ANNIVERSARY MINING CLAIMS LLC

187 IBLA 95 February 8, 2016

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
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ANNIVERSARY MINING CLAIMS LLC

IBLA 2015-156 February 8, 2016

Appeal from a decision of the Nevada State Office, Bureau of Land Management (BLM), declaring unpatented lode mining claims forfeit and void. NMC1108687 *et al.*

Affirmed.

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

   When BLM determines that a claimant has filed a defective certificate or notice of location, BLM must send the claimant a notice of the defect by certified mail, return receipt requested. If the claimant fails to submit the required documentation within 30 days of receipt of the notice of the defect, the claimant forfeits the mining claims.

2. Administrative Procedure: Generally--Mining Claims: Location

   The Department has long followed the rule that transmission of a notice to a party's last address of record by registered or certified mail, return receipt requested, constitutes constructive service even though delivery was unsuccessful. A party may defeat application of the rule by showing error in Postal Service procedure.

APPEARANCES: Gregory A. Miles, Esq., Henderson, Nevada, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Anniversary Mining Claims, LLC (Appellant), has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), declaring eight

unpatented lode mining claims in Clark County, Nevada, forfeited and void.[1] BLM stated in its Decision that the claims were forfeited because Appellant failed to amend its location documents for the claims within 30 days of receiving notice of defects in the documents from BLM. BLM Decision dated Apr. 10, 2015 (Decision) at 1. Based on the following analysis, we affirm BLM's decision.

Background

Appellant sent Certificates of Location (COLs) for the mining claims at issue to BLM in January 2015. BLM sent a Notice to Appellant on February 4, 2015, to notify it that its "location documents contain location discrepancies between [Appellant's] COLs and [Appellant's] claim maps that must be corrected as a requirement of 43 CFR 3833.11." Notice at 1. BLM attached an exhibit to its Notice that indicated the discrepancies for seven claims at issue by comparing their locations as described in the COLs versus the locations as illustrated on Appellant's claim map. *Id*. at Exhibit A. BLM additionally identified mathematical errors in the COLs for the Anniversary No. 3 and Anniversary No. 4 (NMC1108687 and NMC1108688) claims, and an error in the claim description for the Anniversary No. 17 (NMC1108701) mining claim. *Id*. at 2. BLM provided Appellant 30 days in which to correct the discrepancies pursuant to 43 C.F.R. § 3830.94(b). *Id*. BLM stated that failure to do so would "result in the issuance of a decision declaring the subject claims forfeit and void," citing 43 C.F.R. § 3830.94(d).

BLM sent the Notice via certified mail on February 4, 2015, to Appellant's address of record at 1231 Sharon Road, Las Vegas, Nevada. BLM's records show that the Notice arrived on February 10, 2015. BLM also states that "USPS records indicate that a notice was left and [its] correspondence went unclaimed." Decision at 2. The Notice was returned to BLM on March 10, 2015.

The record contains no evidence that Appellant provided amended COLs or maps within the prescribed 30-day period. On April 10, 2015 BLM issued the Decision being appealed, declaring the claims forfeited and void because Appellant did not provide amended COLs or maps within the 30 days provided.

Appellant timely appealed BLM's decision. Appellant does not state that it filed amended COLs or maps within the prescribed 30 day period. Instead, Appellant states that it did not receive BLM's Notice. Notice of Appeal (Appeal) at 1. Specifically,

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1 The claims listed as forfeited are Anniversary 3 (NMC1108687), Anniversary 4 (NMC1108688), Anniversary 6 (NMC1108690), Anniversary 7 (NMC1108691), Anniversary 12 (NMC1108696), Anniversary 14 (NMC1108698), Anniversary 17 (NMC1108701), and Anniversary 18 (NMC1108702).

Appellant states that "the USPS mail carrier attempted to deliver the certified Notice to 1221 Sharon Road, Las Vegas, Nevada, not 1231 Sharon Road, which is the address of record" for the Appellant. Appeal at 1. According to Appellant, it has received an apology from the post office for the mistake, and the post office "has expressed a willingness to document their mistake in written correspondence to the BLM if required." *Id*.

Analysis

[1] The law controlling the disposition of this appeal provides that when BLM determines that a claimant has filed any defective document, BLM must send the claimant a notice of the defect by certified mail return receipt requested. 43 C.F.R. § 3830.94(a). The claimant must cure the defect within 30 days of receipt of BLM's notification of the defect for any document other than a defective fee waiver request. 43 C.F.R. § 3830.94(b). If the claimant fails to submit the required information within the 30-day period, the claimant forfeits the mining claims or sites. 43 C.F.R. § 3830.91(a)(8); *see also* 43 C.F.R. §§ 3830.93(b), 3830.94(d).

[2] The law governing constructive service is also relevant to the disposition of this appeal. The applicable regulation, 43 C.F.R. § 1810.2 (b), provides:

> Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities.

Our precedent clarifies that pursuant to this regulation, "when BLM sends a notice or decision, return receipt requested, to a party's last address of record and it is returned by the Postal Service because there is no forwarding address, or delivery was refused, or no such address exists . . . BLM is deemed to have met its obligation to notify the party and may act as if delivery had actually been made." *J-O'B Operating Co.,* 97 IBLA 89, 91 (1987). Thus the transmission of a notice to a party's last address of record by certified mail, return receipt requested, constitutes constructive service even though the delivery was not successful. *Robert W. Willingham,* 164 IBLA 64, 66

(2004) and cases cited. More specifically, we have held that when the U.S. Postal Service has attempted to deliver a BLM notice sent via certified mail, return receipt requested, but returned the letter to BLM marked "Unclaimed,'" the notice is considered constructively received despite the lack of actual receipt. *Bruce M. Lewis*, 156 IBLA 287, 290 n.3 (2002) and cases cited.

In this case, BLM notified Appellant of defects in its claim location documents and provided it with 30 days to cure the defects. 43 C.F.R. § 3830.94. The record shows that the Notice was sent to Appellant's address of record, and that Appellant did not claim the Notice, and therefore failed to cure the defects within 30 days of receipt of BLM's notification as required by 43 C.F.R. § 3830.94(b).

We have carefully considered Appellant's Appeal. Its contents do not provide a basis for altering BLM's decision because they do not provide evidence to excuse Appellant's failure to respond to the Notice within 30 days. Appellant states in its Appeal that it did not receive the Notice due to an error by the U.S. Postal Service, but has provided no evidence to support this statement. In the absence of any evidence demonstrating an error in the delivery of the Notice, we must conclude that Appellant constructively received the Notice in this case despite the claim of lack of actual receipt. *Bruce M. Lewis*, 156 IBLA at 290 n.3; *J-O'B Operating Co.,* 97 IBLA at 92; *see also David Robertson*, 107 IBLA 114, 116 (1989). Appellant failed to respond to the Notice, and in accordance with the applicable regulations, 43 C.F.R. §§ 3830.91(a) (8), 3830.93(b), and 3830.94(d), we conclude that BLM properly declared the mining claims forfeited and void.

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 is affirmed.

/s/
James F. Roberts
Administrative Judge

I concur:

/s/
Eileen Jones
Chief Administrative Judge