

INTERIOR BOARD OF LAND APPEALS

Byron L. Philpott

137 IBLA 137 (December 12, 1996)

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BYRON L. PHILPOTT

IBLA 93-395

Decided December 12, 1996

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting lode mining claims for recordation. CAMC 259377 through CAMC 259379.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claim Certificates or Notices of Location—Mining Claims: Recordation of Certificate or Notice of Location

Although 43 CFR 3833.0-5(h) provides that the date of location of a mining claim shall be determined by state law in the jurisdiction where the claim is located, where the location certificate, as recorded with the county recorder's office as required by state law, recites a specific date of location of the claim, that date will be used as the inception of the 90-day period allowed for recordation by 43 U.S.C. § 1744 (1994), as that is the date upon which the claimant asserts he located the claim and entered upon the public land.

2. Mining Claims: Rental or Claim Maintenance Fees: Generally

The Department of the Interior and Related Agencies Appropriations Act of 1993, P.L. 102-381, 106 Stat. 1374, approved on Oct. 5, 1992, provides "[t]hat for every unpatented mining claim * * * located after the date of enactment of this Act through September 30, 1994, the locator shall pay \$100 to the Secretary of the Interior or his designee at the time the location notice is recorded with the Bureau of Land Management to hold such claim for the year in which the location was made." 106 Stat. 1379. Where appellant timely filed location notices within 90 days of the date of location, but did not include payment of the \$100 rental fee, the notices were properly rejected for recordation. A refile of the same location notices including location and rental fees will be deemed untimely filed where the location notices establish a local recordation date more than 90 days prior to the date the notices and fees were received by BLM.

APPEARANCES: Byron L. Philpott, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE BYRNES

Byron L. Philpott appeals from an April 13, 1993, decision of the California State Office, Bureau of Land Management (BLM), declaring unpatented lode mining claims CAMC 259377 through CAMC 259379 abandoned and void for failure to file a copy of the notice or certificate of location with BLM within 90 days after the date of location as required by section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1994), and implementing regulations found at 43 CFR 3833.1-2(a).

The statute and regulations provide that mining claims located after October 21, 1976, shall be recorded with BLM by filing "a copy of the official record of the notice of location or certification of location" within 90 days after the "date of location of such claim." BLM's decision asserts that the Bag Pipes (CAMC 259377), Black Watch (CAMC 259378), and Highland Fling (CAMC 259379) claims were located on October 8, 1992, but the required location notices were not filed in BLM offices until March 4, 1993, after the 90-day filing period had expired.

In his notice of appeal and statement of reasons (SOR), appellant states that he recorded the three claims in the local recording office on October 8, 1992. He avers, however, that he staked the claims by setting up markers on them on December 5, 1992. He asserts that BLM received copies of his location notices on January 8, 1993, but returned them because he had not included rental fees. Philpott states that he was not aware that the "new rental fee of \$100 per claim per year" had to accompany the recordation papers, in addition to recordation fees. He also expresses confusion regarding when the act of location took place. "[D]id I locate the three mining claims in the court house in Sonora Co. or did I do it when I put up my markers?" he asks.

The location notices for the three claims in BLM's case file reveal that they were originally stamped as received by "USDI-BLM-CA" on January 8, 1993. Those date stamps, located on the bottom of each notice, have been crossed through with red ink. A second date stamp appears on each of the three notices near the top of the page, showing that BLM received them a second time on March 4, 1993. On the back of each claim form, under topographical maps on which are drawn the boundaries of the claims, are written the words "Physically located Dec. 5, 1992." A "Receipt and Accounting Advice" filed with the record reveals that BLM recorded payment in the amount of \$330 received from Philpott on March 5, 1993. Thus, it appears that after Philpott received the returned location notices, he wrote on the back of each notice that he had physically located the claims on December 5, 1992, and returned the forms to BLM with the required \$330 total fee.

The back of each of Philpott's claim forms also quotes sections of the California Public Resources Code pertaining to the proper procedure for

locating a mining claim within the state of California. Section 2301(d) (now section 3901(d)) ^{1/} provides that "[t]he date of location * * * shall be the date of posting such notice [of location posted in or on the conspicuous and substantial monument identifying the claim]." Section 2313 (now section 3911 (see n. 1)) provides that after a notice of location has been posted upon a mining claim, tunnel or millsite, the locator shall record the location of that claim "in the office of the county recorder of the county in which * * * [the] claim is situated."

Thus, California law contemplates that a mining claimant will stake his claim, post a notice of location on his claim, then record the location notice with the county recorder, listing the date the claim notice was posted on a conspicuous monument on the ground staked as the date the claim was located. In this case, however, Philpott avers he filed the location notices with the county recorder prior to the date he staked the claims. He wants to know which is the "date of location"—the October 8, 1992, date listed on the front of his form or the December 5, 1992, date listed on the back.

The question before us, then, is which evidence on Philpott's location notices activates the 90-day filing period set forth in section 314(b) of FLPMA.

[1] By Departmental regulation, as well as decisions of this Board, the "date of location" of a mining claim is "the date determined by State law in the local jurisdiction in which the unpatented mining claim, mill or tunnel site is situated." 43 CFR 3833.0-5(h); John & Maureen Watson, 113 IBLA 235 (1990); Dutch Creek Mining Co., 98 IBLA 241, 247 (1987). Under California law, the date of posting a location notice on a permanent monument situated on the claim is the date of location. Cal. Pub. Res. Code §§ 3900(d), 3902(d), 3915 (West 1984, Supp. 1996); John & Maureen Watson, *supra*; C. B. Shannon, 55 IBLA 312 (1981); Lee Resources Management Corp., 50 IBLA 131, 132 (1980).

As a practical matter, however, decisions by this Board have generally treated the date of location as the date of posting stated in a recorded location certificate. Dutch Creek Mining Co., *supra* at 248, n.6; *see American Law of Mining* § 33.10[5] (2d ed. 1985). In large measure, this is because most of the Board's cases on this point arise under section 314(b) of FLPMA which requires that "a copy of the official record of the notice of location or certification of location," be filed "within ninety days after the date of location of such claim."

^{1/} Specifically, sections 2301, 2302, 2306, 2307, 2311, 2313, and 2316 are quoted. Those and related sections were recodified by Stats. 1988, c. 259, § 11 at California Public Resources Code, §§ 3900-3924, as amended, (West 1984, Supp. 1996).

Although 43 CFR 3833.0-5(h) provides that the date of location of a mining claim shall be determined by state law in the jurisdiction where the claim is located, where the location certificate, as recorded with the county recorder's office as required by state law, recites a specific date of location of the claim, that date will be used as the inception of the 90-day period allowed for recordation by 43 U.S.C. § 1744 (1994), as that is the date upon which the claimant asserts he located the claim and entered upon the public land. See Mrs. George G. Wagner, 63 IBLA 146, 149-51 (1982). The Board has held that allegations that the true date of location is other than that recorded on the notice of location cannot dictate a different result. John C. Buchanan, 52 IBLA 387 (1981); Lee Resources Management Corp., *supra*; P & S Mining Co., 45 IBLA 115 (1980).

[2] In this instance, the date recorded on the certificate is October 8, 1992. Philpott's notices of location were locally recorded 3 days after the effective date of the Department of the Interior and Related Agencies Appropriations Act of 1993 (the Act), P.L. 102-381, 106 Stat. 1374 (Oct. 5, 1992). That statute provided:

[t]hat for every unpatented mining claim * * * located after the date of enactment of this Act through September 30, 1994, the locator shall pay \$100 to the Secretary of the Interior or his designee at the time the location notice is recorded with the Bureau of Land Management to hold such claim for the year in which the location was made. [Emphasis supplied.]

106 Stat. 1379. That Act also provided that "the Secretary of the Interior shall promulgate rules and regulations to carry out the purposes of this section as soon as practicable after the effective date of this Act." Id. BLM published notice on November 16, 1992, that the Act had been signed into law and that "[c]laimants holding mining claims * * * located on or after October 6, 1992, must pay the \$100 rental fee at the time of recording with BLM." 57 FR 54102 (Nov. 16, 1992). Thus, Philpott was required to pay rental fees at the time he filed his certificates of location with BLM under penalty of forfeiture of his claims if he failed to do so. 2/

2/ Under that Act the only exemption provided from the annual rental fee requirement was the so-called small miner exemption, available to claimants holding 10 or fewer mining claims, millsites, or tunnel sites on Federal lands who met all the conditions set forth in 43 CFR 3833.1-6(a) and 43 CFR 3833.1-7 (1993). See Bonnie M. Brown, 132 IBLA 393, 396 (1995); William B. Wray, 129 IBLA 173 (1994). However, an exemption was not available for the 1992-93 assessment year for a claimant who located a claim on or after Oct. 6, 1992, and before Sept. 1, 1993. For a claim located during that period, a certificate for exemption from the 1993-94 assessment year had to be filed on or before Aug. 31, 1993.

That Act has since been superseded by section 10101(d) of the Omnibus Budget Reconciliation Act of Aug. 10, 1993, P.L. 103-66, 107 Stat. 405, 30 U.S.C. § 28f(d) (1994), which provides that the holder of an unpatented mining claim, mill or tunnel site is required to pay a claim maintenance

See Bonnie M. Brown, 132 IBLA 393, 395 (1995). Although Philpott refiled the certificates of location with the required fees, BLM did not receive them until March 4, 1993, well after the 90-day period for timely filing the notices had expired.

"[T]he Department is without authority to excuse lack of compliance with the rental fee requirement, to extend the time for compliance, or to afford any relief from the statutory consequences, and the Board may not consider special facts or provide relief in view of mitigating circumstances." Lee H. & Goldie E. Rice, 128 IBLA 137, 141 (1994). Appellant is presumed to know the contents of Federal laws and regulations. Bonnie M. Brown, *supra* at 397, citing Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 385 (1947). See also Dee W. Alexander Estate, 131 IBLA 39 (1994).

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.

James L. Bymes
Chief Administrative Judge

I concur:

James F. Roberts
Acting Administrative Judge

fn. 2 (continued)

fee of \$100 per claim on or before Aug. 31 of each year for years 1994 through 1998, unless an eligible mining claimant seeking a waiver of the annual mining claim maintenance fee files a certification of entitlement by Aug. 31 of each year. 30 U.S.C. §§ 28f(a), 28f(d) (1994); 43 CFR 3833.1-7(d). Under section 10104 of the same statute, failure to pay the claim maintenance fee or to timely file a certification of entitlement "shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law." 30 U.S.C. § 28i (1994); see Harlow Corp., 135 IBLA 382 (1996).

Similar to the provisions of the earlier act, the Omnibus Budget Reconciliation Act requires that "for the initial assessment year in which the location is made, the locator shall pay the claim maintenance fee at the time the location notice is recorded" with BLM, and not later than 90 days after the date of location. 43 U.S.C. § 28f(b) (1994). In addition to the claim maintenance fee, that statute further imposed a "hardrock mining claim location fee" in the amount of \$25, also to be paid at the time the location notice is recorded with BLM. 43 U.S.C. § 28g (1994).