



WESTERN UTAH COPPER CO.
NORTH AMERICAN EXPLORATION, INC.

174 IBLA 337

Decided May 30, 2008



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

WESTERN UTAH COPPER CO.
NORTH AMERICAN EXPLORATION, INC.

IBLA 2006-181

Decided May 30, 2008

Appeal from a decision issued by the Utah State Office, Bureau of Land Management, declaring 40 mining claims abandoned and void for failure to record copies of the notices of location within 90 days after the date of location. UMC 382763 through UMC 382802.

Reversed and remanded.

1. Mining Claims: Recordation of Certificate or Notice of Location--
Applications and Entries: Filing

A BLM decision declaring mining claims abandoned and void for failure to record copies of the notices of location with BLM within 90 days after the date of location because the notices of location were received on the 91st day after location in an envelope bearing only a Pitney-Bowes postage meter stamp will be reversed when, on appeal, the appellants provide the written statement of the U.S. Postal Service Officer in Charge of the Post Office from which the envelope was mailed stating that the Post Office does not hand or machine cancel Pitney-Bowes meter dates applied by licensed customers with active permits, that the company mailing the notices was a licensed customer with an active permit, and that the Post Office recognized the Pitney-Bowes postage meter date as the official date of depositing the mail for delivery.

APPEARANCES: Mark Dotson and O. Jay Gatten, Kaysville, Utah, for appellants.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Western Utah Copper Company (Western Utah) and North American Exploration, Inc. (North American) (collectively, appellants) have appealed from an April 17, 2006, decision of the Utah State Office, Bureau of Land Management

(BLM), declaring 40 mining claims abandoned and void for failure to record copies of the notices of location (NOLs) within 90 days after the date of location.¹ Appellants argue that they mailed the NOLs on the 90th day after locating the claims and, since BLM received the NOLs within 15 days, that the NOLs should be considered timely filed under 43 C.F.R. § 3830.5. BLM's decision states that appellants do not qualify for that grace period because the envelope used to transmit the NOLs had only "a private meter stamp." For the reasons stated below, we reverse.

Background

The NOLs for the claims at issue show "Western Utah Copper Co.[,] Mark Dotson," as the locator, and "North American Exploration[,] Inc.[,] O. Jay Gatten," as agent. Gatten is the signatory on the NOLs, and the county recorder stamp on each NOL shows that North American filed the NOL with the county. Each NOL lists the location date of the claim as January 13, 2006. BLM date stamped all of the NOLs as received on April 14, 2006. The envelope used to transmit the NOLs bears only a Pitney-Bowes postage meter stamp dated "Apr 13 06" designated as "MAILED FROM KAYSVILLE, UT 84037." On April 17, 2006, BLM declared the claims abandoned and void, and appellants timely appealed.

Analysis

The regulation at 43 C.F.R. § 3833.11(a) requires that a copy of the NOL be recorded with BLM "by the 90th day after the date of location," and 43 C.F.R. § 3833.1(a) states that if the claim is not recorded by the 90th day, the claim is abandoned and void. "Recording" is defined as the act of filing a notice or certificate of location with the local recording office and BLM. 43 C.F.R. § 3830.5. Therefore, appellants were required to have filed their NOLs with BLM by the 90th day after their claims were located, *i.e.*, by April 13, 2006. "Filed means a document is--(a) Received by BLM on or before the due date; or (b)(1) Postmarked or otherwise clearly identified as sent on or before the due date by a *bona fide* mail delivery service, and (2) Received by the appropriate BLM state office" within 15 days after the due date.² 43 C.F.R. § 3830.5. BLM did not receive appellants' NOLs by the due date. Therefore, the NOLs, which were received within 15 days after the due date, may be considered timely filed only if the envelope in which they were transmitted was postmarked or otherwise identified as sent on or before the due date by a *bona fide* delivery service.

¹ Those claims are the GB-458 through GB-497 lode mining claims, serialized as UMC 382763 through UMC 382802, respectively.

² Clearly, the postmark would be affixed to the envelope or other packaging containing the document. See 43 C.F.R. § 3833.0-5(m) (2002).

The envelope used to transmit the NOLs bears only a Pitney-Bowes postage meter stamp, dated April 13, 2006, indicating the envelope was mailed from Kaysville, Utah. No postmark from the U.S. Postal Service appears on the envelope.

In *Jon Roalf*, 169 IBLA 58 (2006), we addressed an appeal of a BLM decision declaring a mining claim forfeited by operation of law for failure timely to file the \$125 per claim maintenance fee on or before September 1, 2005, for the 2006 assessment year. In that case, the payment arrived late on September 9, 2005, in an envelope bearing two postmarks: a Pitney-Bowes postage meter stamp, dated August 4, 2005, and a U.S. Postal Service postmark dated September 6, 2005. Appellant argued that BLM should honor the Pitney-Bowes postage meter date, alleging that the secondary postmark of September 6, 2005, was affixed by the U.S. Postal Service at the time it forwarded the envelope after having misplacing it. We refused to recognize the Pitney-Bowes postage meter stamp as evidence of having been sent on or before the due date by a *bona fide* mail delivery service.³ *Id.* at 62.

On appeal, appellants offer a letter dated April 25, 2006, from the “Officer In Charge,” U.S. Postal Service, Kaysville, Utah, stating that the Post Office

does not hand cancel or machine cancel meter stamps that are put on by licensed customers with an active permit number. North American Exploration has a current permit with the Kaysville Post Office and is licensed to use their Pittney [sic] Bowes Machine for dating and applying postage to their mailings. The Postal Service recongnizes [sic] this as an official date for when mail was deposited for delivery.

Thus, appellants’ argument is that because the Kaysville Post Office recognizes Pitney-Bowes postage meter stamps on envelopes mailed by North American as reflecting the official date upon which the envelope was deposited for delivery by the U.S Postal Service, the envelope bearing the NOLs should be considered postmarked or otherwise identified as being sent on or before the due date by a *bona fide* delivery service. In reliance on the evidence provided by appellants, we accept their argument.

³ The applicable regulation in that case, 43 C.F.R. § 3830.24(c), provides that a claimant “may send payments using a *bona fide* delivery service,” but that “[t]he payment must be postmarked or clearly identified by the mail delivery service as being sent on or before the due date” (43 C.F.R. § 3830.24(c)(1)), and “[t]he BLM State Office must receive the payment no later than 15 calendar days after the due date” (43 C.F.R. § 3830.24(c)(2)). The language in the regulation defining “[f]iled” is similar.

The present case is distinguishable from *Roalf*. In that case, the envelope in question bore two different dates and the appellant did not offer any evidence in support of his argument that the envelope had been timely deposited with the U.S. Postal Service and thereafter lost. We had no basis on which to accept anything other than the postmark affixed by the U.S. Postal Service on September 6, 2005.

In this case, the envelope bears only one date, that affixed by a Pitney-Bowes postage meter, which is the 90th day following location of the claims. While that evidence alone does not satisfy the definition of “[f]iled” in 43 C.F.R. § 3830.5, the U.S. Postal Service employee’s explanation that the Postal Service considered the date affixed by North American’s Pitney-Bowes postage meter as the “official date for when the mail was deposited for delivery” means that the U.S. Postal Service essentially adopted that postage meter stamp as its own postmark. That evidence satisfies the regulatory definition of “[f]iled.”

Appellants have shown that the NOLs were sent on the due date in an envelope postmarked by a *bona fide* delivery service and received by BLM within 15 days after that due date.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, BLM’s decision is reversed and the case is remanded for action consistent with this decision.

_____/s/_____
Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

_____/s/_____
H. Barry Holt
Chief Administrative Judge