



TIM DANN

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Decided April 27, 2011



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

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IBLA 2011-104

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Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring unpatented mining claim forfeited for failure to timely cure a defective location notice. NMC 1026985.

Affirmed as modified.

1. Mining Claims: Recordation of Certificate or Notice of Location

Pursuant to 43 C.F.R. § 3830.94(b), a claimant shall have 30 days after receipt of written notification from BLM in which to cure a defective certificate of location, or the involved mining claim will be forfeited by operation of law. BLM is without authority to extend that regulatory deadline except through rulemaking.

APPEARANCES: Tim Dann, Carlin, Nevada, *pro se*.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Tim Dann has appealed from a January 4, 2011, decision of the Nevada State Office, Bureau of Land Management (BLM), declaring the Indain Mountain #1 (NMC 1026985) unpatented mining claim forfeit for failure to furnish a complete legal description of the located claim in response to a “Notice: Additional Information Required,” dated September 17, 2010. We affirm BLM’s decision as modified.

On September 13, 2010, appellant filed a copy of a Certificate of Location (COL) for the subject mining claim. However, the COL was defective in that it did not include a complete legal description of the claim, having omitted the quarter section information. Upon its discovery of appellant’s defective COL, BLM provided appellant with notice of the defect and an opportunity to cure by instructing appellant to submit an amended COL, generally consistent with the requirements of 43 C.F.R. § 3830.94 (“How may I cure a defect in my compliance with these

regulations?”). Moreover, BLM provided appellant 90 days from receipt of the notice to provide the missing information, stating that “[f]ailure to comply will result in the issuance of a decision declaring the subject claim(s) forfeit and void.” Appellant failed to respond to BLM’s notice within that 90-day time period, and BLM issued its decision declaring the claim forfeit. Appellant appealed but alleged no error in BLM’s decision.

[1] Section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (2006), provides that the owner of an unpatented mining claim shall file a copy of the notice or certificate of location with BLM within 90 days after the date of location. Such notice or certificate of location must include “a description of the location of the mining claim . . . sufficient to locate the claimed lands on the ground.” 43 U.S.C. § 1744(b) (2006); *see* 43 C.F.R. § 3833.11(b)(5). The description must “describe the land by state, meridian, township, range, section and by aliquot part¹ to the quarter section.” 43 C.F.R. § 3832.12(a)(1). Timely filing a defective COL does not constitute a failure to file (which would “be deemed conclusively to constitute an abandonment of the mining claim . . . by the owner”), 43 U.S.C. § 1744(c) (2006), but such a defect must be cured within 30 days to satisfy FLPMA’s filing requirements. Otherwise, the claims will be declared forfeited. 43 C.F.R. § 3830.94(d); *see Topaz Beryllium Co. v. United States*, 649 F.2d 775, 778 (10th Cir. 1981) (recognizing that a defective filing for a claim will be rejected if not cured in 30 days after notice).

The relevant regulation states that “[i]f you have filed **any defective document** other than a defective fee waiver request, you must cure the defects within **30 days** of receiving BLM’s notification of the defects.” 43 C.F.R. § 3830.94(b) (emphasis added).

In this instance, BLM allowed appellant an opportunity to cure the defect within **90 days** of receipt of the notice. We are unsure why BLM inappropriately extended the opportunity to cure. It is possible that, considering BLM’s reference to 43 C.F.R. § 3833.22 in its notice letter (“You must record an amended location certificate or notice with BLM within 90 days after you record the amended notice or certificate in the local recording office”), BLM decided that requiring the cure of a COL by filing an amended COL within 90 days of receiving BLM’s notice would be consistent with the 90-day requirement in that regulation. However, the 90-day filing requirement in 43 C.F.R. § 3833.22(a) has nothing to do with responding to a BLM notice of defect and, in fact, it imposes no absolute filing deadline but only a relative one. That is, the claimant must record his amended COL with BLM within 90 days after recording the amended COL with the local recording office. There is no

¹ Aliquot part is defined as “a legal subdivision of a section of a township and range, except fractional lots, by division into halves or quarters.” 43 C.F.R. § 3830.5.

reference to when the claimant should record the amended COL with the local recording office. If BLM extended the cure period on that or any other basis, then BLM's actions were in error.

BLM's extension of the cure period also violated the BLM Manual. The Manual identifies, consistent with the corresponding regulations, the information required to be included on a COL to complete recordation of a mining claim, including a "Description of Mining Claims and Sites." BLM Manual 3833.12.B.5. The Manual also addresses defects in that information. "Failure to file adequate information called for in [BLM Manual 3833] .12[.]B . . . is a curable defect. . . . For curable defects, a decision is issued to the owner of the mining claim or site giving 30 days to submit the requested information, or the mining claim or site will be declared abandoned and void." BLM Manual 3833.73.A. The BLM Manual is consistent with BLM's regulations, and BLM may not extend the cure period except through rulemaking.

Even though BLM, in error, provided too much time for appellant to cure his defective COL, appellant failed to respond during even this extended period, and BLM appropriately declared appellant's claims to be forfeit.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed as modified herein.

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

I concur:

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