

KERRY SHUMWAY

IBLA 86-265

Decided September 25, 1987

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring mining claims invalid. UMC 286018 through UMC 286022.

Affirmed as modified.

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

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

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

"Dates of Location." The date of location of a mining claim is determined in accordance with the law of the state where the claim is situated. Under Utah law, the date of location is that date specified in the notice of location posted on the mining claim and in the copy of the notice of location filed with the county recorder's office.

APPEARANCES: Kerry Shumway, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Kerry Shumway has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated November 29, 1985, declaring the Antelope Nos. 4 through 8 mining claims, UMC 286018 through UMC 286022, invalid for failure to file copies of the notices of location with BLM within 90 days after the date of location of the claims, as required by section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982).

On appeal to the Board appellant asserts that the Antelope Nos. 4 through 8 mining claims "[w]ere refiled on August 6, 1985, in Sanpete County, and filed with the BLM in Salt Lake City, Utah, on September 5, 1985," and therefore should be valid.

The notices of location indicate that the claims were located on the ground on January 19, 1985. The record reflects that copies of appellant's notices of location were originally recorded with the Sanpete County recorder on January 23, 1985. The notices of location bear a second date stamp from the Sanpete County recorder's office indicating they were filed for recordation a second time on August 6, 1985. The notices were subsequently filed with BLM on September 5, 1985.

[1] Pursuant to section 314(b) of FLPMA and the regulation at 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located after October 21, 1976, on Federal land must file with the proper BLM office within 90 days after the date of location a copy of the official record of the notice or certificate of location of the claim filed under state law. If this record of the notice of location is not filed within 90 days, the claim is conclusively presumed to be abandoned by statute, 43 U.S.C. § 1744(c) (1982), and properly declared abandoned and void under 43 CFR 3833.4(a). C. B. Shannon, 55 IBLA 312 (1981); John C. Buchanan, 52 IBLA 387 (1981).

[2] The date of location of a mining claim is determined by the law of the state where the claim is situated. 43 CFR 3833.0-5(h); C. B. Shannon, *supra*. Appellant's placer claims lie within the State of Utah. Under Utah law the date of location is established by the date specified in the notice of location posted on the mining claim and in the copy of the notice of location filed with the county recorder's office. Utah Code Ann. §§ 40-1-2, 40-1-4 (1981). The BLM decision declared appellant's claims invalid because the location notices were not filed within 90 days after the date of location of the claims. Appellant's notices of location expressly state the date of location as January 19, 1985, while the filing with BLM did not occur until September 5, 1985, more than 7 months thereafter.

On appeal, appellant asserts that the claims should be valid because they were "refiled" in the county recorder's office on August 6, 1985, and thereafter filed with BLM on September 5, 1985. However, it is the date of location of a claim rather than the date it is recorded with the county recorder's office which initiates the 90-day period for recording the notice of location with BLM. The date of location shown on the notice of location is controlling when determining whether the claim has been timely recorded with BLM. C. B. Shannon, *supra*; John C. Buchanan, *supra*. Refiling the claim with the country recorder prior to filing the notice of location with BLM will not alter the date of location or revive a claim which had not been recorded with BLM within 90 days of the date of location. Depending upon the status of the lands involved, the claims may be relocated. However, a relocation or new location establishes a new date of location as opposed to an amended notice of location which merely furthers rights acquired by a valid subsisting location and which relates back to the original date of location.

See R. Gail Tibbetts, 43 IBLA 210, 86 I.D. 538 (1979). In Utah the notices of location must be filed for record with BLM within 90 days of the date of location shown on the notice of location.

As the required instruments relating to these claims, located after October 21, 1976, were not filed with BLM within 90 days from the date of location, BLM should have declared the claims abandoned and void for that reason. The decision of November 29, 1985, is affirmed as so modified.

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 Utah State Office is affirmed as modified.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

R. W. Mullen
Administrative Judge

