the mining claim * * * sufficient to locate the claimed lands on the ground." 43 CFR 3833.1-2(b)(5) provides that: "For all claims or sites a description shall be furnished." 43 CFR 3833.1-2(b)(5) continues:

(i) This description shall recite, to the extent possible, the section(s), the approximate location of all or any part of the claim to within a 160 acre quadrant of the section (quarter section), or sections, if more than one is involved, and the township, range, meridian and State obtained from an official survey plat or other U.S. Government map showing either the surveyed or protracted U.S. Government grid, whichever is applicable.

(ii) The location of the claims or sites shall be depicted on either a topographic map published by the U.S. Geological Survey or by a narrative or a sketch describing the claim or site with reference by appropriate tie to some topographic, hydrographic, or man-made feature. Such map, narrative description, or sketch shall set forth the boundaries and position of the individual claim or site with such accuracy as will permit the authorized officer of the agency administering the lands or mineral interests in such lands to identify and locate the claims or sites on the ground.

(iii) More than one claim or site may be shown on a single map or described in a single narrative or sketch if they are located in the same general area, so long as the individual claims or sites are clearly identified.

The only Board decision which addresses the specific topic of BLM's requiring a mining claimant to furnish a description of the location of his mining claim to within a quarter section is Walter Everly, 52 IBLA 58 (1981). In that case, the appellant failed to comply with BLM's request that appellant specify where the subject claims were situated, according to the rectangular survey system. The Board ruled that

BLM properly required appellant to supplement his certificate of location to reflect the quarter section where it is situated. Under 43 CFR 3833.1-2(c)(5) [3] BLM may require a claimant to furnish a description of the location of his claim to within a

3/ The requirement that a claimant describe the location of the claim to within a quarter section was previously embodied in 43 CFR 3833.1-2(c)(5) (1982), the text of which was virtually identical to that of 43 CFR 3833.1-2(b)(5)(i).

quarter section, if this information was not provided with his original filing.

52 IBLA at 59. However, of importance to the instant appeal, the Board noted in Everly that "[a]s the land has been surveyed, this information was readily ascertainable." Id.

Appellants suggest in their statement of reasons that T. 11 S., R. 39 E., whereon the subject claims are located, is unsurveyed. Other documents in the case file, including the affidavit of assessment work for the year ending September 1, 1984, and the quitclaim deed executed by H. E. Ward, conveying the mining claims to appellants, refer to the claims as located in an unsurveyed area of the township. These documents correctly reflect that the township is, in fact, unsurveyed. Surveys of portions of the township were executed by G. W. Baker under contract dated September 23, 1884, and approved on May 20, 1886, but those surveys were cancelled by BLM memorandum 9183.2 (420), dated April 24, 1970. A protraction diagram was officially filed with BLM on September 9, 1970.

The requirement that a mining claimant provide a description reciting the location of the claim or claims to within a quarter section, according to an official survey plat or other U.S. Government map including a protracted U.S. Government grid, is a qualified requirement. The claimant is required to describe "to the extent possible," the "approximate location of all or any part of the claim." 43 CFR 3833.1-2(b)(5)(i). This qualified requirement takes into account the problems associated with conforming the situs of the claim on the ground with the description of the claim in the notice of location. Those problems were discussed in Arley Taylor, 90 IBLA 313 (1986), which involved, inter alia, the issue of whether BLM had properly declared null and void in part three mining claims on the basis that they overlapped previously patented land over which the Department no longer had jurisdiction. BLM made its determination based upon information in appellant's location certificates, the map of the claims submitted, as required by 43 CFR 3833.1-2(b)(5)(ii), and official plats. The claims involved in Taylor also were located on unsurveyed lands.

The Board in Taylor observed that neither 30 U.S.C. § 28 (1982), 43 U.S.C. § 1744(b) (1982), nor the regulations promulgated thereunder "require a mining claimant to submit to BLM information sufficiently precise for his claim or claims to be projected onto a township plat." 90 IBLA at 316. Rather, the Board emphasized the requirement that the recorded description refer to a natural object or permanent monument. See 30 U.S.C. § 28 (1982). The purpose of this requirement is to "give a starting point from which, by following the description, the markings of the claim on the ground may be found." 90 IBLA at 316. See 2 American Law of Mining, § 33.09[3] (2d ed. 1984). However, according to the Board, "neither the statute nor the regulations requires a precise map or description of the position of the claims." 90 IBLA at 316. See Floyd and Elsie Patrin, 87 IBLA 152 (1985); Robert H. Lawson, 48 IBLA 93 (1980). The Board explained this rule:

Indeed, for most mineral locations, precision could not be achieved without a survey, a step the mining law (30 U.S.C. § 29 (1982)) does not require until an application for patent is made. See generally United States v. Haskins, 59 IBLA 1, 94-95, 88 I.D. 925, 972 (1980); 2 American Law of Mining, § 51.04 (2d ed. 1982). Rather, the test established by statute for the sufficiency of a recorded description is whether the claim may in fact be found and identified by following the recorded description. 2 American Law of Mining, § 33.09[3] (2d ed. 1984). [Emphasis added.]

90 IBLA at 316-17.

The Board in Taylor proceeded to emphasize that the distances from a natural object or permanent monument given in a location notice or certificate are not intended to be exact. The Board's analysis continued as follows:

In this regard, the map submitted with the location notice cannot independently serve as a basis for placing the claims on the protracted survey plat as it is not designed to be an exact depiction of the situs of the claims but merely an aid to finding them on the ground. See Floyd and Elsie Patrin, supra. These problems are in addition to the well recognized legal principle that the situs of the claim on the ground as disclosed by its monuments will control over a conflicting description in the notice of location. See United States v. Kincanon, 13 IBLA 165, 168 (1973); 2 American Law of Mining, § 33.04[9] (2d ed. 1984). [Emphasis in original.]

90 IBLA at 317-18.

Thus, in determining whether a claimant has complied with the description requirements, we must examine the information of record. Clearly, in this case the fact that the township involved is unsurveyed does not relieve the claimant from describing the approximate location of the claim, to the extent possible, based upon the protracted U.S. Government grid, and from providing a map, narrative, or sketch describing the claim with reference by appropriate tie to some topographic, hydrographic, or man-made feature.

Moreover, we find that appellants' location notices do not provide descriptions which refer to a natural object or permanent monument so as to give a starting point from which, by following the description, the markings of the claims on the ground may be found. See 2 American Law of Mining, § 33.09[3] (2d ed. 1984). For example, the narrative description of the amended location of White Cliffs #1 provides, "The discovery Mon is situated about 300 feet from the edge of Hill on its easterly Slope in a unsurveyed area and about 7 miles Northerly from upper Warm Springs in Saline Valley." The amended location for the White Cliffs #10 states: "The discovery Mon is situated about 8 miles from the upper Warm Springs and to the West of the Corridor Wash also to the West of the steel Summit road." None of the other notices is any more helpful in determining the location

of the claims. In addition, the "map" submitted by appellants on the back of the amended notice of location for the White Cliffs #1 claim would be of little assistance in locating the claim corners. It is not of sufficient detail that one could use it to identify and locate the claims on the ground, since it principally depicts the claims merely in their relationship to one another.

While BLM did not request additional information from appellants other than a description reciting the location of the claims to within a quarter section, appellants made no effort to provide additional information of any sort which would have satisfied the recordation requirements. ^{4/} This failure to respond, plus the deficiency of the narrative descriptions and the sketch provided in the location notices, requires that we affirm BLM's decision in this case. ^{5/}

The regulations at 43 CFR 3833.4 make clear the consequences of a failure to file a claim description which conforms with the requirements of 43 CFR 3833.1-2(b). Therein, the regulations state:

(b) The failure to file the information required in §§ 3833.1-2(b), 3833.2-1(c), 3833.2-2(a) and (b) or 3833.2-3(b) and (c) shall not be deemed conclusively to constitute an abandonment of the claim or site, but such information shall be filed within 30 days of receipt of a decision from the authorized officer calling for such information. Failure to file such information within the time allowed by decision shall cause the filing to be rejected by a decision appealable under the procedures of Part 4 of this title. Final affirmance of such rejection for failure to file such information shall be deemed conclusive evidence of abandonment of the mining claim, mill or tunnel site and such mining claim, mill or tunnel site shall be void.

We find that BLM's declaration that appellants' mining claims were abandoned and void was proper, given their failure, following notice, to provide a description reciting the location of each claim which complies with 43 CFR 3833.1-2(b)(5).

The dissent would remand to allow appellants a further opportunity to comply with the regulations. Appellants are considered to have knowledge of

^{4/} The better approach in cases in which BLM is seeking additional information regarding the description of mining claims located in areas covered by protracted surveys would be not only to request that the description provide, to the extent possible, the information required by 43 CFR 3833.1-2(b)(5)(i), but also to indicate that if such a description is not feasible, the description should be tied to some natural object or permanent monument.

^{5/} In other cases the Board has held that maps and narrative descriptions satisfied the statutory and regulatory requirements for recordation. See Floyd and Elsie Patrin, *supra*; Marion Birch, 53 IBLA 366 (1981); George Phil Martinez, 51 IBLA 330 (1980); Robert Lawson, *supra*.

the recordation requirements. See John Plutt, Jr., 53 IBLA 313, 316 (1981). When appellants' recordation documents failed to comply with the regulations, BLM gave them notice and an opportunity to correct the deficiency. Appellants failed to respond. They did not say the area was covered by a protracted survey and providing the information would be difficult or impossible; they said nothing. On appeal, appellants indicate they may have relocated these claims, but they submitted no information to identify the location of the present claims. Under the circumstances, BLM's decision was proper.

Accordingly, 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.

Bruce R. Harris
Administrative Judge

I concur:

Anita Vogt
Administrative Judge
Alternate Member

ADMINISTRATIVE JUDGE MULLEN DISSENTING:

In order to best illustrate why I do not join with the majority, I will cast the sequence of events in reverse order.

On March 29, 1985, the Bureau of Land Management (BLM) rejected appellants' mining claim recordation filings because the "[l]ocation notices did not show the section numbers." After stating "[t]he claimants were notified of this discrepancy * * * claimants were asked to respond within 30 days" and that "[a] response was not received." BLM held that "[c]laimants have failed to comply with the regulations, the recordation of these claims is hereby rejected." The decision further states that 43 CFR 3833.4(a) provides that failure to file instruments required by 43 CFR 3833.1 and 43 CFR 3833.2 within the time periods prescribed shall be deemed conclusively to constitute an abandonment of the claims.

As can be seen the reason for BLM's conclusion that the claims had been deemed conclusively abandoned and void was appellants' failure to show the section number of the section in which the claims were located, after having been given an opportunity to do so. 1/ The initial notice of BLM's finding that the filings were insufficient was given on February 5, 1985. That notice was by form letter which stated, in pertinent part:

We have been unable to accomplish the recordation of the above-named mining claim/site(s) because:

* * * * *

a description that recites the section, quarter-section, township, range, meridian and state.

* * * * *

Reference to the assigned CA MC serial numbers will expedite the processing of your correspondence. If we do not receive the required information/documents within 30 days from receipt of this letter, the recordation of the claim(s) will be rejected. [Emphasis in original.]

1/ The claims were located in 1960 and amended in 1964. The majority opinion properly considered the 1984 amendments to the new locations. The 1960 claims can be conclusively deemed abandoned and void for failure to file on or before October 21, 1979, pursuant to 43 U.S.C. § 1744(b) (1982). For claims located after October 21, 1976, notices must be filed within 90 days from the date of location. The notices of the 1984 locations were filed within the requisite period.

The basis for BLM's rejection was appellants' failure to comply with 43 CFR 3833.1 and 43 CFR 3833.2 because of the failure to identify the location of the claims by section and quarter-section. The provisions of 43 CFR 3833.1-2 were adopted to further define that provision of 43 U.S.C. § 1744(b) (1982), including that portion of § 1744(b) which requires the submittal of a "description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground." The applicable provisions of 43 CFR 3833.1-2 provide:

(5) For all claims or sites a description shall be furnished.

(i) This description shall recite, to the extent possible, the section(s), the approximate location of all or any part of the claim to within a 160 acre quadrant of the section (quarter section), or sections, if more than one is involved, and the township, range, meridian and State obtained from an official survey plat or other U.S. Government map showing either the surveyed or protracted U.S. Government grid, whichever is applicable.

(ii) The location of the claims or sites shall be depicted on either a topographic map published by the U.S. Geological Survey or by a narrative or a sketch describing the claim or site with reference by appropriate tie to some topographic, hydrographic, or man-made feature. Such map, narrative description, or sketch shall set forth the boundaries and position of the individual claim or site with such accuracy as will permit the authorized officer of the agency administering the lands or mineral interests in such lands to identify and locate the claims or sites on the ground.

(iii) More than one claim or site may be shown on a single map or described in a single narrative or sketch if they are located in the same general area, so long as the individual claims or sites are clearly identified;

* * * * *

(6) In place of the requirements of paragraph (b)(5) of this section, an approved mineral survey may be supplied. A mining claim described by legal subdivisions, section, township, range, meridian and State fulfills the requirements of paragraph (b)(5) of this section.

When 43 CFR 3833.1-2(5)(i) is read in conjunction with 43 CFR 3833.1-2(6), it becomes apparent that the claimant has the option to meet the regulatory requirement by either complying with paragraph (i) or paragraph (ii).

The logic of the interpretation becomes readily apparent when analyzing what would be necessary when attempting to comply with paragraph (i) in

surveyed and unsurveyed lands. For surveyed lands one would be able to meet the requirements by finding a survey monument and tying the claims to that monument. For unsurveyed lands, a claimant would be required to tie the claims to some topographic, hydrographic, or man-made feature and then find that feature on a topographic or similar map and, by projection, determine the location of the claims in relation to the projected legal subdivision lines. ^{2/} Thus, for unsurveyed lands, a tie to some readily identified topographic, hydrographic, or man-made monument which could readily be identified in the field should satisfy the requirements of 43 U.S.C. § 1744(b) (1982).

Thus, it can be seen that, if a map is submitted which meets the requirements of 43 U.S.C. § 1744(b) (1982), by sufficient ties to natural or man-made monuments, claims located on unsurveyed lands should not be conclusively deemed to be abandoned and void.

The file did not contain a Geological Survey, or similar map of the area of sufficient detail to attempt to locate the claims based on appellants description and map. Without this map I am unable to determine whether the description of the claim, which is set forth in detail in the majority opinion, and as depicted on appellants' map is sufficient to locate the claims on the ground, a fact which has never been alleged.

In summary, I find appellants have, in fact, failed to comply with the requirements of 43 CFR 3833.1-2(5)(i), appellants were never given an opportunity to comply with 43 U.S.C. § 1744(b) (1982) by submitting a document in compliance with 43 CFR 3833.1-2(5)(ii), and the evidence in the file is insufficient to conclude that the evidence submitted did not comply with 43 CFR 3833.1-2(5)(ii). I would set the BLM decision aside and remand this case to BLM for further consideration.

R. W. Mullen
Administrative Judge

^{2/} The futility of this additional exercise is apparent when examining Jennie A. Wasey, 92 IBLA 228 (1986). In that case, the claimant misidentified the location of the claims when describing the claims based upon a projection by one full Township, but met the recordation requirements.

