

INTERIOR BOARD OF LAND APPEALS

Roy E. Tidwell and Gene D. Mathern

146 IBLA 62 (October 7, 1998)

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Editor's Note: Reconsideration denied by Order dated March 12, 1999

ROY E. TIDWELL,
GENE D. MATHERN

IBLA 97-416

Decided October 7, 1998

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting mining claim location notices and deeming claims null and void. CAMC 271481-CAMC 271490.

Affirmed.

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

"Date 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 California law, it is the date of posting a location notice on a permanent monument situated on the claim.

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

The dates of posting a location notice on mining claims as shown on the notice of location recorded in compliance with state law will be treated as controlling where, after rejection by BLM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are in error.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Roy E. Tidwell and Gene D. Mathem (Appellants) have appealed from an April 29, 1997, Decision of the California State Office, Bureau of Land Management (BLM), rejecting the notices of location for, and deeming forfeited, the American 1, American 2, and Aurora 4 through 11 placer mining claims (CAMC 271481-CAMC 271490), because the notices of location were not filed with BLM within 90 days from the date of location.

The location notices for the American 1 and 2 claims state that these claims were located on September 15, 1996. The location notices for the Aurora 4 through 11 claims state that these claims were located on April 20, 1993. All claims were recorded with the Inyo County, California Recorder on March 26, 1997, and with the BLM on March 31, 1997.

BLM's Decision cites the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1994), and 43 C.F.R. § 3833.1-2(a), which require a location notice to be filed with the proper BLM office within 90 days after the date of location for all claims located after October 21, 1976.

Appellants assert on appeal that "it should be obvious" from the recordation date with the Inyo County recorder (March 26, 1997) that the Appellants made an error in the location dates. (Statement of Reasons at 3.) As Exhibit 1, Appellants have submitted the affidavit of Janet R. Blackburn, Appellants' secretary. Blackburn states therein that she typed the information on the location notices, that she misunderstood what was meant by "'date located' and incorrectly interpreted it as meaning the 'Location Date of Discovery.'" Blackburn states that the date of location should actually have been March 25, 1997.

[1] Under 43 C.F.R. § 3833.1-2(a), 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) (1976), and properly declared abandoned and void under 43 C.F.R. § 3833.4(a). C.B. Shannon, 55 IBLA 312, 313 (1981), and cases there cited.

[2] 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 (West 1984, Supp. 1996). The location notices Appellants filed with BLM both expressly state the dates of posting. They contain the following language: "Date of location (date a conspicuous and substantial location monument was erected and location notice posted in or on it) of this placer mining claim is April 20, 1993," for claim CAMC 271481, and identical language specifying the "date a conspicuous and substantial location monument was erected and location notice posted in or on it" of "Sept. 15, 1996," for claim CAMC 271482.

[3] Although Appellants now dispute the accuracy of those statements, we have repeatedly held in similar circumstances, for mining claims located in California, that the date of posting stated in the location certificate recorded with the State is controlling. See Ronald W. Froelich, 139 IBLA 84, 85 (1997); John and Maureen Watson, 113 IBLA 235, 236 (1990); C.B. Shannon, *supra*, at 314.

Thus, the dates of location are the dates of posting specified on the record notices of location. In both cases, the filing of the copy of the notice location with BLM did not occur until more than 90 days after these dates. Accordingly, BLM properly found these claims to be abandoned and void under 43 C.F.R. § 3833.1-2(a).

Accordingly, 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.

James P. Terry
Administrative Judge

I concur:

David L. Hughes
Administrative Judge