

1990

Gordon Griffin and Red Dome Inc. v. Sandra Memmott, Ralph Memmott, Sue Bushnell, Shere Bushnell, Jim Bushnell, Brett Sanders, Pam Sanders, and Craig Sanders : Brief of Appellant

Utah Court of Appeals

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Recommended Citation

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UTAH COURT OF APPEALS

BRIEF

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DOCKET NO. 900136-CA

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IN THE UTAH COURT OF APPEALS

GORDON GRIFFIN and RED DOME, :
INC., :

Plaintiffs/Respondents, :

vs. :

SANDRA MEMMOTT, RALPH :
MEMMOTT, SUE BUSHNELL, :
SHEREE BUSHNELL, JIM :
BUSHNELL, BRETT SANDERS, PAM :
SANDERS, and CRAIG SANDERS, :

Defendants/Appellants. :

Case No. 900136-CA

Prior 16

BRIEF OF APPELLANTS

Appeal from a Summary Judgment entered
in the Fourth Judicial District Court and For
Millard County, State of Utah

The Honorable Ray M. Harding, District Judge Presiding

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PARTIES TO THIS ACTION

All parties to this action are listed on the cover.

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Other Treatise

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IN THE UTAH COURT OF APPEALS

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vs.	:	
	:	
SANDRA MEMMOTT, RALPH	:	
MEMMOTT, SUE BUSHNELL,	:	
SHEREE BUSHNELL, JIM	:	Case No. 900136-CA
BUSHNELL, BRETT SANDERS, PAM	:	
SANDERS, and CRAIG SANDERS,	:	Priority No. 16
	:	
Defendants/Appellants.	:	

BRIEF OF APPELLANTS

JURISDICTION

Jurisdiction of this case is vested in the Utah Court of Appeals as a case properly transferred from the Supreme Court of the State of Utah pursuant to UTAH CODE ANN. §78-2-2(4) (1989). Original jurisdiction was in the Supreme Court pursuant to UTAH CODE ANN. §78-2-2(3)(j).

NATURE OF PROCEEDINGS

This is an appeal seeking reversal of a Summary Judgment entered in the Fourth Judicial District Court In and For Millard County, State of Utah. Said Summary Judgment was entered in favor of Plaintiffs/Respondents and against

Defendants/Appellants quieting title to certain placer mining claims located in Millard County.

STATEMENT OF ISSUES

- I. WHETHER GRIFFIN'S FILING OF A "SYNOPSIS" OF INFORMATION CONTAINED IN THE OFFICIAL NOTICES OF LOCATION OF MINING CLAIMS RATHER THAN AN ACTUAL "COPY" THEREOF SATISFIES THE REQUIREMENTS OF 43 U.S.C. §1744(b).
- II. WHETHER THERE EXISTS ANY SPECIAL CIRCUMSTANCE EXCUSING THE FILING OF AN ACTUAL "COPY" OF THE NOTICES OF LOCATION, AND, IF SO, WHETHER THE "SYNOPSIS" CONSTITUTES SUFFICIENT "OTHER EVIDENCE" UNDER THE CODE OF FEDERAL REGULATIONS.
- III. WHETHER RETENTION AND INVOLVEMENT WITH THE RED DOME FILINGS BY THE BLM CONSTITUTES OR EXCUSES ACTUAL COMPLIANCE WITH THE PROVISIONS OF THE FLPMA.

DETERMINATIVE STATUTORY PROVISIONS

43 USC §1744(b) (See Appendix 19.)

STATEMENT OF CASE

a. Nature of Case

This is an action wherein both parties seek to quiet title to unpatented placer mining claims. The Plaintiffs/Appellants, hereinafter collectively referred to as "Griffin", claim to own said claims, denominated RED DOME Placer Mining Claims Nos. 1 through 7, and RED DOME NEW DISCOVERY Placer

Mining Claims. Defendants/Appellants, hereinafter collectively referred to as "Memmotts" claim that Griffin did not properly file Notices of Location with the Bureau of Land Management ("BLM") in accordance with §1744 of the Federal Land Policy and Management Act (FLPMA).

The parties acknowledged that if Griffin had established title to the claims said claims were not open to "location" by the Memmotts and the counter-claim would be subject to dismissal. If, however, Griffin was found to not be in compliance with the FLPMA, the RED DOME claims were open to location, had been located on by Memmotts, and Griffin would have no "standing" to challenge Memmotts' ownership because Griffin had not filed "over" said claims.

b. Course of Proceedings and Disposition

Both sides submitted Motions for Summary Judgment on the issues of ownerships of the claims. Griffin's ancillary claims for damages were abandoned after trial. On September 30, 1986, the Court issued a "RULING ON PLAINTIFFS' FIRST AND SECOND MOTIONS FOR SUMMARY JUDGMENT AND DEFENDANTS' MOTION FOR SUMMARY JUDGMENT", denying Griffin's Motion for Summary Judgment and granting, in part, Memmotts' Motion for Summary Judgment. (R. 561-65; See Appendix 1 and 2). On January 2, 1987, the Trial Court issued a "RULING ON PLAINTIFFS' MOTION FOR RELIEF FROM AND RECONSIDERATION OF RULING" setting aside its Summary Judgment in favor of Memmotts. (R. 851-53; Appendix 3). Then, on April 20, 1987, the Court vacated both

prior rulings, determining that issues of material fact existed precluding Summary Judgment. (R. 925-29; Appendix 21). The case proceeded to trial whereupon the matter was submitted on proffer after Plaintiff rested. The District Court entered Judgment quieting title to said claims in favor of Griffin and against Memmotts (R 1254-1287; Appendix 4-7).

c. Relevant Facts

1. In December, 1983, Memmotts filed Notices of Location of the Feather Lite Claims Nos. 1 through 5. (Appendix 22). Under Utah law said recorded Notices are *prime facie* evidence of the facts of location recited therein. (UTAH CODE ANN §40-1-10 (1953)) The factual recitation therein described were undisputed and unchallenged at trial.

2. "Griffin's" ownership of the subject claims originated with the filing of Notices of Location of claims denominated RED DOME Nos. 1 through 7 and NEW DISCOVERY (Exhibit P-2, Appendix 16). Said claims were filed in 1936, 1938, 1939, and 1950.

3. Under the applicable provisions of the FLPMA certain filings were required in order to preserve unpatented mining claims. Said filings were required to be made prior to October 22, 1979.

(b) Additional Filing Requirements

The owner of an unpatented lode or placer mining claims or mill or tunnel site located prior to October 21, 1976 shall, within the three-year period following October 21, 1976 file in the office of the Bureau designated by the Secretary a copy of the official record of the notices of location or

certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. (Emphasis added.)
43 U.S.C. 1744(b)

4. The "official record" of the Notices of Location is the record maintained by law in the Millard County Recorder's Office. (UTAH CODE ANN. §40-1-4 (1953)).

5. Rather than obtaining "copies" of the Notices of Location on the "RED DOME and NEW DISCOVERY" from the Millard County Recorder's Office and filing the same with the Bureau as proscribed by the FLPMA, Griffin filed an abbreviated synopsis of said filings. (Exhibit P-3, Appendix 17).

SUMMARY OF THE ARGUMENT

Under the terms and provisions of the FLPMA, Griffin was required to file with the BLM prior to October 22, 1979 "copies" of the official Notices of Location of its mining claims in order to preserve those claims. Although "copies" of said Notices were readily obtainable from the Millard County Recorder's Office, Griffin merely filed an abstract or abbreviation thereof, which contained some of the relevant information, but not all, and contained numerous errors and omissions.

Under special circumstances, i.e., where the official recorders had been lost, destroyed, or were illegible, "other evidence" is permitted to be filed. No special circumstances exist in this case and the C.F.R.s which purportedly permit such filings cannot legally vary the precise statutory

language used by Congress. The BLM's "acceptance" (stamped receipt thereof and noted deficiencies) does not constitute compliance.

ARGUMENT

I.

THE BURDEN OF PROOF IS UPON GRIFFIN TO ESTABLISH ITS OWN VALID TITLE.

Griffin is, admittedly, the senior locator. In this quiet title action, therefore, Griffin's title succeeds or fails solely on a showing, by it, of the validity of its own filings. (*Michael v. Salt Lake Inv. Co.*, 9 Utah 2d 370, 345 P.2d 200 (1959); *Homeowners Loan Corp. v. Dudley*, 105 Utah 208, 141 P.2d 160 (1943); *Coleman v. Butkovich*, 538 P.2d 188 (Utah 1975).)

Claims may only be challenged by junior locators. Therefore, in the absence of a "relocation" by Griffin on Memmotts' FEATHER LITE Claims, Griffin's failure to comply with §1744 leaves the claims open to location by Memmotts and immune from challenge by Griffin.

II.

A SYNOPSIS IS NOT A "COPY" WITHIN THE MEANING OF §1744.

The statute required Griffin to file a "copy" of the official record of the Notice of Location. Griffin would have this Court ignore the plain, everyday meaning of the words

chosen by Congress. Black's Law Dictionary, Fourth Edition, defines "copy" as follows:

The transcript or double of an original writing; as the copy of a patent, charter, deed, etc. [Citations omitted and emphasis supplied].

Congress did not choose to require a "summary"¹ or an "abstract"² of the official record--it required a "copy".

The United States Supreme Court has previously rejected a claimant's effort to rewrite the plain language of the statute to comport with what was filed rather than what was required, noting "It is clear to us that the plain language of the statute simply cannot sustain the gloss appellees would put on it." *United States v. Locke*, 471 U.S. 84, 85 L.Ed.2d 64, 75 (1985). The *Locke* Court also cautioned against attempting "to soften the clear import of Congress' chosen words whenever a court believes those words lead to a harsh result." *Id.* at 76.

Congress presumably recognized that a real property instrument such as Notice of Location must be examined in its entirety. To permit the filing of parts of an instrument

¹ "Summary, n. An abridgment; brief; compendium; . . ." Black's Law Dictionary, Fourth Edition at 1604.

² "Abstract, n. Less quantity containing the virtue and force of a greater quantity (citation omitted). A transcript is generally defined as a copy, and is more comprehensive than an abstract. (Citations omitted) Summary or epitome, or that which comprises or concentrates in itself the essential qualities of a larger thing or of several things (citations omitted)." Black's Law Dictionary, Fourth Edition, at 24.

leaves the BLM and the public in the position of the proverbial blind men describing the elephant by touching its individual parts. The BLM and public never see the whole instrument. Rather than specifying certain desired parts of the official record of the Notice of Location, Congress specified that a copy of the official record must be filed.

Griffin inexplicably tried to second-guess what information Congress was really after, and then filed only that limited information. In every instance, however, the documents prepared and filed by Griffin omitted at least the following information that would have been apparent from a copy of the official record: (1) The names of the locators, (2) the number of the locators, (3) the specific minerals claimed, (4) the dates of amendments to the claims, and (5) the exact quantity of acreage claimed.

In individual cases the significance of the omissions is obvious. For example, for the RED DOME No. 3 claim, the document prepared and filed with BLM omitted any reference to one lot containing some 40 acres of land. Thus, it was impossible to tell from the documents filed with the BLM that Griffin claimed such land. In other cases the significance of the missing information, though equally important, is less obvious to one unfamiliar with the more arcane aspects of mining law. For example, the number of locators is material to whether a claim was properly located, as there must be at least one locator for each 20 acres embraced in the claim or

the entire claim is invalid. (30 U.S.C. §§35 and 36 (1976)). Similarly, the exact acreage claimed in each irregularly shaped lot is material to determine if the 20 acre rule has been violated. *Id.* Or, the date of an amended location is often necessary to establish the priority of the location. (See e.g., *R. Gail Tibbetts et al.*, 43 IBLA 210, 217-19 (1979).)

III.

A "SYNOPSIS", EVEN IF CORRECT, IS NOT A "COPY" OF THE NOTICE OF LOCATION AS PROSCRIBED WITHIN THE STATUTE.

Griffin has made no proffer of evidence why actually photographically reproduced "copies" of the Notices of Location were not filed with the BLM. Other mining claimants from Millard County obtained photo or xeroxed copies of their Notices of Location and timely filed the same. (See, e.g., Appendix 13 and 14). Not one scintilla of evidence was produced or proffered in an effort to establish some unusual or special circumstance justifying filing of "other evidence" rather than an easily and readily obtainable "copy" of the Notice of Location on file in the County Recorder's Office.

IV.

THE "SYNOPSIS" OF THE NOTICES OF LOCATION ARE NOT ACCEPTABLE "OTHER EVIDENCE" UNDER 43 C.F.R. §3833.0-5(i) AND SAID REGULATION CANNOT AMEND OR VARY THE PLAIN STATUTORY MANDATE.

Griffin claims that the Code of Federal Regulations permits the filing of a "synopsis" of the official record and that its filings were, therefore, adequate to preserve its claims. The history of said CFR is somewhat confusing, as evidenced by the District Court's inconsistent prior rulings regarding the same.

On January 2, 1987, the Trial Court issued its "RULING ON PLAINTIFFS' MOTION FOR RELIEF FROM AND RECONSIDERATION OF RULING [of September 30, 1986]" in which the Court reversed its earlier position and vacated its Ruling of September 30, 1986. In vacating its earlier Ruling, the Court indicated that it had erroneously relied on the current version of the federal regulation defining the term "copy" as used in 43 U.S.C. §1744 (i.e., 43 C.F.R. §3833.0-5 (i)), rather than the version that was in effect at the time Griffin was required to comply with the filing requirements of 43 U.S.C. §1744. The Court then quoted the version of 43 C.F.R. §3833.0-5(i) that was in effect from March 16, 1979 through the end of the period during which Griffin was required to file the documents specified in 43 U.S.C. §1744(b) (viz., October 22, 1979) in part as follows:

"Copy of the official record of the notice of certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim, mill or tunnel site which was or will be filed in the local jurisdiction where the claim or site is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation.

(Ruling of January 2, 1987, at 2, quoting 43 C.F.R. §3833.0-5(i); emphasis added by Court).

The Court then proceeded to find that Griffin had in fact submitted "other evidence, acceptable to the proper BLM office, of such instrument of recordation" and therefore, the Court granted partial summary judgment in favor of Griffin solely as to the issue that Griffin had in fact complied with 43 U.S.C. §1744(b). (See Ruling of January 2, 1987, at 2; R. 851-53; Appendix 3.)

At trial the Court adopted the same legal posture determining that the BLM's "acceptance" of Griffins's filings was, in effect, conclusive. The Court's rulings are legally flawed for the following reasons: (1) The version of 43 C.F.R. §3833.0-5(i) relied upon by the Court was not yet in effect at the time that Griffin made its filings with the BLM relating to the Notices of Location of the RED DOME claims, and consequently, it was error for the Court to apply the "other evidence" exception to those filings; and (2) even if the so-called "1979 version" of the regulation were applicable to Griffin's RED DOME filings, those filings failed to comply with the regulation because they did not include all of the amended notices of locations; and (3) even if the "other evidence" exception were applicable in this action, such "other evidence" is permissible only in those rare instances where copies of the official records are not available, e.g., where the official county records have been lost or destroyed; and (4) even if BLM were to take the more expanded view and

permit "other evidence" when copies of the official records are readily available, as in the present case, the quoted regulation clearly would not comport with the express statutory language of 43 U.S.C. §1744(b), which requires "a copy of the official record of the notice of location or certificate of location"; and (5) even if "other evidence" were permissible despite the fact that copies of the official records were readily available, and even if the acceptability of such "other evidence" did not conflict with the express language of 43 U.S.C. §1744(b), the undisputed evidence in this case demonstrates that BLM has not determined that Griffin's RED DOME filings were "acceptable".

A. THE VERSION OF 43 C.F.R. §3833.0-5(i) RELIED UPON BY THE COURT WAS NOT IN EFFECT AT THE TIME GRIFFIN FILED "OTHER EVIDENCE" OF THE NOTICES OF LOCATION FOR ITS RED DOME CLAIMS.

"Official record of the notice or certificate of location" means the official document of recordation and all accompanying maps, papers, or other documents filed for record with the recorder or other officer now authorized to record such instruments under state law in the local jurisdiction where the unpatented mining claim, mill site, or tunnel site is located and any amendments thereof which may change or alter the location of the claim or site.

As indicated by the above-quoted version of the regulation that was in effect during the time that most of Griffin's RED DOME filings were made, the "other evidence" exception had not yet come into existence! Consequently, it was improper

and legally erroneous for the Court to apply the "other evidence" exception to the RED DOME filings.

B. EVEN IF THE SO-CALLED "179 VERSION" OF 43 C.F.R. §3833.0-5(i) WERE APPLICABLE TO GRIFFIN'S RED DOME FILINGS, THE TRIAL COURT DID NOT APPLY THE REGULATION IN ITS ENTIRETY.

In its Ruling of January 2, 1987 and Summary Judgment herein, the Court quoted from the so-called "1979 version" of 43 C.F.R. §3833.0-5(i) only so far as the regulation referred to the "other evidence" exception. The regulation, however, went on to state as follows:

"Copy of the official record of the notice [or] certificate of location" . . . also includes an exact reproduction, duplicate or other acceptable evidence, except microfilm, or an amended instrument which may change or alter the description of the claim or site.
43 C.F.R. §3833.0-5(i) (effective as of March 16, 1979) (emphasis added.)

Under the above-quoted version of the regulation, Griffin's were required to file "an exact reproduction, duplicate or other acceptable evidence" of any Amended Notices of Locations. Consistent with the pattern of their other filings, however, Griffin failed to file with BLM all of the Amended Notices of Location relating to their RED DOME claims. (For example, Griffin's summary filing for the RED DOME Placer Claim No. 3 omitted a description of some 40.95 acres that were claimed by a subsequent amendment.)

C. "OTHER EVIDENCE" IS PERMISSIBLE ONLY IN THOSE INSTANCES IN WHICH COPIES OF THE OFFICIAL RECORDS ARE NO LONGER AVAILABLE.

As indicated above, the "other evidence" exception contained in 43 C.F.R. §3833.0-5(i) has been uniformly interpreted by BLM, the agency charged with the administration of the FLPMA, to apply only in those rare instances where copies of the official records are not available, such as where such records have been lost or destroyed. (See, e.g., *Cleo May Fresh*, 50 IBLA 363, 365 (October 16, 1980) "In any event, the provision of the regulations concerning the submission of 'other evidence' only applies when the notice of location is no longer available"; *John J. Vikarcik*, 58 IBLA 377, 379 (October 21, 1981); Organic Act Directive No. 79-7 (November 24, 1978) "Where a search of the local (county or recording district) records, therefore, does not reveal the original filing, but does show that there is reason to believe that a recording may have been made, secondary evidence will be accepted.") (Copies are attached as Appendix 10, 11, and 12.)

Griffin attempts to distinguish both *Cleo May Fresh* and *Vikarcik* on several grounds, none of which is persuasive. First, Griffin asserts that in *Cleo May Fresh*, BLM had returned various documents to the appellant and declared the subject claims abandoned, and in *Vikarcik*, BLM rejected the recordation of certain mining claims held by the appellants. Griffin then asserts that by contrast, in the present case, BLM "accepted" Griffin's RED DOME filings. Griffin obviously ignores or misunderstands the distinction between the meaning

of the term "accept" as a legal term of art, versus its meaning in ordinary and common usage. In *Cleo May Fresh*, the IBLA specifically addressed this distinction and stated that "[nor] do noncomplying submissions become 'acceptable' because BLM takes receipt of them." 50 IBLA at 367. Thus, merely because BLM in the present case may have taken receipt of Griffin's RED DOME filings in no way demonstrates that those filings were "acceptable" to BLM.

Griffin also argues that, unlike the documents filed by the appellants in *Cleo May Fresh* and *John J. Vikarcik*, the documents filed by Griffin in this matter contained all of the pertinent data necessary to satisfy the purposes and objectives of FLPMA. This argument, however, is unpersuasive for two reasons. First, it is nothing more than a "substantial compliance" argument, which has been expressly rejected. (*Rogers v. United States*, 575 F. Supp. 4, 8 (D. Mont. 1982)). Second, contrary to Griffin's assertions that their RED DOME filings contained all of the pertinent information necessary to satisfy the purposes and objectives of FLPMA, a number of items of information contained in the official records of the Millard County recorder's Office are not contained in Griffin's RED DOME filings.

That the "other evidence" exception applies only in instances where copies of the official records are no longer available is reinforced by the use of the term "other evidence" in other BLM regulations. For example, 43 C.F.R.

§3862.1-4 (Appendix 24) (10-1-85 Ed.) relating to lode mining claim patent applications) provides as follows:

Evidence relating to destroyed or lost records.

In the event of the mining records in any case having been destroyed by fire or otherwise lost, a statement of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the statement of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim, should be filed. (Emphasis added.)

The clear import of the above-quoted regulation, like Organic Act Directive No. 79-7 (Exhibit "C" hereto), is that "other evidence" is permissible only in situations where the original records are lost or destroyed. The rationale for this conclusion is obvious: to permit "other evidence" in situations where the original official records are available would be in direct conflict with the purposes and objectives of FLPMA to provide a comprehensive and up-to-date database of information. Instead, it would permit claimants to file whatever documents might be in their possession, regardless of the ready availability of the very documents that Congress chose to require. For these reasons, the "other evidence" exception should be applied only in instances where the required documents are no longer available.

D. TO PERMIT "OTHER EVIDENCE" EVEN IN SITUATIONS WHERE COPIES OF THE OFFICIAL RECORDS ARE READILY AVAILABLE WOULD DIRECTLY CONFLICT WITH THE EXPRESS STATUTORY LANGUAGE OF 43 U.S.C. §1744(b).

Even assuming, *arguendo*, that BLM were to take a more expansive view of 43 C.F.R. §3833.0-5(i) and permit "other evidence" even in situations, as in this case, where copies of the official records were readily available, such an interpretation of §3833.0-5(i) would be in direct conflict with the express language of 43 U.S.C. §1744(b), in which Congress specifically required "a copy of the official record of the notice of location or certificate of location". Since regulations are inferior to the statutes under which they are promulgated, the regulations must be interpreted in a manner consistent with the statutory language. *See, e.g., Utah Hotel Co. v. Industrial Commission*, 151 P.2d 467, 471-73 (Utah 1944).

E. THE BLM'S "ACCEPTANCE" OF GRIFFINS FILINGS IS NOT CONCLUSIVE OF THE ISSUE OF VALIDITY OF SAID CLAIMS.

Griffin contends that the BLM has "accepted" the "other evidence" of the notices or certificates of location filed with respect to the RED DOME claims, within the meaning of 43 C.F.R. §3833.0-5(i). This contention is flawed in two salient respects. First, Griffin has muddled the distinction between the meaning of the term "accept" as a legal term of art versus its meaning in common and ordinary usage, which refers to "taking receipt of" something. *See Cleo May Fresh*, 50 IBLA

363, 365 (Oct. 16, 1980) ("Nor do noncomplying submissions become 'acceptable' because BLM takes receipt of them.").

Second, and related to the first point, BLM has expressly indicated that it has not determined whether Griffin's RED DOME filings are sufficient to comply with the recordation requirements of 43 U.S.C. §1744(b).

The IBLA on July 12, 1986 ((Sandra Memmott on Reconsideration) 93 IBLA 113 (1968)) vacated the BLM decision of August 21, 1985, in its entirety. The IBLA vacated the decision without ruling on the sufficiency or correctness of the decisions. As a result, we now have no opinion as to whether or not the documents contained in our records for the Red Dome claims are adequate to comply with the recordation requirements of Section 314 of FLPMA and regulations promulgated thereunder. (Emphasis added.)

(See Sandra Memmott (On Reconsideration), 93 IBLA 113 (July 24, 1986). (Appendix 23; Exhibit P-26; Appendix A)

V.

"SUBSTANTIAL COMPLIANCE" DOES NOT VALIDATE A DEFECTIVE FILING UNDER §1744.

Griffin relies upon certain language of §1744(c) of FLPMA and two cases, *Topaz Beryllium Co. v. United States*, 649 F.2d 775 (10th Cir. 1981) and *Jackson v. Robertson*, 763 F.2d 1176 (10th Cir. 1985) as standing for the proposition that its defective filings did not result in an abandonment of its claims. Griffin misconstrues both the cited language of §1744(c) and the cases.

Section 1744(c) provides, in pertinent part:

The failure to file such instruments as required by subsections (a) and (b) shall

be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective . . .

The statutory reference concerning a "defective" instrument does not relate to any document filed by a party. It refers to the "instrument" "required by subsections (a) and (b)" of §1744, referenced earlier in the sentence quoted above. Only one "instrument" is "required by subsection (b)" of §1744. It is the "copy of the official record of the notice of location" for each claim. Such official records" were routinely photocopied at the Millard County Recorder's office at the pertinent time but Griffin admits that no copies of such official record were filed for the RED DOME claims. None of the documents prepared and filed by Griffin purported to be a "copy" of the record. They were simply Griffins' interpretation of those portions of that record that its legal counsel thought relevant or required. None were the specified "instrument" referenced in the statute. Thus, the quoted language concerning "defective" instruments is inapplicable to resuscitate Griffin's inadequate filing.

Griffin misreads the *Jackson* and *Topaz* cases. Those cases did not deal with the effect of a claimant's failure to file an instrument explicitly required by §1744. The *Topaz* case developed a distinction between the effect of failure to file something explicitly required by statute and the effect of a failure to file certain supplemental information required

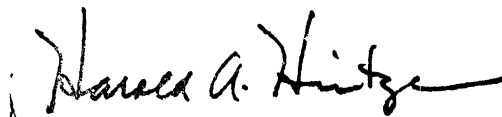
only by BLM's regulations. In the former case the effect was clear: abandonment! In contrast, the failure to file supplemental information required only by the general regulations does not result in abandonment of the claims. (649 F.2d at 778). Jackson simply applied the Topaz rule, noting that the alleged filing deficiency in that case related to information required only by the BLM's regulations rather than §1744 itself.

CONCLUSION

Because Griffin has not established a *prima facie* case of compliance with the provisions of the FLPMA, the Court's granting of Judgment should be reversed. Griffin's failure to timely comply with said Act left the subject ground open to location. Memmott's filed Notices of Location thereon in 1984.

This Court should reverse the District Court's determination that Griffin's filings with the BLM were sufficient to satisfy the FLPMA. The case then should be remanded for further proceedings consistent with said ruling, including determination of damages arising, if any, from Griffin's use and occupation of Memmott's claims.

DATED this 4th day of June, 1990.



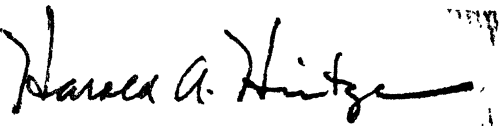
Harold A. Hintze
Attorney for Defendants/
Appellants

CERTIFICATE OF MAILING

I hereby certify that I mailed a four true and correct copies of the APPELLANTS' BRIEF to the following:

Frederick A. Jackman
1327 South 800 East, Suite 300
Orem, Utah 84058
Attorney for Plaintiffs/Respondents

on this 4th day of June, 1990.



Harold A. Hintze
Attorney for Defendants/
Appellants

ADDENDUM

1. Ruling on Plaintiffs' First and Second Motions for Summary Judgment and Defendants' Motion for Summary Judgment (9-30-86)
2. Ruling on Plaintiffs' Objection to Ruling, and Request for Oral Argument and on Objection to Defendants' Proposed Order for Partial Summary Judgment (10-22-86)
3. Ruling on Plaintiffs' Motion for Relief from and Reconsideration of Ruling (1-27-87)
4. Memorandum Decision (5-23-89)
5. Findings of Fact and Conclusions of Law (6-21-89)
6. Judgment (6-21-89)
7. Amended Judgment (8-15-89)
8. Order (8-22-89)
9. BLM letter (4-15-7) (Exhibit P-26)
10. *Cleo May Fresh*, 80 IBLA 325 (1980)
11. *John J. Vikarcik*, 81 IBLA 530 (1981)
12. Organic Act Directive No. 79-7 (11-24-78)
13. Exhibit List and Exhibit D-12, Case No. 6656 (12-21-78)
14. BLM Documents (Recorded 1979)
15. *Ellis Bushman*, 84 IBLA 332 (1985)
16. Notice of Location (Exhibit P-2)
17. Synopsis of Location notices (Exhibit P-3)
18. *United States v. Locke*
19. 43 U.S.C. §1744
20. 43 C.F.R. §3833.0-5(i)
21. Order Vacating Prior Rulings (5-13-87)
22. Notice of Location of Feather Lite Claims
23. *Sandra Memmott* (on Reconsideration), 93 IBLA 113 (1986)
24. 43 CFR 3862.1-3

Tab 1

IN THE FOURTH JUDICIAL DISTRICT COURT

MILLARD COUNTY, STATE OF UTAH

GORDON GRIFFIN and	)	Case Number 7975
RED DOME, INC.,)	
Plaintiffs,)	
vs.	)	RULING ON PLAINTIFF'S
	)	FIRST AND SECOND MOTIONS
SANDRA MEMMOTT, et al.,	)	FOR SUMMARY JUDGMENT AND
Defendants.	)	DEFENDANT'S MOTION FOR
	)	SUMMARY JUDGMENT

The court, having reviewed the memoranda, interrogatories, affidavits and other pleadings submitted to the court, finds that plaintiffs have failed to comply with the filing requirements of 43 U.S.C. Section 1744(b), and therefore, as a matter of law the nine (9) "Red Dome" mining claims that are the subject of this action are deemed to have been abandoned pursuant to 43 U.S.C. Section 1744(c). The court also finds that there remain several genuine issues of material fact relating to the validity of defendants' "Feather Lite" mining claims yet to be resolved in this matter.

URCP 56(c) states that a motion for summary judgment will be granted if:

The pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Concerning defendants' motion for summary judgment, the court finds that there are no issues of material fact concerning (1) what documents were filed by plaintiffs with the Bureau of Land Management in attempted compliance with 43 U.S.C. Section 1744(b), and (2) concerning what documents constituted the official records of the notices of location of the "Red Dome" mining claims maintained by the Millard County Recorder's Office. It is also uncontested that the documents filed by plaintiffs were not "exact" copies of the official records of notice of location maintained by the Millard County Recorder's Office. Since defendants' motion can be partially decided on these facts alone, and since such facts are uncontested, the court finds that there are no genuine issues of material fact relating to granting a partial judgment on defendants' motion for summary judgment. Based on such uncontested facts, the court finds that defendants are entitled to a partial judgment on their counterclaim as a matter of law. U.S.C. Section 1744(b) states in relevant part:

Additional filing requirements. The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to the date of approval of this Act [enacted October 21, 1976] shall, within the three-year period following the date of approval of this Act [enacted October 21, 1976], file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground.

If such filings are not made, U.S.C. Section 1744(c) provides the following penalty:

Failure to file as constituting abandonment; defective or untimely filing. The failure to file such instruments as required by subsections (a)

and (b) shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site.

The court finds that the instruments filed by plaintiffs with the BLM, although timely filed, were not the type of instruments required to be filed under U.S.C. Section 1744(b), and therefore, plaintiffs failed to comply with 43 U.S.C. Section 1744(b). Under 43 U.S.C. Section 1744(b) plaintiffs were required to file "cop[ies] of the official record of the notice of location or certificate of location" of all mining claims. (Emphasis added). The federal regulations accompanying 43 U.S.C. Section 1744 define "copy of the official record" as follows:

"Copy of the official record" means a legible reproduction or duplicate, except microfilm, of the instrument which was or will be filed under state law in the local jurisdiction where the claim or site is located. It also includes and [sic] exact reproduction, duplicate, except microfilm, of an amended instrument which may change or alter the description of the claim or site.

43 C.F.R. Section 3833.0-5(i).

A definition of the term "reproduction" equates it with the term "duplicate". Random House Dictionary of the English Language, unabridged edition (copyright 1983). The definition of "duplicate" most favorable to plaintiff defines a "duplicate" as "a document the same as another in essential particulars." Blacks Law Dictionary, 5th Edition (copyright 1979). The court finds that even in applying this extremely lenient definition of

the term "copy" to plaintiffs' filed instruments, in comparing them to the official records, such instruments are not the same as the official records in "essential particulars", and therefore do not constitute "copies" of the official records of the notices of location maintained by the Millard County Recorder's Office. Instead, the court finds that such instruments are only "summaries" of such official records, rather than "copies" of such official records. Additionally, even though such "summaries" contained approximately the same information as the above mentioned official records, federal law does not recognize the theory of "substantial compliance" in relation to 43 U.S.C. Section 1744. See, Rogers v. United States, 575 F. Supp. 4, 8 (1982).

The court also finds that the instruments filed by plaintiff do not fall under the exception set out in 43 U.S.C. Section 1744(c) in the following language:

But it shall not be considered a failure to file
if the instrument is defective...

The court interprets this language to refer to instruments (copies of the official records) that are informationally deficient/defective for purposes of the Federal Land Policy and Management Act of 1976, only because they were copied from official records that were themselves informationally defective for purposes of such Act. If the instrument filed is defective in the sense that it cannot be construed as a "copy" of the official records, it does not fall under this exception.

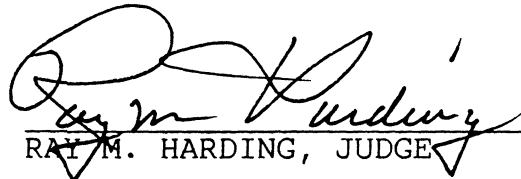
Accordingly, the court grants defendants' motion for summary judgment in part, ruling that plaintiffs' "Red Dome"

mining claims are deemed to be abandoned pursuant to 43 U.S.C. Section 1744(c), because of noncompliance with 43 U.S.C. Section 1744(b), and ruling that plaintiffs have no right or interest in the subject area of interest of this lawsuit based upon their "Red Dome" mining claims.

Concerning plaintiff's first and second motions for summary judgment, such motions are denied on the basis that plaintiffs' Red Dome mining claims have been deemed abandoned as explained hereinabove and also on the basis that there remain several genuine issues of material fact relating to the validity of defendants' "Feather Lite" mining claims yet to be resolved in this matter.

Defendants are requested by the court to prepare an appropriate order pursuant to this ruling.

DATED this 30th day of September, 1986.


RAY M. HARDING, JUDGE

cc: Patrick J. Garver and Hal J. Pos
Dexter L. Anderson

Tab 2

IN THE FOURTH JUDICIAL DISTRICT COURT

MILLARD COUNTY, STATE OF UTAH

GORDON GRIFFIN and	)	Case Number 7975
RED DOME, INC.,)	
Plaintiffs,	)	RULING ON PLAINTIFF'S
vs.	)	OBJECTION TO RULING, AND
	)	REQUEST FOR ORAL
SANDRA MEMMOTT, et al.,	)	ARGUMENT AND ON
	)	OBJECTION TO DEFENDANTS'
Defendants.	)	PROPOSED ORDER FOR
	)	PARTIAL SUMMARY JUDGMENT

The court, having reviewed the memoranda submitted by counsel on plaintiffs' objection to defendants' proposed order for partial summary judgment and on plaintiffs' objection to ruling, rules as follows:

1) That the court, having never received plaintiffs' letter dated June 25, 1986, in which plaintiffs requested oral argument on defendants' motion for summary judgment, and finding no copy of such letter in the file, finds that oral argument on such motion for summary judgment was never properly requested, and as such, plaintiffs had no right to oral argument on such motion. Wherefore, plaintiffs' motion for rescission of the court's ruling dated September 30, 1986, and for oral argument on defendants' motion for summary judgment filed May 28, 1986, is denied.

2) That plaintiffs' objections to defendants' proposed order for partial summary judgment are well taken. The court hereby rejects the proposed order submitted by defendants

pursuant to the court's September 30, 1986, ruling and requests that plaintiffs submit to the court an amended order, identical to defendants' proposed order, except for the following changes:

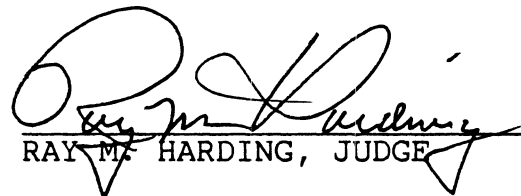
1. That the language contained in paragraph 4 of the defendants' proposed order be stricken completely from such proposed order;

2. That the language contained in paragraphs 2 and 3 of defendants' proposed order be replaced by new paragraphs 2 and 3 containing the following language:

2. That defendants' motion for summary judgment is hereby granted in part, whereas plaintiffs' "Red Dome" mining claims are deemed abandoned, pursuant to 43 U.S.C. Section 1744(c); and

3. Plaintiffs have no right or interest in the subject area of interest of this lawsuit based upon their "Red Dome" mining claims.

DATED this 22nd day of October, 1986.


RAY M. HARDING, JUDGE

cc: Dexter L. Anderson
Patrick J. Garver

pursuant to the court's September 30, 1986, ruling and requests that plaintiffs submit to the court an amended order, identical to defendants' proposed order, except for the following changes:

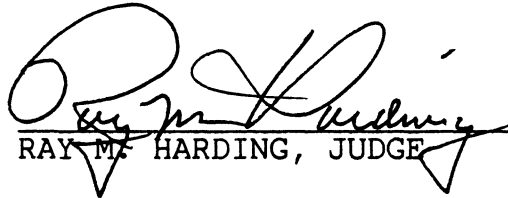
1. That the language contained in paragraph 4 of the defendants' proposed order be stricken completely from such proposed order;

2. That the language contained in paragraphs 2 and 3 of defendants' proposed order be replaced by new paragraphs 2 and 3 containing the following language:

2. That defendants' motion for summary judgment is hereby granted in part, whereas plaintiffs' "Red Dome" mining claims are deemed abandoned, pursuant to 43 U.S.C. Section 1744(c); and

3. Plaintiffs have no right or interest in the subject area of interest of this lawsuit based upon their "Red Dome" mining claims.

DATED this 22nd day of October, 1986.


RAY M. HARDING, JUDGE

cc: Dexter L. Anderson
Patrick J. Garver

Tab 3

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IN THE FOURTH JUDICIAL DISTRICT COURT ~~OF THE~~
OF THE STATE OF UTAH, IN AND FOR MILLARD COUNTY

GORDON GRIFFIN and RED DOME, INC.,)

Plaintiff,)

-VS-

)

)

)

SANDRA MEMMOTT, et al.,)

Defendant.)

CASE NUMBER 7975

RULING ON PLAINTIFFS'
MOTION FOR RELIEF FROM
AND RECONSIDERATION OF
RULING

The court, having reviewed the memoranda submitted by counsel pursuant to this motion, and being fully advised in the premises, grants plaintiffs' motion to set aside its ruling of September 30, 1986, pursuant to URCP 60(b)(7), for the reason that the court relied on the current version of the federal regulations defining "copy" as used in 43 U.S.C. Section 1744 (i.e., 43 C.F.R. Section 3833.0-5(i)), rather than the version that was in effect at the time plaintiffs were required to comply with the FLPMA. The court finds that such an error in law by the court justifies relief from the previous ruling.

Having set aside its ruling of September 30, 1986 (ruling on plaintiffs' first and second motions for summary judgment and defendant's motion for summary judgment), the court in reconsidering such motions, finds that plaintiffs have complied with the filing requirements of 43 U.S.C. Section 1744(b), which states in relevant part:

"Additional filing requirements. The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to the date of approval of this Act [enacted Oct. 21, 1976] shall, within the three-year period following the date of approval of this Act [enacted Oct. 21, 1976], file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground."

The 1979 version of ~~43 U.S.C. Section 3833.05(i)~~ (the federal regulation defining "copy of the official record") varies from the version relied upon by the court in its previous ruling. The 1979 version states the following:

" 'Copy of the official record of the notice of certificate of location' means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim, mill or tunnel site which was or will be filed in the local jurisdiction where the claim or site is located ~~other evidence, acceptable to the proper BLM office, of such instrument of recordation.~~ [Emphasis added.]

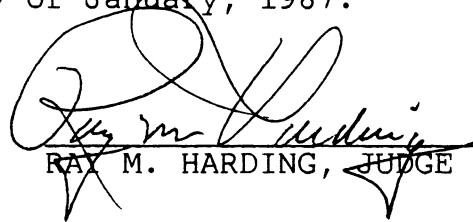
The court finds that plaintiffs have submitted "other evidence, acceptable to the proper BLM office, of such instrument of recordation," and therefore, the court grants partial summary judgment on plaintiffs' first motion for summary judgment as to this issue only, having found that plaintiffs have complied with 43 U.S.C. Section 1744(b). Concerning the issue of whether plaintiffs have properly maintained their "Red Dome" mining claims in relation to performing proper assessment work, the court finds that there is a genuine issue of material fact as to whether plaintiffs have complied with 43 U.S.C. Section 1744(a).

Accordingly, the court grants partial summary judgment to plaintiffs on plaintiffs' first motion for summary judgment, only to the degree set forth hereinabove.

In addition, the court finds that there remain genuine issues of material fact concerning plaintiffs' second motion for summary judgment and defendant's motion for summary judgment, and therefore, denies such motions.

Plaintiffs to prepare a proper order.

DATED this 2nd day of January, 1987.


RAY M. HARDING, JUDGE

cc: Dexter L. Anderson
Hal J. Pos

Tab 4

IN THE FOURTH JUDICIAL DISTRICT COURT
OF THE STATE OF UTAH, IN AND FOR MILLARD COUNTY

GORDON GRIFFIN and RED DOME,
INC.,

Plaintiffs,

CASE NUMBER CV 7975

-vs-

RAY M. HARDING, JUDGE

SANDRA MEMMOTT, RALPH
MEMMOTT, SUE BUSHNELL,
SHEREE BUSHNELL, JIM
BUSHNELL, BRETT SANDERS,
PAM SANDERS, and CRAIG
SANDERS,

Defendants.

MEMORANDUM DECISION

The Court, having conducted a bench trial on this matter finds that plaintiffs are entitled to have title to the "Red Dome" mining claims quieted in them.

The major issue which is before the Court in this matter is whether the documents filed with the Bureau of Land Management (B.L.M.) were sufficient and acceptable to that agency; and whether the Court finds the documents acceptable to preserve plaintiffs rights against the defendants. The documents are required to be filed under 43 U.S.C. section 1744. Under this section claimants are required to file with the B.L.M. before December 31st of each year a notice of intention to hold a claim and an affidavit of assessment work performed on the claim. There is no issue as to whether plaintiffs filing with the B.L.M. was timely. The issue is whether the documents filed by plaintiffs adequately complied with the statute in their form so that they were sufficient and acceptable to the B.L.M. If the

documents were acceptable, plaintiffs are entitled to retain possession of the claim, and may be entitled to damages from the defendants for trespass. If plaintiff's documents were not acceptable to the B.L.M., defendant's claims may be valid, and plaintiffs may be liable to defendants for damages.

After consideration of the evidence presented at trial, the Court finds that the documents supplied by the plaintiffs, were sufficient and acceptable to the B.L.M., in both form and content, and that their filing on the property remained valid. There is substantial evidence that the documents were acceptable to the B.L.M. 1. U.M.C. numbers were assigned to the claims. 2. Before October 22nd, 1979 the filings were affirmatively recognized by the B.L.M. through correspondence requesting more information. Plaintiffs supplied the information. 3. The B.L.M. has continued to receive and respond to further filings of proof of labor. 4. The B.L.M. continues to maintain a file on the Red Dome Mining claims. 5. In the past, the B.L.M. advised the defendants that the filings made on behalf of Red Dome were acceptable. Had the documents supplied by plaintiff's been insufficient, the B.L.M. would have requested that plaintiffs supplement the information provided to the agency. While the B.L.M. does not have the authority to determine whether the documents filed by plaintiffs were sufficient and acceptable concerning the dispute between these parties, the agency has the responsibility to determine sufficiency and acceptability of the documents between the plaintiff and the B.L.M.

We do not disparage the right of BLM on its own initiative to adjudicate any mining claim in terms of compliance with section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. section 1744 (1982). Clearly this is BLM's responsibility in administering the statute. We note, however, that upon review of the sufficiency of the section 314 filings for a claim, no decision would

ordinarily be issued approving the filings.
On Reconsideration, Sandra Memmott, 93 IBLA
115 footnote 2 (1986).

There is no evidence before the Court that the B.L.M. was not satisfied with the sufficiency and acceptability of documents as they were presented by the plaintiffs. The Court finds that the documents were also sufficient and acceptable to accomplish the purposes of the statute. For the above reasons, the Court finds that plaintiff's filings were acceptable to the B.L.M., and to this Court, and that the claims at all relevant times remained valid. The claims were therefore not subject to relocation by the defendants.

Defendants claim that the holding in United States et al., v. Madison d. Locke, et al., 53 L.W. 4433 (1985), should be controlling in this case. There the United States Supreme Court held that the date for filing a notice of intention to hold a claim required strict compliance. The Court finds that Locke, is distinguishable because it is the sufficiency of the information filed which is at issue in the case at bar rather than the time it was filed. In Locke, the lawsuit was filed because the B.L.M. indicated that the filing was late and was not in compliance with the statute. The evidence presented to the Court indicates that where the B.L.M. is not satisfied with the sufficiency of documentation, the agency requests further information. Whether a party is in compliance is left to the discretion of the B.L.M. This is far different from non compliance with a strict time limit set by Congress as was the case in Locke. In the case at bar, there is no evidence that the B.L.M. did not consider plaintiffs to be in compliance with the statute. The Court is satisfied that the summary submitted by the plaintiff's to the B.L.M. satisfied the requirements of the statute, and that supplying an actual copy of the sheets on file in the recorders office was neither practical or necessary. The Court notes that

in a strictly technical sense, the documents in the recorders office are not actual notices of claim. If defendant's argument was to be accepted, the only documents accepted by the B.L.M. would be the original notices which were returned to the claimants after copying into the county records.

A second issue is whether plaintiffs in any way jeopardized their claim through failing to file proof of their assessment work with the county. The evidence before the Court is that the assessment work was done, but there was no filing with the county. Plaintiffs made the required filing with the B.L.M. The holding in Knight v. Flat Top Mining Co., 305 P.2d 503 (1957) is dispositive of this issue. In Knight, the Supreme Court stated that: ". . . failure to file proofs of labor where the work is actually done does not render claims subject to relocation." The evidence in the case at bar indicates that the work was done. The land was therefore not subject to relocation.

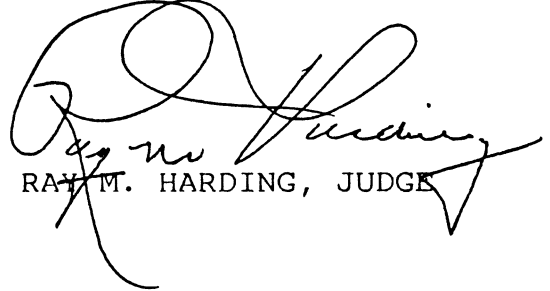
Because plaintiffs have a continuous valid claim on the property, it was not subject to location by the defendants. Defendants cross claim therefore is moot.

Because trial in this matter was bifurcated, the issue of damages if any, has not been resolved. If the plaintiffs wish to pursue damages, they must request a trial setting on that issue in writing within ten days, or damages will be presumed waived.

Counsel for plaintiffs to prepare findings of fact, conclusions of law, and a judgment, incorporating the terms of this decision and submit it to opposing counsel for approval as to form prior to filing with the Court for signature.

Dated this 23rd day of May, 1989.

BY THE COURT:



RAY M. HARDING, JUDGE

cc: Frederick A. Jackman, Esq.
Harold A. Hintze, Esq.

Tab 5

1989
Lisa Croeland

FREDERICK A. JACKMAN, #1632
Attorney for Plaintiffs
1327 South 800 East, Suite 300
Orem, Utah 84058
(801) 225-1632

IN THE FOURTH JUDICIAL DISTRICT COURT
OF THE STATE OF UTAH, IN AND FOR MILLARD COUNTY

GORDON GRIFFIN and RED DOME,
INC.,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Plaintiffs,

v.

SANDRA MEMMOTT, RALPH
MEMMOTT, SUE BUSHNELL,
SHEREE BUSHNELL, JIM
BUSHNELL, BRETT SANDERS,
PAM SANDERS, and CRAIG
SANDERS,

Defendants.

Civil No. CV 7975

Honorable Ray M. Harding

This matter having come before the Court on the 22nd day of May, 1989, on a bench trial, the Court having heard the proffered evidence, and having reviewed the documents stipulated into evidence, now makes the following:

FINDINGS OF FACT

1. That U.M.C. numbers were assigned to each of the claims made by Red Dome.

2. That before October 22, 1979, the filings by Red Dome were affirmatively recognized by the Bureau of Land Management (hereinafter B.L.M.) through correspondence requesting more

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information. Red Dome, Inc., provided the information.

3. The B.L.M. has continued to receive and respond to further filings of proof of labor.

4. The B.L.M. continues to maintain a file on the Red Dome mining claims.

5. In the past, the B.L.M. advised the defendants that the filings made on behalf of Red Dome were acceptable. Had the documents supplied by the plaintiffs been insufficient, the B.L.M. would have requested that plaintiffs supplement the information provided to the B.L.M.

6. There is no evidence that the B.L.M. did not consider the plaintiffs to be in compliance with the statute.

7. The Court finds that the appropriate assessment work for all years in question was done but there was no filing with the County.

8. The Court finds that the plaintiffs did make the required filings with the B.L.M.

9. The Court having entered its Findings of Fact now enters its:

CONCLUSIONS OF LAW

1. While the B.L.M. does not have the authority to determine whether the documents filed by the plaintiffs were sufficient and acceptable concerning the dispute between the

parties, the B.L.M. has the responsibility and authority to determine sufficiency and acceptability of the documents as between the plaintiff Red Dome and the B.L.M.

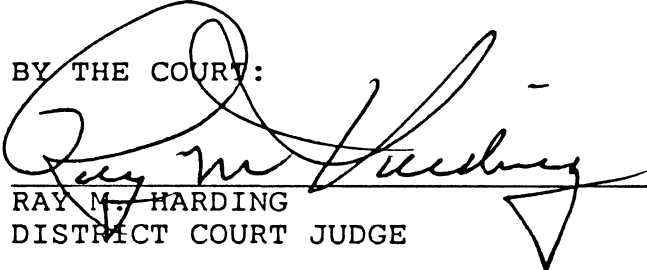
2. The summary submitted by the plaintiffs to the B.L.M. satisfied the requirements of the statute and that supplying an actual copy of the sheets on file in the recorder's office was neither practical or necessary.

3. The Court finds the documents supplied by the plaintiffs were sufficient and acceptable to the B.L.M. in both form and content and that the plaintiffs' filing on the property remain valid and therefore the claims were not subject to relocation by the defendants. Therefore, defendants' cross-claim is moot.

4. With regard to the failure to file the assessment claims with the County, the Court finds that failure to file proofs of labor where the work is actually done does not render the claims subject to relocation.

DATED this 21 day of June, 1989.

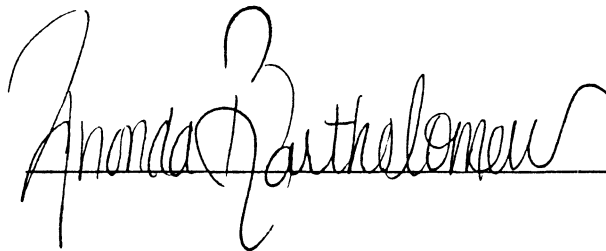
BY THE COURT:


RAY M. HARDING
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that on the 12 day of June, 1989, I mailed a true and correct copy of the foregoing, postage prepaid, to:

Harold A. Hintze
Attorney for Defendants
3319 North University Avenue
#200
Provo, Utah 84604



001261

Tab 6

300
1989
Lisa Crosland

FREDERICK A. JACKMAN, #1632
Attorney for Plaintiffs
1327 South 800 East, Suite 300
Orem, Utah 84058
(801) 225-1632

IN THE FOURTH JUDICIAL DISTRICT COURT
OF THE STATE OF UTAH, IN AND FOR MILLARD COUNTY

GORDON GRIFFIN and RED DOME,
INC.,

JUDGMENT

Plaintiffs,

v.

SANDRA MEMMOTT, RALPH
MEMMOTT, SUE BUSHNELL,
SHEREE BUSHNELL, JIM
BUSHNELL, BRETT SANDERS,
PAM SANDERS, and CRAIG
SANDERS,

Defendants.

Civil No. CV 7975

Honorable Ray M. Harding

The Court, having conducted a bench trial in this matter,
and having entered its Findings of Fact and Conclusions of Law,
now makes and enters the following:

JUDGMENT

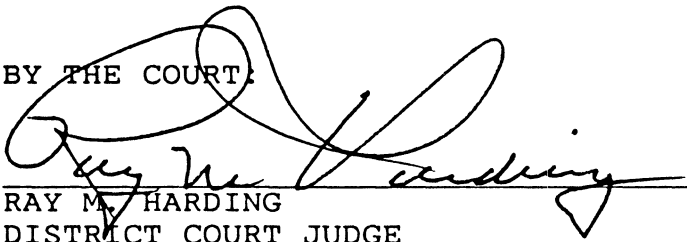
1. The plaintiffs are entitled to have title to the "Red Dome" mining claims more particularly described in the exhibits "A" - "I" attached to this Judgment quieted in them.
2. That defendants' cross-claim is dismissed with

001260

prejudice.

DATED this 21 day of June, 1989.

BY THE COURT:



RAY M. HARDING
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that on the 10 day of June, 1989, I mailed a true and correct copy of the foregoing, postage prepaid, to:

Harold A. Hintze
Attorney for Defendants
3319 North University Avenue
#200
Provo, Utah 84604

Rhonda Bartholomew

RED DOME #1 PLACER MINING CLAIM
MILLARD COUNTY, UTAH

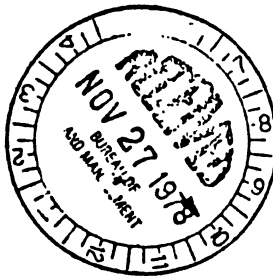
- 1) Notice of Location recorded at Book 11 page 449 on September 5, 1946.
- 2) Claim located September 5, 1946
- 3) Legal Description

Lot 1; & beg. 10 chains West of the Southeast corner of the Northeast 1/4 running thence West 40 chains, thence North 20 chains, thence East 40 chains, thence South 20 chains to beg., all in Sec 26, Township 21 South, Range 6 West, S.L.B. & M.

- 4) Owners are

Red Dome, Inc
SR Box 125
Fillmore, UT 84631

Fillmore Products, Inc
Lessee
SR Box 125
Fillmore, UT 84631



INTERIOR, BLM Utah State Office
Data relative to this document
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system and images of all documents
have been microfilmed.

UMC 58768

U MC 58768

EXHIBIT "A"

001260

RED DOME #2 PLACER MINING CLAIM
MILLARD COUNTY, UTAH

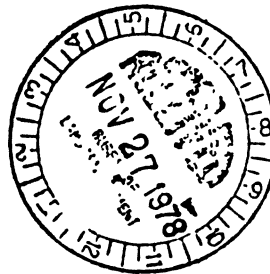
- 1) Notice of Location recorded at Book 9 page 543 on July 21, 1936.
- 2) Claim located on July 21, 1936.
- 3) An amendment recorded at Book 9 page 580 on April 4, 1937.
- 4) Legal Description

The East one-fifth (1/5) of Lot 1, all of Lot 2, and all of Lot 3 in Section 23, Township 21 South, Range 6 West, Salt Lake Base & Meridian. Lot 2, Section 26 Township 21 South, Range 6 West, Salt Lake Base & Meridian.

5) Owners:

Red Dome, Inc.
SR Box 125
Fillmore, UT 84631

Fillmore Products, Inc.
Lessee
SR Box 125
Fillmore, UT 84631



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U MC 58769

U MC 58769

EXHIBIT "B"

001267

RED DOME #3 PLACER MINING CLAIM
MILLARD COUNTY, UTAH

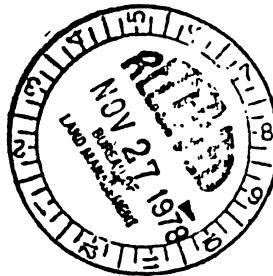
- 1) Notice of Location recorded at Book 9 page 544 on July 21, 1936.
- 2) Claim located on July 21, 1936.
- 3) An amendment recorded at Book 9 page 580 on April 6, 1937.
- 4) Legal Description

The South three-fourths (3/4) of the West four-fifths (4/5) of Lot 1, in Section 23, Township 21 South, Range 6 West, Salt Lake Base & Meridian, and all of Lot 4 in Section 26, Township 21 South, Range 6 West, Salt Lake Base & Meridian.

- 5) Owners:

Red Dome, Inc.
SR Box 125
Fillmore, UT 84631

Fillmore Products, Inc.
Lessee
SR Box 125
Fillmore, UT 84631



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U MC 58770

RED DOME #4 PLACER MINING CLAIM
MILLARD COUNTY, UTAH

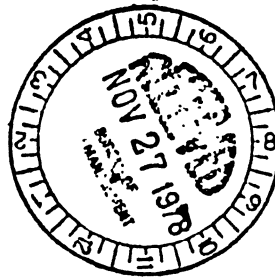
- 1) Notice of Location recorded at Book 9 page 560 on October 26, 1936.
- 2) Claim located on October 19, 1936.
- 3) Legal Description

The North quarter of the West four-fifths (4/5) of Lot 1 and commencing at the Northwest corner of Lot 1 and running thence North 16 chains; thence East 18 chains; thence South 16 chains; and thence West 18 chains; all in Section 23, Township 21 South, Range 6 West, Salt Lake Base & Meridian.

4) Owners:

Red Dome, Inc.
SR Box 125
Fillmore, UT 84631

Fillmore Products, Inc.
Lessee
SR Box 125
Fillmore, UT 84631



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have been microfilmed.

U MC 58771

EXHIBIT "D"

001265

RED DOME #5 PLACER MINING CLAIMS
MILLARD COUNTY, UTAH

- 1) Notice of Location recorded at Book 9 page 560
- 2) Claim located on October 19, 1936.
- 3) Legal Description

4.5 Acres being part of the Northeast 1/4 of the South east 1/4 of Section 27, and also part of the Lot 5, Section 26 Township 21 South, Range 6 West, Salt Lake Base & Meridian and more particularly described as follows:

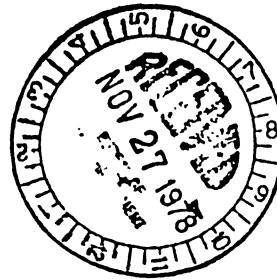
Commencing 3 chains West of the East 1/4 corner of Section 27, Township 21 South, Range 6 West, Salt Lake Base & Meridian, and running thence South 5 chains; thence East 9 chains; thence North 5 chains thence West 9 chains to the point of beginning.

- 4) Owners:

Red Dome, Inc.
SR Box 125
Fillmore, UT 84631

Fillmore Products, Inc.
Lessee
SR Box 125
Fillmore, UT 84631

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UJ MC 58772

RED DOME #6 PLACER MINING CLAIM
MILLARD COUNTY, UTAH

- 1) Notice of Location recorded at Book 10 page 265 on July 1, 1938.
- 2) Claim located on July 1, 1938.
- 3) Amendment recorded at Book 10 page 318 on June 28, 1939.
- 4) Legal Description

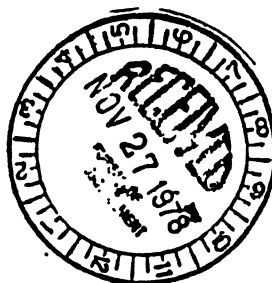
The Northeast 1/4 of the Southwest 1/4 of Section 23,
Township 21 South, Range 6 West, Salt Lake Base &
Meridian.

5) Owners:

Red Dome, Inc.
SR Box 125
Fillmore, UT 84631

Fillmore Products, Inc
Lessee
SR Box 125
Fillmore, UT 84631

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U MC 58773

RED DOME #7 PLACER MINING CLAIM
MILLARD COUNTY, UTAH

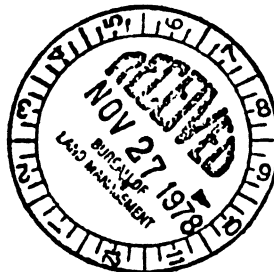
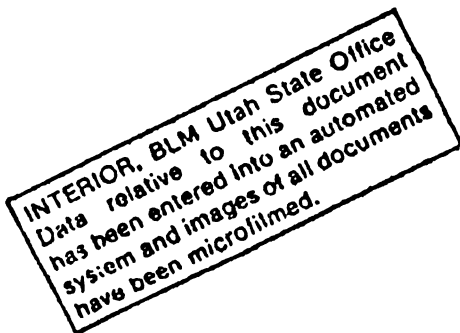
- 1) Notice of Location recorded at Book 10 page 265 on July 1, 1938.
- 2) Claim located on July 1, 1938.
- 3) Legal Description

Lot 1 and the North three-fourths (3/4) of Lot 2,
Section 27, Township 21 South, Range 6 West, Salt
Lake Base & Meridian.

- 4) Owners:

Red Dome, Inc.
SR Box 125
Fillmore, UT 84631

Fillmore Products, Inc.
Lessee
SR Box 125
Fillmore, UT 84631



U MC 58774

RED DOME NEW DISCOVERY PLACER MINING CLAIM
MILLARD COUNTY, UTAH

- 1) Notice of Location recorded at Book 12 page 339 on June 2, 1950.
- 2) Claim located on June 21, 1950.
- 3) Legal Description

Beginning at the Southeast corner of Section 22,
Township 21 South, Range 6 West, Salt Lake Base &
Meridian and running thence West 80 rods; thence
North 80 rods; thence East 80 rods; thence South
80 rods to the point of beg.

- 4) Owners:

Red Dome, Inc.
SR Box 125
Fillmore, UT 84631

Fillmore Products, Inc.
Lessee
SR Box 125
Fillmore, UT 84631

UMC 59192

EXHIBIT "H"

001270

RED DOME PLACER MINING CLAIM
MILLARD COUNTY, UTAH

- 1) Notice of location recorded at Book 9 page 384 on June 10, 1935.
- 2) Claim located May 24, 1935. (This claim was completely overlapped by Red Dome #2 and #3.)
- 3) Amendment recorded at Book 9 page 543 on July 20, 1936.
- 4) Legal Description

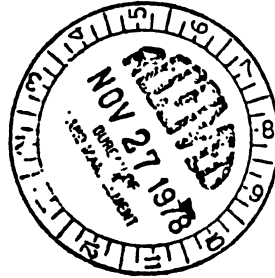
Commencing at a point approximately one half mile Northeast of U.S. Geological Survey Bench mark "Y" 1931 to Red Dome Placer Claim Stake No. 1; thence Southeasterly twenty chains to Red Dome Placer Claim Stake No. 2; thence Northeasterly thirty chains to Red Dome Placer Claim Stake No. 3; thence Northwesterly twenty chains to Red Dome Placer Claim Stake No. 4; thence Southwesterly thirty chains to point of beginning. The above described Claim is located in and is part of the South half of Section 23, and part of the North half of Section 26, in Township 21 South Range 6 West, S.L.B. & M.

5) Owners

Red Dome, Inc.
SR Box 125
Fillmore, UT 84631

Fillmore Products, Inc.
Lessee
SR Box 125
Fillmore, UT 84631

7436795

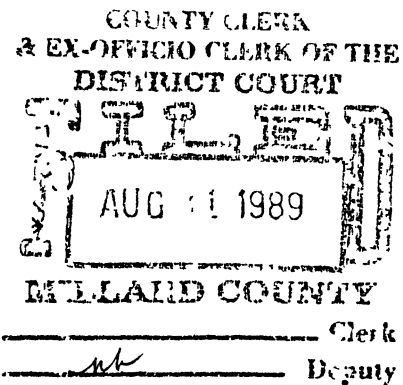


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U MC 58767

U MC 58767

Tab 7



FREDERICK A. JACKMAN, #1632
Attorney for Plaintiffs
1327 South 800 East, Suite 300
Orem, Utah 84058
(801) 225-1632

IN THE FOURTH JUDICIAL DISTRICT COURT
OF THE STATE OF UTAH, IN AND FOR MILLARD COUNTY

GORDON GRIFFIN and RED DOME,
INC.,

AMENDED JUDGMENT

Plaintiffs,

v.

SANDRA MEMMOTT, RALPH
MEMMOTT, SUE BUSHNELL,
SHEREE BUSHNELL, JIM
BUSHNELL, BRETT SANDERS,
PAM SANDERS, and CRAIG
SANDERS,

Defendants.

Civil No. CV 7975 .

Judge Ray Harding

THE ABOVE-ENTITLED ACTION having come on regularly for trial on May 22, 1989, before this court sitting without a jury with Frederick A. Jackman appearing as attorney for plaintiffs, and Harold A. Hintze appearing as attorney for defendants; the respective parties hereto having introduced evidence both oral and documentary; the Court having heard and considered the evidence and arguments of counsel; and the Court having filed its Findings of Fact and Conclusions of Law; now, therefore;

IT IS ORDERED, ADJUDGED, AND DECREED AS follows:

1. Plaintiff, Red Dome, Inc., is the owner in fee simple

001278

and entitled to the possession of certain Red Dome mining claims situated in Millard County, State of Utah, described as follows:

1. RED DOME BLANKET CLAIM

Commencing at a point approximately one half mile Northeast of U.S. Geological Survey Bench Mark "Y" 1931 to Red Dome Placer Claim Stake No. 1; thence southeasterly twenty chains to Red Dome Placer Claim Stake No. 2; thence Northeasterly thirty chains to Red Dome Placer Claim Stake No. 3; thence Northwesterly twenty chains to Red Dome Placer claim No. 4; Thence Southwesterly thirty chains to point of beginning. The above described claim is located in and is part of the South half of Section 23, and part of the North half of Section 26, in Township 21 South, Range 6 West, S.L.B. & M.

2. RED DOME CLAIM NO. 1

Lot 1; and Beg. 10 chains West of the Southeast corner of the Northeast 1/4 running thence West 40 chains; thence North 20 chains; thence East 40 chains; thence South 20 chains to beginning; all in Sec. 26, Township 21 South, Range 6 West, S.L.B.M. containing 120 acres.

3. RED DOME CLAIM NO. 2

The East one-fifth of Lot 1, containing 10.31 acres and all of Lot 2, containing 53.92 acres, and all of Lot 3, containing 53.92 acres, all in Section Twenty-three (23), Township 21 South, Range 6 West, Salt Lake Base and Meridian, and all of Lot 2, containing 40.62 acres, in Section Twenty-six (26) Township 21 South, Range 6 West, Salt Lake Base and Meridian.

4. RED DOME CLAIM NO. 3

The South Three-fourths of the West Four-fifths of Lot 1, containing 30.95 acres, in Section Twenty-three (23), Township 21 South, Range 6 West, Salt Lake Base and Meridian, and all of Lot 3, containing 40.95 acres, and all of Lot 4, containing 48.02 acres, in Section Twenty-six (26), Township 21 South, Range 6 West, Salt Lake Base and Meridian.

5. RED DOME CLAIM NO. 4

The North One-fourth of the West Fourth-fifth of Lot 1, containing 10.30 acres and Commencing at the NW corner of Lot 1, thence North 16 chains; thence East 18 chains; thence South 16 chains; thence West 18 chains to beginning, containing 28.8 acres, all in Section 23, Township 21 South, Range 6 West, Salt Lake Base and Meridian; containing a total of 39.1 acres.

6. RED DOME CLAIM NO. 5

4.5 acres, being part of the NE1/4 of the SE1/4 of Section 27, and also part of the NW1/4 of the SW1/4 of Section 26, Township 21 South, Range 6 West, Salt Lake Base and Meridian; more particularly described as follows:

Commencing 3 chains West of the East One-fourth corner of Section 27, Township 21 South, Range 6 West, Salt Lake Base and Meridian, more particularly described as follows:

7. RED DOME CLAIM NO. 6

Beginning at the Northeast corner of Lot 3, running thence East 20 chains; thence Northwesterly 22 chains; thence in a southerly direction 10.5 chains, more or less, to the place of beginning; also the Northwest 1/4 of the Southeast, and the Northeast 1/4 of the Southwest 1/4, all situated in Section 23, Township 21 South, Range 6 West, Salt Lake Meridian.

Amended Location Notice Recorded In: Book 10,
page 318
Recorded June 28, 1939, 9:10 a.m.

The Northeast 1/4 of the Southwest 1/4 of Section
23, Township 21 South of Range 6 West, Salt Lake
Base and Meridian.

8. RED DOME CLAIM NO. 7

Lot 1, containing 46.83 acres; the North 3/4 of
Lot 2, containing 35.14 acres; all situated in
Section 27, Township 21 South, Range 6 West, Salt
Lake Base and Meridian.

9. RED DOME CLAIM NEW DISCOVERY

Commencing at the S.E. cor. of Sec. 22, Twp. 21
South, Range 6 West, S.L.B.&M. running thence
West 80 rods; thence North 80 rods; thence East
80 rods; thence South 80 rods more or less to the
point of beginning. Containing 40 acres.

2. The claims of defendants Sandra Memmott, Ralph Memmott,
Sue Bushnell, Sheree Bushnell, Jim Bushnell, Brett Sanders, Pam
Sanders, and Craig Sanders and all who claim title under them in
and to said real property are without any right whatever, and
said defendants have no estate, right, title, lien, or interest
whatever in or to said mining claims or any part thereof;

3. Defendants Sandra Memmott, Ralph Memmott, Sue Bushnell,
Sheree Bushnell, Jim Bushnell, Brett Sanders, Pam Sanders, and
Craig Sanders and al persons claiming under them are hereby
permanently enjoined from asserting any estate, right, title,
lien, or interest in or to said real property or any part

thereof; and

4. Plaintiffs shall recover from defendant Sandra Memmott, Ralph Memmott, Sue Bushnell, Sheree Bushnell, Jim Bushnell, Brett Sanders, Pam Sanders, and Craig Sanders cost of court.

5. The defendants' Counterclaim is dismissed with prejudice.

DATED this 15 day of Aug, 1989.


DISTRICT COURT JUDGE

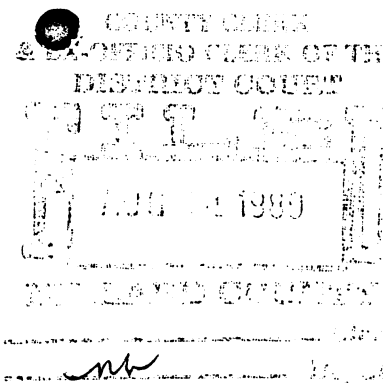
MAILING CERTIFICATE

I hereby certify that on the 16 day of June, 1989, I mailed a true and correct copy of the foregoing, postage prepaid, to:

Harold A. Hintze
Attorney for Defendants
3319 North University Avenue
#200
Provo, Utah 84604

Rnonda Bartholomew

Tab 8



FREDERICK A. JACKMAN, #1632
Attorney for Plaintiffs
1327 South 800 East, Suite 300
Orem, Utah 84058
(801) 225-1632

IN THE FOURTH JUDICIAL DISTRICT COURT
OF THE STATE OF UTAH, IN AND FOR MILLARD COUNTY

GORDON GRIFFIN and RED DOME,
INC.,

Plaintiffs,

ORDER

v.

SANDRA MEMMOTT, RALPH
MEMMOTT, SUE BUSHNELL,
SHEREE BUSHNELL, JIM
BUSHNELL, BRETT SANDERS,
PAM SANDERS, and CRAIG
SANDERS,

Defendants.

Civil No. CV 7975
Judge Ray Harding

THE ABOVE-ENTITLED ACTION having come on regularly for trial on May 22, 1989, before this court sitting without a jury with Frederick A. Jackman appearing as attorney for plaintiffs, and Harold A. Hintze appearing as attorney for defendants; the respective parties hereto having introduced evidence both oral and documentary; the Court having heard and considered the evidence and arguments of counsel; and the Court having filed its Findings of Fact and Conclusions of Law; and the matter having come on before the Court for further proceedings on the 23rd day of June, 1989, for purposes of considering attorney's fees and/or

00128.

contempt; now, therefore;

IT IS ORDERED, ADJUDGED, AND DECREED AS follows:

1. Plaintiff, Red Dome, Inc., is the owner in fee simple and entitled to the possession of certain Red Dome mining claims situated in Millard County, State of Utah, described as follows:

1. RED DOME BLANKET CLAIM

Commencing at a point approximately one half mile Northeast of U.S. Geological Survey Bench Mark "Y" 1931 to Red Dome Placer Claim Stake No. 1; thence southeasterly twenty chains to Red Dome Placer Claim Stake No. 2; thence Northeasterly thirty chains to Red Dome Placer Claim Stake No. 3; thence Northwesterly twenty chains to Red Dome Placer claim No. 4; Thence Southwesterly thirty chains to point of beginning. The above described claim is located in and is part of the South half of Section 23, and part of the North half of Section 26, in Township 21 South, Range 6 West, S.L.B. & M.

2. RED DOME CLAIM NO. 1

Lot 1; and Beg. 10 chains West of the Southeast corner of the Northeast 1/4 running thence West 40 chains; thence North 20 chains; thence East 40 chains; thence South 20 chains to beginning; all in Sec. 26, Township 21 South, Range 6 West, S.L.B.M. containing 120 acres.

3. RED DOME CLAIM NO. 2

The East one-fifth of Lot 1, containing 10.31 acres and all of Lot 2, containing 53.92 acres, and all of Lot 3, containing 53.92 acres, all in Section Twenty-three (23), Township 21 South, Range 6 West, Salt Lake Base and Meridian, and

all of Lot 2, containing 40.62 acres, in Section Twenty-six (26) Township 21 South, Range 6 West, Salt Lake Base and Meridian.

4. RED DOME CLAIM NO. 3

The South Three-fourths of the West Four-fifths of Lot 1, containing 30.95 acres, in Section Twenty-three (23), Township 21 South, Range 6 West, Salt Lake Base and Meridian, and all of Lot 3, containing 40.95 acres, and all of Lot 4, containing 48.02 acres, in Section Twenty-six (26), Township 21 South, Range 6 West, Salt Lake Base and Meridian.

5. RED DOME CLAIM NO. 4

The North One-fourth of the West Fourth-fifth of Lot 1, containing 10.30 acres and Commencing at the NW corner of Lot 1, thence North 16 chains; thence East 18 chains; thence South 16 chains; thence West 18 chains to beginning, containing 28.8 acres, all in Section 23, Township 21 South, Range 6 West, Salt Lake Base and Meridian; containing a total of 39.1 acres.

6. RED DOME CLAIM NO. 5

4.5 acres, being part of the NE1/4 of the SE1/4 of Section 27, and also part of the NW1/4 of the SW1/4 of Section 26, Township 21 South, Range 6 West, Salt Lake Base and Meridian; more particularly described as follows:

Commencing 3 chains West of the East One-fourth corner of Section 27, Township 21 South, Range 6 West, Salt Lake Base and Meridian, more particularly described as follows:

7. RED DOME CLAIM NO. 6

Beginning at the Northeast corner of Lot 3, running thence East 20 chains; thence

Northwesterly 22 chains; thence in a southerly direction 10.5 chains, more or less, to the place of beginning; also the Northwest 1/4 of the Southeast, and the Northeast 1/4 of the Southwest 1/4, all situated in Section 23, Township 21 South, Range 6 West, Salt Lake Meridian.

Amended Location Notice Recorded In: Book 10,
page 318

Recorded June 28, 1939, 9:10 a.m.

The Northeast 1/4 of the Southwest 1/4 of Section 23, Township 21 South of Range 6 West, Salt Lake Base and Meridian.

8. RED DOME CLAIM NO. 7

Lot 1, containing 46.83 acres; the North 3/4 of Lot 2, containing 35.14 acres; all situated in Section 27, Township 21 South, Range 6 West, Salt Lake Base and Meridian.

9. RED DOME CLAIM NEW DISCOVERY

Commencing at the S.E. cor. of Sec. 22, Twp. 21 South, Range 6 West, S.L.B.&M. running thence West 80 rods; thence North 80 rods; thence East 80 rods; thence South 80 rods more or less to the point of beginning. Containing 40 acres.

2. The claims of defendants Sandra Memmott, Ralph Memmott, Sue Bushnell, Sheree Bushnell, Jim Bushnell, Brett Sanders, Pam Sanders, and Craig Sanders and all who claim title under them in and to said real property are without any right whatever, and said defendants have no estate, right, title, lien, or interest whatever in or to said mining claims or any part thereof;

3. Defendants Sandra Memmott, Ralph Memmott, Sue Bushnell, Sheree Bushnell, Jim Bushnell, Brett Sanders, Pam Sanders, and

Craig Sanders and al persons claiming under them are hereby permanently enjoined from asserting any estate, right, title, lien, or interest in or to said real property or any part thereof; and

4. Plaintiffs shall recover from defendant Sandra Memmott, Ralph Memmott, Sue Bushnell, Sheree Bushnell, Jim Bushnell, Brett Sanders, Pam Sanders, and Craig Sanders cost of court.

5. That any contempt proceedings for violation of a Court order in another case would be more appropriately handled in that case and before that Judge.

6. That there is no statutory or contracted basis for awarding attorney's fees to either party and therefore each party shall bear their own fees and costs.

7. The defendants' Counterclaim is dismissed with prejudice.

DATED this 22 day of August, 1989.


DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that on the 15 day of August, 1989, I mailed a true and correct copy of the foregoing, postage prepaid, to:

Harold A. Hintze
Attorney for Defendants
3319 North University Avenue
#200
Provo, Utah 84604

Rhonda Bartholomew

Tab 9

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
UTAH STATE OFFICE
324 SOUTH STATE, SUITE 301
SALT LAKE CITY, UTAH 84111-2303

IN REPLY REFER TO

3833
(U-942)

APR 15 1987

ons, Behle and Latimer
ntion: Patrick J. Garver
Box 11898
Lake City, Utah 84147-0898

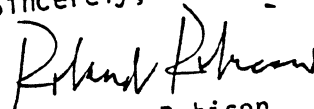
Mr. Garver:

I met with Orval Hadley of this office the first week in April 1987 to express concern that our letter, dated March 16, 1987, did not adequately address the question in your letter of February 3, 1987. Therefore, we will try to clarify the matter.

Our question was: "Is it BLM's position that BLM has determined that the owners of the Red Dome claims filed with BLM prior to October 22, 1979, acceptable to the proper BLM Office," (as that phrase is used in the version of the 43 CFR 3833, Paragraph 3833.0-5(i) that was in effect during 1979) of copies of the official record of the notices or certificates of location for the Red Dome claims?" To answer this question, we need to state the sequence of events concerning the Red Dome claims.

On July 20, 1984, Larsen, Nazuran, and Verhaaren (a professional corporation) requested us to issue a decision "declaring the Red Dome Mining Claims null and void, or that said claims have been abandoned" because of failure of the claimant to comply with Section 314 of FLMPA and 43 CFR 3833.3. A decision was issued on August 21, 1985, that did not declare the Red Dome claims as being invalid for the above stated reasons. This decision was appealed to the Interior Board of Land Appeals (IBLA) which dismissed the appeal on September 27, 1985. The appellant submitted a petition for reconsideration which was granted by IBLA. The IBLA on July 12, 1986 ((Sandra Memmott on reconsideration) 93 IBLA 113 (1986)) vacated the BLM decision of August 21, 1985, in its entirety. The IBLA vacated the decision without ruling on the sufficiency or correctness of the decision. As a result, we now have no opinion as to whether or not the documents contained in our records for the Red Dome claims are adequate to comply with the recordation requirements of Section 314 of FLPMA and regulations promulgated thereunder.

Sincerely,



Roland G. Robison
State Director

EXHIBIT "A"

Tab 10



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

INTERIOR BOARD OF LAND APPEALS

4015 WILSON BOULEVARD

ARLINGTON, VIRGINIA 22203

CLEO MAY FRESH
MARJORIE P. DETERTS

IBLA 80-325

Decided October 16, 1980

Appeal from the decision of the Colorado State Office, Bureau of Land Management, returning various documents relating to mining claim, CMC 150396, and declaring the claim abandoned.

Affirmed.

1. Mining Claims: F.L.P.M.A.--Abandonment--Affidavit of Assessment Work--Location Prior to October 21, 1976--Notice of Intention to Hold a Mining Claim--Recordation of Mining Claims; LOCATION PROCEDURES--Relocation; REGULATIONS--Applicability--Interpretation.

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim and related documents with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

APPEARANCES: Carl H. Noel, Esq., Denver, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Cleo May Fresh and Marjorie P. Deterts have appealed from the decision of the Colorado State Office, Bureau of Land Management (BLM), dated December 7, 1979, returning various documents relating to the Cleo May placer claim, CMC 150396, as insufficient for purposes of recordation under the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

INDEX CODE:

43 CFR 3833.0-5(i)
43 CFR 3833.1-2(q)
43 CFR 3833.2-1(a)
43 CFR 3833.5(f)

On September 27, 1979, appellants submitted to BLM a copy of a quitclaim deed dated May 2, 1961, transferring the Behan placer mining claim to appellants, a map, and an affidavit of value of labor and improvements for the period from September 1, 1979, to September 1, 1980. The affidavit, which was recorded with the county recorder on August 3, 1979, and the map indicate that the Cleo May claim and Behan claim are one and the same.

In its decision, BLM indicated that appellants did not file a certificate of location before October 22, 1979, as required by FLPMA and enclosed a copy of the pertinent regulations. On January 11, 1980, counsel for appellants appeared at the BLM office and attempted to submit the original certificate of location for the Cleo May placer claim. BLM would not accept it. A copy of the certificate of location attached to appellants' statement of reasons indicates that the appellants located the Cleo May claim on April 18, 1949.

In their statement of reasons, appellants first point out that the definition of "[c]opy of the official record of the notice of certificate of location" found at 43 CFR 3833.0-5(1) includes: "other evidence, acceptable to the proper BLM office, of such instrument of recordation." Appellants argue that such evidence was offered and accepted by BLM prior to October 22, 1979. Appellants then contend that they should have been allowed to correct filings as they attempted to do, since they would have had ample time to submit the required certificate of location if BLM had not accepted their filings originally. They note that other claimants were informed that their filings were deficient before the October 22, 1979, cutoff and argue that they have been unfairly treated.

[1] Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The corresponding regulation, 43 CFR 3833.1-2(a), reads as follows:

[§] 3833.1-2 Manner of recordation--Federal Lands

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law.

Section 314(a) of FLPMA and Departmental regulations at 43 CFR 3833.2-1(a) also require the owner of such a mining claim to file evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of recording.

Thus, on or before October 22, 1979, appellants were required to have filed a copy of the certificate of location for the Cleo May claim and evidence of assessment work for the preceding assessment year or a notice of intention to hold the claim.

The failure of BLM to notify appellants upon filing that their submissions did not meet the requirements of FLPMA does not prevent BLM from later doing so. 43 CFR 3833.5(f). Nor do noncomplying submissions become "acceptable" because BLM takes receipt of them. The quitclaim deed submitted by appellants did not constitute "other evidence" of the certificate of location as it in no manner refers to the location of the claim or the recording of that claim in the county recorder's office. ^{1/} In any event, the provision of the regulations concerning the submission of "other evidence" only applies when the notice of location is no longer obtainable or when a claimant purports to hold a claim under 30 U.S.C. § 38 (1976). Herein, appellants had a copy of the location notice. They merely failed to send it to BLM. Cf. Philip Sayer, 42 IBLA 296 (1979).¹ Additionally, we note that the affidavit of assessment work was also unacceptable because it related to the coming assessment year rather than the preceding year.

The responsibility for complying with the recordation requirements rested with appellants and appellants must bear the consequences of their failure to do so. BLM has no authority to waive compliance or accept late filings. Although it is undoubtedly true that BLM was able to review and reject some noncomplying filings before the October 22, 1979, filing date, there is no evidence that BLM did not properly process appellants' filings. Glen J. McCrorey, 46 IBLA 355 (1980).^b

As noted in the BLM decision, appellants may relocate these claims for locatable minerals and file notice with BLM within 90 days of location as provided in 43 CFR 3833.1 subject to any intervening rights of third parties and assuming no intervening closure of the land to mining location.

^{1/} It was unexplained and we find it curious that the quitclaim deed purporting to transfer ownership of the claim at issue to appellants has a later date than the certificate of location evidencing appellants' location of the claim.

a) GFS(MIN) 69(1979)

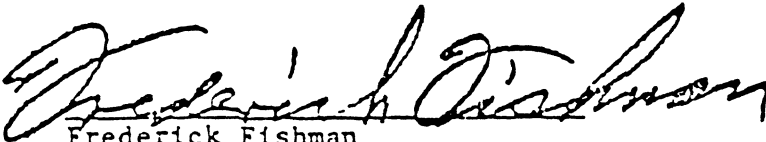
b) GFS(MIN) 61(1980)

Therefore, 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.

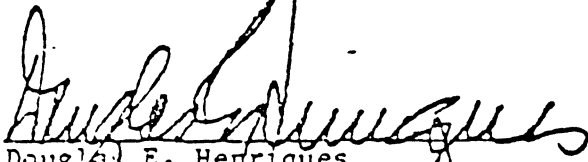


James L. Burski
Administrative Judge

We concur:



Frederick Fishman
Administrative Judge



Douglas E. Henriques
Administrative Judge

Tab 11



IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS INTERIOR BOARD OF LAND APPEALS

4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

JOHN J. VIKARCIC
GEORGE W. VRABLE

IBLA 81-530

Decided October 21, 1981

Appeal from decision of the California State Office, Bureau of Land Management, rejecting recordation of certain mining claims. CA MC 54975 through CA MC 54978.

Affirmed as modified.

1. Mining Claims: F.L.P.M.A.--Abandonment--Location Prior to October 21, 1976--Recordation of Mining Claims; REGULATIONS--Applicability.

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

2. Mining Claims: F.L.P.M.A.--Recordation of Mining Claims; REGULATIONS--Applicability; WORDS AND PHRASES--Copy of the Official Record of the Notice or Certificate of Location.

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper Bureau of Land Management office, of such instrument or recordation. It also includes an exact reproduction, duplicate, or other acceptable evidence except microfilm, of an amended instrument which may change or alter the description of the claim. A quitclaim deed is not an acceptable substitute in the absence of a showing that the certificates of location were unavailable.

INDEX CODE

43 CFR 3833.0-5(1)
43 CFR 3833.1-2

58 IELA 377

GFS(MIN) 370(1981)

APPEARANCES: Robert C. Coates, Esq., for appellants.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

John J. Vikarcik and George W. Vrabie have appealed from the March 10, 1981, decision of the California State Office, Bureau of Land Management (BLM), rejecting recordation of certain mining claims held by appellants including the Bedrock (CA MC 54975), Warlock (CA MC 54976), Neptune (CA MC 54977), and Shamrock (CA MC 54978) mining claims. 1/ Appellants filed maps, quitclaim deeds, and proofs of labor for these claims with BLM on October 20, 1979. No copies of the original location notices, however, were filed. On January 30, 1981, the California State Office notified appellants that the claims could not be recorded in the absence of original location notices, and allowed appellants 30 days in which to submit the copies. 2/ Appellants neither sent copies nor explained why copies were not available. On March 10, 1981, BLM issued its decision rejecting the filings.

[1] Section 314(b) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to file timely such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. William E. Talbott, 52 IBLA 12 (1981).^a

[2] "Copy of the official record of the notice of location" is defined by 43 CFR 3833.0-5(i) to include:

[A] legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim, mill or tunnel site which was or will be filed in the local jurisdiction where the claim or site is located or other evidence acceptable to the proper BLM office, of such instrument of recordation. It also includes an exact reproduction, duplicate or other acceptable evidence, except microfilm, of an amended instrument which may change or alter the description of the claim or site.

The purpose of the recordation requirements of FLPMA is to give notice to BLM of the existence of mining claims on Federal lands so that this information may be considered in the management of those lands. The

1/ This appeal concerns only the four claims named above, although the decision below also affected a number of other claims.

2/ See n.3, infra.

date of location is important for establishing the date from which a claimant's rights to a particular claim arise. William E. Talbott, supra.

The quitclaim deeds submitted by appellants do not constitute "other evidence" of the certificate of location under the above regulation as the deed in no way refers to the location of the claim or its recordation in the county recorder's office. Cleo May Fresh, 50 IBLA 363 (1980).^b The provision in the regulation concerning the submission of "other evidence" applies only when the notice of location is no longer obtainable or when a claimant purports to hold a claim under 30 U.S.C. § 38 (1976). Id. 3/ Although appellants were given 30 days to submit copies of the original location notices, they did not submit them and, further, gave no explanation as to why they did not. In these circumstances, we cannot assume that the notices of location are no longer obtainable or that appellants purport to hold claims under 30 U.S.C. § 38 (1976) (entitled "Evidence of possession and work to establish right to patent"). Accordingly, appellants' submission of maps and quitclaim deeds was not sufficient to effect the recordation of their claims. See Marvin E. Brown, supra at n.3.

Appellants do not allege compliance with the statutory and regulatory provisions. Instead, they argue that these requirements are unconstitutional. They assert that unpatented mining claims are valuable property rights requiring constitutional due process protection; that the Government may not alter prior vested rights by subsequent legislation; that there is no public welfare interest nor an emergency authorizing taking without just compensation; that the statutory irrebuttable presumption of abandonment is arbitrary and capricious; and that there has been no notice or opportunity to be heard before forfeiture. In Lynn Keith, 53 IBLA 192, 197-98, 88 I.D. 369, 372 (1981),^f we responded to similar objections to the constitutionality of the statute as follows:

3/ While quitclaim deeds may be acceptable if a claimant demonstrates that the certificates of location are not available, the State Office's letter of Jan. 30, 1981, purported to extend the time for filing the documents which the statute required to be filed by Oct. 22, 1979. In Lynn Keith, infra, we noted that Congress did not vest the Secretary of the Interior with the authority to waive or excuse noncompliance with the statute. Although Organic Act Directive (OAD) 80-19 (Feb. 25, 1980) refers to the submission of quitclaim deeds as a substitute for certificates of location, we do not read this as approving acceptability of quitclaim deeds in all situations. See D. Estremado, 55 IBLA 49 n.1 (1981).^d The OAD 80-19 refers to OAD 79-7 (Nov. 24, 1978), which indicated that quitclaim deeds may be accepted if the mining claimant demonstrates that the certificates of location were unavailable. See Marvin E. Brown, 52 IBLA 44 (1981).^e

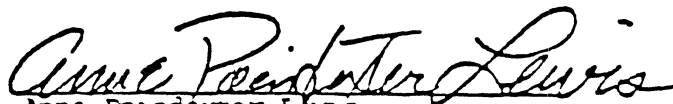
- b) GFS(MIN) 250(1980)
- c) GFS(MIN) 86(1981)
- d) GFS(MIN) 161(1981)
- e) GFS(MIN) 28(1981)

Appellant's challenge of the statute and regulations cannot be sustained here. Essentially, the regulations merely mirror the statute and, to the extent that they have been considered by the courts, they have been upheld. See Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979) (appeal pending); Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, [Civ. No. 78-46 M. (D. Mont. June 19, 1979)]. In any event, it has frequently been held that an appeals board of this Department has no authority to declare a duly promulgated regulation invalid. Exxon Co., U.S.A., 45 IBLA 313 (1980);^f cf. Garland Coal and Mining Co., 52 IBLA 60 (1981).^g Nor may such a regulation be waived by the Department. Marvin E. Brown, 52 IBLA 44 (1981),^h and cases therein cited. With reference to the statute, this Board adheres to its earlier holdings that the Department of the Interior, being an agency of the executive branch of the Government, is not the proper forum to decide whether an act of Congress is constitutional. Alex Pinkham, 52 IBLA 149 (1981),ⁱ and cases therein cited. Jurisdiction of such an issue is reserved exclusively to the judicial branch.

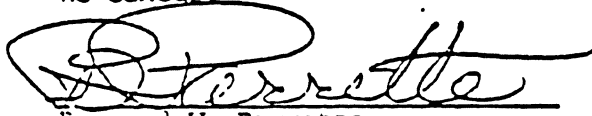
In answer to appellants' objection that there has been no opportunity to be heard, we note that no hearing is required in the absence of a disputed issue of material fact. See United States v. Consolidated Mines & Smelting Co., Ltd., 455 F.2d 432, 453 (9th Cir. 1971). No such issue arises as appellants do not dispute their failure to file the documents necessary to prevent their claims from being deemed abandoned under FLPMA.

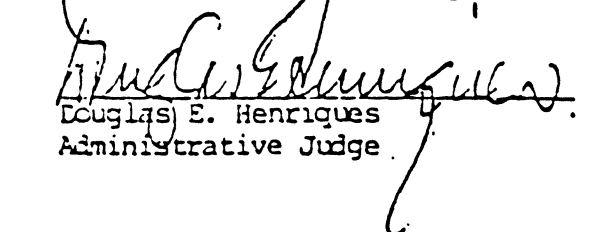
We note that appellants may relocate these claims and file notice of this as provided in 43 CFR 3833.1, subject to any intervening rights of third parties, and assuming no intervening closure of the land to mining location.

Therefore, 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.


Anne Poindexter Lewis
Administrative Judge

We concur:


Bernard V. Parrette
Chief Administrative Judge


Douglas E. Henriques
Administrative Judge

-
- f) GFS(OCS) 71(1980)
 - g) GFS(MIN) 32(1981)
 - h) GFS(MIN) 28(1981)
 - i) GFS(MIN) 39(1981)

Tab 12



IN REPLY REFER TO:

United States Department of the Interior

3833 (723)

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

Organic Act Directive No. 79-7

November 24, 1978

To: AFO's

From: Associate Director

Subject: Recordation Under Federal Land Policy and Management Act
Where Local Recordation Cannot be Established

There have already been instances where claimants, wishing to record their mining claims with BLM, have been unable to supply copies of location notices, or certificates of location, which they believe to have been recorded in the local recording office. Such cases normally involve claims dating back to the turn of the century or before.

The Bureau recognizes that over the years many documents may become lost or misplaced. A number of recording offices have been destroyed by fire. Other types of casualties are known to have occurred.

The purpose of section 314 of FLPMA is to ensure that all mining claims, mill sites, and tunnel sites are reflected in the land records. Where a search of the local (county or recording district) records, therefore, does not reveal the original filing, but does show that there is reason to believe that a recording may have been made, secondary evidence will be accepted. Evidence leading to a belief that a recording may have been made includes, but is not limited to, such things as a history of annual assessment work recordings, recorded grants to the present owner, or wills showing that the claim was inherited by the present owner or a predecessor in interest. The above items are described in 43 CFR 3862.1-4. In 43 CFR 3862.3-1 the means of establishing a right by occupancy is described. Where the above described documents cannot be produced, a right by occupancy will be accepted.

We expect that if this situation is to become acute, it will happen during the last two or three months before October 22, 1979. In each case, the material will be accepted, along with the filing fee, and date stamped. Subsequent review of the material will determine whether or not it is sufficient. Any case where a decision cannot be made as to its sufficiency will be referred to the Director (720) for a final decision.

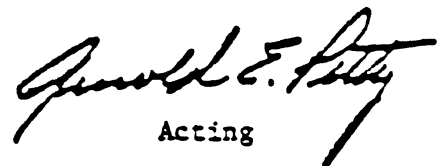

Acting

EXHIBIT "C"

Tab 13

Ralph Memmott

Plaintiff

va. Evan Anderson, et al.

Defendant

Dave Mc Mullin

Attorney for Plaintiff

Shope Waddingham, LeRoy L. JacksonDexter L. Anderson, Randy Smart

Attorney for Defendant

Date December 21-1978Case No. 6656Judge J. Harlan Burns

PLAINTIFF'S EXHIBITS:

Received

DEFENDANT'S EXHIBITS:

Received

74 P-1 <u>Aerial Map 1974</u>	Rec. ✓	D-1	
166 P-2 " " 1976	Rec. ✓	D-2	
158 P-3 " " 1958	Rec. ✓	D-3	
753 P-4 " " 1952	Rec. ✓	D-4	
P-5 <u>Map. - Drawing</u>	Rec. ✓	D-5	
P-6		D-6 <u>Aerial Picture</u>	
P-7		D-7 <u>Map</u>	Rec. ✓
P-8		D-8 <u>Deed</u>	
P-9		D-9 <u>Map</u>	Rec. ✓
P-10		D-10 <u>Map</u>	
P-11		D-11 <u>Notice of Claim</u>	
P-12		D-12 <u>Notice of Claim</u>	Rec. ✓
P-13		D-13 <u>Notice of Location</u>	
P-14		D-14 <u>Proof of Labor</u>	
P-15 <u>Claim</u>	Rec. ✓	D-15	
P-16 <u>Notice of Location</u>	Rec. ✓	D-16	
P-17 <u>Notice of Location</u>	Rec. ✓	D-17	
P-18 <u>Notice of Location</u>	Rec. ✓	D-18	
P-19 <u>Notice of Location</u>	Rec. ✓	D-19	
P-20 <u>Picture Aerial</u>		D-20	

PLAINTIFF'S WITNESSES:

DEFENDANT'S WITNESSES:

1. <u>Ralph Memmott</u>	1. <u>Ron Theobald</u>
2. <u>Roy Hyatt</u>	2. <u>Jay W. De Graff</u>
3. <u>Dell Allgood</u>	3. <u>Archie P. Christensen</u>
4. <u>Ralph Christensen</u>	4. <u>Robert B. Jones</u>
5. <u>Robert L. Phillips</u>	5. <u>Alan Christensen</u>
6. <u>Willie Morrison</u>	6. <u>David A. Allen</u>
7. <u>Inace Memmott</u>	7. <u>Evan B. Anderson</u>
8. _____	8. <u>Sandra Memmott</u>
9. _____	9. _____
10. _____	10. _____

EXHIBIT "D"

Plaintiff Rests: 12-22-78 10:34 A.M.

19 78

Defendant Rests:

4:10 P.M. 12-22-78 19

Plaintiff

VS.

Defendant

Attorney for Plaintiff

Attorney for Defendant

Date

Case No.

Judge

PLAINTIFF'S EXHIBITS:

Received

DEFENDANT'S EXHIBITS:

Received

P-21 Surveyors Map.

D-22 Resolution

P-29 - Comm. Minutes

Rec. ✓

D-23 Resolution

Rec. ✓

P-30 - Comm. Minutes

Rec. ✓

D-24 Resolution

Rec. ✓

P-4

D-25 Resolution

Rec. ✓

P-5

D-26 Map

Rec. ✓

P-6

D-27 Subpoena Log Sheet

Rec. ✓

P-7

D-28 Map

Rec. ✓

P-8

D-29 Picture

Rec. ✓

P-9

D-30 Picture

Rec. ✓

P-10

D-31 Picture

Rec. ✓

P-11

D-32 Picture

Rec. ✓

P-12

D-12

P-13

D-13

P-14

D-14

P-15

D-15

P-16

D-16

P-17

D-17

P-18

D-18

P-19

D-19

P-20

D-20

PLAINTIFF'S WITNESSES:

DEFENDANT'S WITNESSES:

1.

2.

3.

4. MARLENE WHICKER COUNTY CLERK AND EX-OFFICIO CLERK OF THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR MILLARD COUNTY, STATE OF UTAH, HEREBY CERTIFY THAT THE FOREGOING IS

5. TRUE AND CORRECT COPY OF THE ORIGINAL DOCUMENT IN FILE AND OF RECORD IN MY OFFICE AS SUCH CLERK

6. WITNESS MY HAND AND SEAL OF SAID COURT THIS 12th

7. DAY OF January

AD. 19 87

8. Marlene Whicker

MARLENE WHICKER CLERK

BY J. Brannon

DEPUTY CLERK

9.

10.

Plaintiff Rests:

M.

19

Defendant Rests:

M.

19

116 TRIAL INFORMATION SHEET

U. S. 11
- 116

Millit No. D-12
Case No. 6656

NOTICE OF LOCATION
OF
CINDER CRATER NO. EIGHT PLACER MINING CLAIM

KNOW ALL MEN BY THESE PRESENTS, that Merrill G. Memmott and Marie S. Memmott, of Salt Lake City, Utah, and Ralph C. Memmott and Grace K. Memmott, of Scipio, Utah, all citizens of the United States, having complied with all of the requirements of law and the local rules and customs, claim by right of discovery and location a valuable bed or deposit of volcanic cinders or ash and other minerals, which placer mining ground or claim the undersigned have name the "CINDER CRATER NO. EIGHT." Said claim contains 46.73 acres, is situated in unorganized mining district, Millard County, State of Utah, and is described as follows:

Lot Five of Section 26, Township 21 South,
Range 6 West, Salt Lake Meridian.

This claim lies about 4 miles North of White Mountain and about 10 miles West of Fillmore, Utah.

The undersigned have erected at the point of discovery a monument about three feet high above the ground situated about 50 feet South and 985 feet West from the North East corner of this claim upon which monument this notice is conspicuously posted.

The undersigned have distinctly marked each corner of this claim by erecting at each corner a monument about three feet high above the ground so that the boundaries thereof

I hereby certify this to be a true and correct copy of the document recorded in the office of the MILLARD COUNTY RECORDER in Book 11 of Notice of Location, Page 506. IN WITNESS WHEREOF, I hereunto set my hand and affix my official seal this 15th day of Dec, 19 78.

Lavoy Martin
LAVOY MARTIN, Millard County Recorder
Fillmore, Utah 84631

17

name the "CINDER CRATER NO. EIGHT." Said claim contains 46.73 acres, is situated in unorganized mining district, Millard County, State of Utah, and is described as follows:

Lot Five of Section 26, Township 21 South,
Range 6 West, Salt Lake Meridian.

This claim lies about 4 miles North of White Mountain and about 10 miles West of Fillmore, Utah.

The undersigned have erected at the point of discovery a monument about three feet high above the ground situated about 50 feet South and 985 feet West from the North East corner of this claim upon which monument this notice is conspicuously posted.

The undersigned have distinctly marked each corner of this claim by erecting at each corner a monument about three feet high above the ground so that the boundaries thereof can be readily traced.

Date of Location: March 5th, 1947.

Witnesses to posting of notice and marking of boundaries:

Merrill G. Memmott

Ralph Memmott.

MERRILL G. MEMMOTT

MARIE S. MEMMOTT

RALPH C. MEMMOTT

GRACE K. MEMMOTT

Locators

By: Edward B. Jones, Agent.

Filed for record March 10, 1947 at 9:00 A. M. File No. #60157
Camilla Hunter, County Recorder.

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Tab 14

NOTICE OF LOCATION

NOTICE IS HEREBY GIVEN that the undersigned having complied with the requirements of Section 2324 of the Revised Statutes of the United States and the Local Laws, Customs and Regulations of this District, has located fifteen hundred feet in length by Six Hundred feet in width, on this, the Elwood No. 1, Lode, Vein or Deposit, bearing gold, silver, copper, lead and other valuable minerals, situate in Tintic Mining District Juab County, State of Utah, the location being described and marked on the ground as follows, to-wit:

Beginning at this discovery and running about S. 6° W. 1000 feet, and about N. 28° E. 500 feet, and claiming all ground within 300 feet on each side of this the lode line, excepting conflicts with Sur. Nos. 2945, 3295, 4014, 2955, 5393 and 6015. The $\frac{1}{4}$ Cor. between Secs. 25 and 36, T. 10 S., R 2 W. bears about N. 89° 30' E. 312 feet.

The above described Mining Claim shall be known as the Elwood No. 1.

Located this 1st day of July, 1930.

NAMES OF LOCATORS:


Witness

Jos N. Elsinor

Jesse Haws

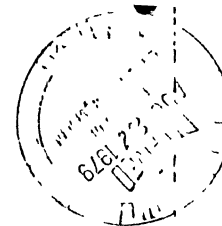
Filed for Record July 1, 1930 at 2:55 P. M. H. M. Naylor, Recorder A. Naylor Deputy
Recorded Book 14 page 273.

No. 45745 Recorded at the request of Jesse Haws, July 3, 1930, at 10 A. M.



County Recorder

NOTICE OF LOCATION



U
MC
102438

107

SUPPLEMENTAL DATA

Filed by. The Anaconda Company
 555 17th Street
 Denver, CO 80217

For and on behalf of the owners:

Owner(s): North City Mining Company (formerly Empire Mines Company
 40 The Anaconda Company

Address: 555 17th Street
 Denver, CO 80217

	<u>Section</u>	<u>Township</u>	<u>Range</u>
NE $\frac{1}{4}$	<u>36</u>	<u>10S</u>	<u>3W</u>
NW $\frac{1}{4}$	<u>36</u>	<u>10S</u>	<u>3W</u>
SE $\frac{1}{4}$	<u>25</u>	<u>10S</u>	<u>3W</u>
SW $\frac{1}{4}$	<u>25</u>	<u>10S</u>	<u>3W</u>

Salt Lake Meridian

County of Juab

State of Utah

RECEIVED
UTAH STATE OFFICE
1919 AUG 20 AM 10:57

DEPT OF INTERIOR
BUR. OF LAND MGMT.

ROCKY FORD PLACER CLAIM No.2.

NOTICE OF LOCATION OF PLACER CLAIM.

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that the undersigned citizens of the United States over the age of 21 years, have this day located under and in pursuance of and having complied with Sections 2329, 2330, 2331 of the revised Statutes of the United States, and the laws of the State of Utah and the local laws and customs and regulations of this District, have this day located the following described Placer Mining Ground, situated in the Unorganized Mining District, of Juab County, State of Utah, viz:

E $\frac{1}{2}$ Lots 4 and 5 North 344 feet of Lot 12; South 976 ft. of the West $\frac{1}{4}$ of Lot 5 all in Section 4, T.15S, R.3 W.S.L.B. & M. Containing 60 acres.

This claim is located upon a valuable vein or deposit, bearing gold, limestone, and other precious metals, situated in Juab County, Utah.

This claim shall be known as the Rocky Ford Placer No.2 Placer Mining Claim, and we intend to work the same in accordance with the local customs and rules of miners in said mining district, and each of the undersigned have an undivided $\frac{1}{3}$ interest therein.

Located this 2nd day of June 1926.

NAME OF LOCATORS

Geo. H. Chaffin Horace Burkinshaw
D. W. Jennings.

No. 37489 Recorded at the request of Horace Burkinshaw, June 23, 1926 at 11:30 A.M.

Col. W. Recorder.

NOTICE OF LOCATION

NOTICE IS HEREBY GIVEN, That the undersigned, having complied with the requirements of SECTION 2324 of the REVISED STATUTES of the United States, and the Local Laws, Customs and Regulations of this District, ha located Fifteen hundred feet in length by 600 feet in width, on this the Thomas Lode, Vein or Deposit, bearing Gold, Silver, Copper, Lead and other valuable minerals, situated

This claim is situated in the Re: of Sec. 4 T 13 S R 12 W And S 1/4 - NW 1/4 of Sec. 3 T 13 S R 12 W S. 1. N. in the Unborn Mining District, Utah County, State of Utah

the location being described and marked on the ground as follows, to-wit:

Beginning 300 feet East of this location (Discovery) Monument, at the East end center monument, and running thence South 300 feet to S.E corner monument No. 1; thence West 1500 feet to S.W corner monument No. 2; thence North 300 feet to West end center monument; thence North 300 feet to N.W corner monument No. 3; thence East 1500 feet to N.E corner monument No. 4; thence South 300 feet to place of beginning; including all Dips, Spurs, Angles and Variations This claim gains the pink lady on the north and the Topaz No. 1 on the West. This claim is located on the west side of the Thomas range

U M C 34252

The above described Mining Claim shall be known as the Pink Lady No. 1

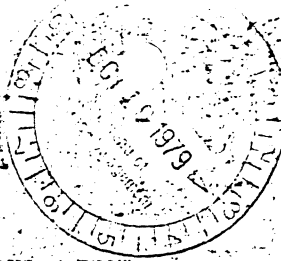
Located this 1 day of January 19 53

<p>Note.</p> <p>*The small type on blank lines is merely a guide for the locator and is no part of this notice.</p> <p>†DIAGRAM OF CLAIM—The location (discovery point) and corner monuments should be designated on the accompanying diagram to make the Record of claim more perfect.</p> <p>A mining claim must not exceed 1600 feet in length along the vein or lode, by 600 feet in width, 300 feet on each side of center of vein at surface.</p> <p>No location of a mining claim can be made until the discovery of the vein or lode within the limits of the ground claimed.</p> <p>The claim must be distinctly marked on the ground, so its boundaries can be readily traced.</p> <p>A severe penalty is provided by law for removing or defacing the stakes or monuments of a mining claim.</p> <p>Claims located on Sunday or holidays are legal.</p> <p>All valuable mineral deposits in lands of the Government are locatable by citizens of the United States only, and those who have declared their intentions to become such.</p> <p>This location notice must be filed for Record with the County Recorder of the county in which the claim is located.</p>	<p>DIAGRAM OF CLAIM</p>
--	--------------------------------

NAMES OF LOCATORS:

Chad Spar
Delta, Utah
Wesley Olson
Delta, Utah
H. Hegmann
Delta, Utah
Ray M. Russell
Golden Utah

ENTRY NO.	84760
RECORDED	Jan 21, 1953 AT 12 00 P.M. \$5.500
REQUEST OF	<u>Henry Hegmann</u>
FEE PAID	FLORENCE C. COOK Jub County Recorder



No. 42365

Filed JUL 1 1931

Recorded 475, 21, in Book 95

of 74 677 page

Recorded by *Edward M. ...*

Platted by *...*

Recorded by *...*

Pr. Keith by *...*

Indexed by *...*

Abstracted by *...*

as 22-5-70

Mailed to *...*

NOTICE IS HEREBY GIVEN that the following is a true and correct copy of the original record as the same appears in the records of the Department of the Interior, Bureau of Land Management, at Washington, D. C.

County, State of Utah, the location being

described and marked on the ground as follows to-wit:

Section 23 of the 11th Township, Range 12E, T11N, R12E, S12E, 4th Meridian, Salt Lake County, Utah.

The above described Mining Claim shall be known as the

located this day of 19

NAMES OF LOCATORS

*Refer to Series of Monuments or Explorer Lines and Discoveries in the Description.

Printed and for sale by M. J. ...

U MC

179614

ION

* This Claim located approximately 5 miles South and East of the Lost Sheep mine and about 2 miles South West of same mine. Beginning at Discovery monument and running South West 750 ft to Center end monument thence 300 ft North West to No. One thence 1500 ft North East to No. 2, thence 600 ft South East to No. 3, thence 1500 ft South West to No. 4, thence North West 300 ft to place of Beginning. This Claim joins on the East side by Blue Chalk No. six

The Mining Claim above described shall be known as the
Blue Chalk Mine Number Seven
Located this 26th day of Oct, 1948

Wells R. Nelson
Archibald A. Scott
Sidney A. Scott

[ENTRY NO] 25273
 RECORDED QCI 22 1948 AT 11 04 AM BOOK 128 PAGE 748
 REQUEST OF and
 FEE PAID 1.00 C. E. BUCK, Clark County Recorder
 \$ 1.00 By W. L. Smith County

(QUARTZ)

79290

Tab 15



IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

INTERIOR BOARD OF LAND APPEALS

4015 WILSON BOULEVARD

ARLINGTON, VIRGINIA 22203

ELLIS BUSCHMAN

IBLA 84-332

Decided June 26, 1985

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring the Lost Nugget mining claim abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Recordation of Mining Claims and Abandonment—Mining
Claims: Recordation

BLM may properly declare an unpatented mining claim abandoned and void for failure to file timely with BLM a copy of the notice of location of the claim, pursuant to sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982).

APPEARANCES: Ellis Buschman, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Ellis Buschman has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated January 20, 1984, declaring the Lost Nugget mining claim abandoned and void for failure to file timely with BLM a copy of the notice of location of the claim, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982). 1/

On May 13, 1983, appellant filed a copy of his affidavit of assessment work done between December 1, 1982, and March 11, 1983, on the Lost Nugget claim with BLM pursuant to section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982). The affidavit had been filed with the Douglas County recorder on

1/ Consideration of this appeal was stayed pending judicial review of the mining claim recordation provisions of FLPMA. The constitutionality of these provisions was recently upheld by the Supreme Court. United States v. Locke, 105 S. Ct. 1785 (1985).^a

INDEX CODE:

43 CFR 3833.1-2(a)

43 CFR 3833.4(a)

a) GFS(MIN) JD-1(1985)

May 9, 1983, but did not indicate when the claim had been located. By letter dated June 28, 1983, BLM requested appellant to indicate the appropriate BLM serial number associated with the claim, in order to ensure proper filing of the affidavit. ^{2/} On July 11, 1983, appellant responded that he "do[es] not have a number from B.L.M."

In its January 1984 decision, BLM declared appellant's mining claim abandoned and void because it had not been "recorded" with BLM, and rejected appellant's 1983 affidavit of assessment work filed for recordation. On appeal, appellant contends that he has a "right" to the claim because it is recorded with the county.

[1] Section 314(b) of FLPMA requires the owner of an unpatented mining claim to file with BLM a copy of the notice of location of the claim within the 3-year period following October 21, 1976 (claims located prior to October 21, 1976), or within 90 days after the date of location of the claim (claims located after October 21, 1976). The record does not indicate when appellant's claim was located. It seems clear that the claim was located on or before December 1, 1982, the date on which appellant began assessment work. However, the record does not contain a copy of appellant's notice of location. Appellant has simply not complied with section 314(b) of FLPMA. ^{3/}

Under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1982), failure to file the required instrument in accordance with the statute "shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner." In such circumstances, the claim "shall be void." 43 CFR 3833.4(a). We have long held that the statute is self-operative and that Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Homestake Mining Co., 77 IBLA 235 (1983),^b and cases cited therein.

Accordingly, we conclude BLM properly declared appellant's mining claim abandoned and void. Harold A. Hinkle, 77 IBLA 152 (1983);^c William E. Day, 72 IBLA 364 (1983).^d

^{2/} BLM also stated that:

"If you do not have a BLM 'OR MC' number, and have not recorded your claim with this office within the specified time periods prescribed, the claims are considered abandoned and void (reference enclosed Circular No. 2516A, 43 CFR 3833.4).

"Abandoned claims may be relocated under applicable mining regulations subject to existing rights and provided the lands are open to mining. The instruments for your new claim should be recorded under state law and then must be filed with BLM within 90 days after the date of location of the new claim under the requirements of 43 CFR 3833.1-2(a)."

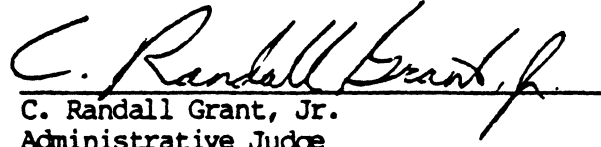
^{3/} Indeed, in his July 1983 letter to BLM appellant essentially admitted that a copy of the location notice for his claim had not been filed with BLM.

b) GFS(MIN) 18(1984)

c) GFS(MIN) 10(1984)

d) GFS(MIN) 109(1983)

Therefore, 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.

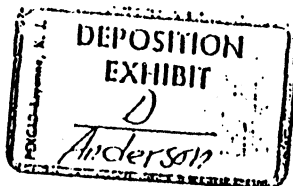

C. Randall Grant, Jr.
Administrative Judge

We concur:


Wm. Philip Horton
Chief Administrative Judge


R. W. Mullen
Administrative Judge

Tab 16



110000

Page 9
p. 154

Exhibit B

NOTICE OF LOCATION
Of Placer Claim

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that the undersigned citizens of the United States, over the age of 21 years have this day located under and in pursuance of and having complied with Section 2320/2330, of the Revised Statutes of the United States and the laws of the State of Utah and the local laws and customs and regulations of this district, have this day located the following described Placer Mining Ground, situated in the _____ Mining District, Millard County, State of Utah, viz:

Commencing at a point approximately one half mile North of U. S. Geological Survey Bench Mark "Y" 1931 to RED DOG Placer claim stake No. 1, thence South-easterly twenty chains to RED DOG placer claim stake No. 2; thence Northwesterly twenty chains to Red Dome placer claim stake No. 4, thence Southwesterly thirty chains to point of beginning.

(Thence Northeast-
erly thirty chain
to Red Dome
placer claim
Stake No. 3.

This claim is located upon a valuable deposit, bearing gold and other precious metals, situated in Millard County, Utah.

This claim shall be known as the "RED DOG" Placer Mining Claim, and we intend to work the same in accordance with local customs and rules of miners in said mining district, and each of the undersigned have an undivided one-third interest therein.

Located this 24th day of May, 1935.

OF LOCATORS

Recorded June 10, 1935 at 11:30 A.M.
Amelia Black, County Recorder

Lafayette Morrison
Fera Little
Armond O'Brien

Book 7
p. 543

NOTICE OF LOCATION OF PLACER CLAIM

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN, that the undersigned citizens of the United States, over the age of 21 years, have this day located under and in pursuance of and having complied with Sections 2329, 2330, 2331, of the Revised Statutes of the United States and the laws of the State of Utah, and the local laws and customs and regulations of this district, have this day located the following described Placer Mining Ground, situated in the _____ Mining District, Millard County, State of Utah, viz:

Commencing at a point approximately one half mile Northeast of U. S. Geological Survey Bench Mark "Y" 1931 to Red Dome Placer Claim State No. 1; thence Southeasterly twenty chains to Red Dome Placer Claim stake No. 2; thence Northeasterly thirty chains to Red Dome placer claim Stake No. 3; thence Northwesterly twenty chains to Red Dome placer claim stake No. 4; thence Southwesterly thirty chains to point of beginning. The above described claim is located in and is part of the South half of Section 23, and part of the North half of Section 26, in Township 21 South, Range 6 West, S. L. B. & M.

This claim is located upon a valuable deposit, bearing gold and other precious metals, situated in Millard County, Utah.

This claim shall be known as the Red Dome Placer Mining Claim, and we intend to work the same in accordance with local customs and rules of minors in said mining district, and each of the undersigned have an undivided one third interest therein.

Located this 18th day of July, 1936.

NAMES OF LOCATORS

Recorded July 20, 1936 at 9:15 A. M.

Amelia Black, County Recorder

Lafayette Morrison

Fera Little

Armond Ogdon

NOTICE OF LOCATION OF PLACER CLAIM

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off.

CT0000

130012 11
P. 449

NOTICE OF LOCATION
OF PLACER CLAIM

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that the undersigned citizens of the United States, over the age of 21 years, have this day located under and in pursuance of and having complied with Sections 2329, 2330, 2331, of the Revised Statutes of the United States, and the laws of the State of Utah and the local laws and customs and regulations of this district, have this day located the following described Placer Mining Ground, situated in the un-named Mining District Millard County, State of Utah, viz.:

Lot 1; and Beg. 10 chains West of the South East corner of the North East 1/4 running thence West 40 chains, thence North 20 chains, thence East 40 chains, thence South 20 chains to beginning, all in Sec. 26, Township 21 South, Range 6 West, S.L.B.M. containing 120 acres. This claim contains valuable volcanic cinders and other valuable mineral to wit:-

This claim is located upon a valuable deposit, bearing gold and other precious metals, situated in Millard County, Utah.

This claim shall be known as the Red Dome No. 1. Placer Mining Claim, and we intend to work the same in accordance with local customs and rules of miners in said mining district, and each of the undersigned have an undivided one sixth interest therein.

Located this 5th day of September, 1946.

NAMES OF LOCATORS

R. S. Morrison
LaVonne Morrison

Lafayette Morrison
Gora S. Morrison
Ralph W. Morrison
Callie C. Morrison
Delta-Utah.

Recorded September 5, 1946 at 3:00 P.M. File #58586

County Recorder.

210006

BOOK 9
P. 543-544

NOTICE OF LOCATION OF PLACER CLAIM

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that the undersigned citizens of the United States, over the age of 21 years, have this day located under and in pursuance of and having complied with Sections 2329, 2330, 2331 of the Revised Statutes of the United States, and the laws of the State of Utah and the local laws and customs and regulations of this district, have this day located the following described Placer Mining Ground, situated in the _____ Mining District, Millard County, State of Utah, viz:

- The East one fifth of Lot 1, containing 10.31 acres and All of Lot 2, containing 53.92 acres and All of Lot 3, containing 53.92 acres, all in Section Twenty-three (23), Township 21 South, Range 6 West, Salt Lake Base and Meridian, and
- All of Lot 2, containing 40.62 acres and All of Lot 3, containing 40.95 acres, in Section twenty-six (26), Township 21 South, Range 6 West, Salt Lake Base and Meridian.

This claim is located upon a valuable deposit, bearing gold and other precious metals situated in Millard County, Utah.

This claim shall be known as the Red Dome Placer Claim No. 2.-Placer Mining Claim, and we intend to work the same in accordance with local customs and rules of miners in said

mining district, and each of the undersigned have an undivided one-tenth interest therein.

Located this 21st day of July, 1936.

NAMES OF LOCATORS

Cora S. Morrison

Lafayette Morrison

Armond Ogden

Richard S. Morrison

Delilah U. Ogden

La Vonne Morrison

Fera Little

David H. Dybee

Verda Little

Verda Dybee

Recorded July 21, 1936 at 11:30 A. M.

Amelia Black, County Recorder

Book 9
p. 544.

NOTICE OF LOCATION OF PLACER CLAIM

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that the undersigned citizens of the United States, over the age of 21 years, have this day located under and in pursuance of and having complied with Sections 2329, 2330, 2331 of the Revised Statutes of the United States, and the laws of the State of Utah and the local laws and customs and regulations of this district, have this day located the following described Placer Mining Ground, situated in the _____ Mining District, Millard County, State of Utah, viz:

The South Three Fourths of the West Four-fifths of Lot 1, containing 30.95 acres, in Section 23, Township 21 South, Range 6 West, Salt Lake Base and Meridian, and All of Lot 4, containing 48.02 acres, in Section 26, Township 21 South, Range 6 West, Salt Lake Base and Meridian.

This claim is located upon a valuable deposit, bearing gold and other precious metals situated in Millard County, Utah.

This claim shall be known as the Red Dome Placer Claim No. 3. Placer Mining Claim, and we intend to work the same in accordance with local customs and rules of miners in said mining district, and each of the undersigned have an undivided one-fourth interest therein.

Located this 21st day of July, 1936.

NAMES OF LOCATORS

Recorded July 21, 1936 at 11:30 A. M.

Amelia Black, County Recorder

Ralph W. Morrison

Callie C. Morrison

Den B. Hall

Winifred S. Hall

Book 9.
p. 560

NOTICE OF LOCATION
OF PLACER CLAIM

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that the undersigned citizens of the United States, over the age of 21 years, have this day located under and in pursuance of and having complied with Sections 2329, 2330, 2331 of the Revised Statutes of the United States, and the laws of the State of Utah and the local laws and customs and regulations of this district, have this day located the following described Placer Mining Ground, situated in the _____ Mining District, Millard County, State of Utah, viz:

The North one-fourth of the West four-fifths of Lot 1, containing 10.30 acres and Commencing at the NW corner of Lot 1, thence North 16 chains; thence East 10 chains; thence South 16 chains; thence West 18 chains to beginning, containing 20.8 acres, all in Section 23, Township 21 South, Range 6 West, Salt Lake Base and Meridian, containing a total of 39.1 acres.

This claim is located upon a valuable deposit, bearing gold and other precious metals situated in Millard County, Utah.

This claim shall be known as the Red Dome Placer Claim No. 4 Placer Mining Claim, and we intend to work the same in accordance with local customs and rules of miners in said mining district, and each of the undersigned have an undivided one-half interest therein.

Located this 19th day of October, 1936.

NAMES OF LOCATORS

Recorded October 26, 1936 at 4:50 P. M.

Millard County Recorder

Von Utley

Zola Utley

NOTICE OF LOCATION
OF PLACER CLAIM

Book 9
p. 560

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that the undersigned citizens of the United States, over the age of 21 years, have this day located under and in pursuance of and having complied with Sections 2329, 2330, 2331 of the Revised Statutes of the United States, and the laws of the State of Utah and the local laws and customs and regulations of this district, have this day located the following described Placer Mining Ground, situated in the, Mining District, Millard County, State of Utah, viz; containing

4.5 Acres, being part of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 27, and also part of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 26, Township 21 South, Range 6 West, Salt Lake Base and Meridian, more particularly described as follows:

Commencing 3 chains West of the East one Fourth corner of Section 27, Twp. 21 South, Range 6 West, and running thence South 5 chains; thence East 9 chains; thence North 5 chains; thence West 9 chains to the point of beginning.

This claim is located upon a valuable deposit, bearing gold and other precious metals situated in Millard County, Utah.

This claim shall be known as the Red Dome Placer Claim No. 5, Placer Mining Claim, and we intend to work the same in accordance with local customs and rules of miners in said mining district, and each of the undersigned have an undivided one-half interest therein.

Located this 19th day of October, 1936.

NAMES OF LOCATORS

Recorded October 26, 1936 at 4:50 P.M.

Amelia Black, County Recorder

Von Utley

ZOLA UTLEY

Tab 17

RED DOME PLACER MINING CLAIM
MILLARD COUNTY, UTAH

- 1) Notice of location recorded at Book 9 page 384 on June 10, 1935.
- 2) Claim located May 24, 1935. (This claim was completely overlapped by Red Dome #2 and #3.)
- 3) Amendment recorded at Book 9 page 543 on July 20, 1936.
- 4) Legal Description

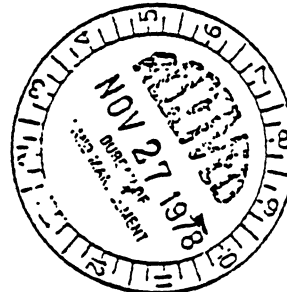
Commencing at a point approximately one half mile Northeast of U.S. Geological Survey Bench mark "Y" 1931 to Red Dome Placer Claim Stake No. 1; thence Southeasterly twenty chains to Red Dome Placer Claim Stake No. 2; thence Northeasterly thirty chains to Red Dome Placer Claim Stake No. 3; thence Northwesterly twenty chains to Red Dome Placer Claim Stake No. 4; thence Southwesterly thirty chains to point of beginning. The above described Claim is located in and is part of the South half of Section 23, and part of the North half of Section 26, in Township 21 South Range 6 West, S.L.B. & M.

5) Owners

Red Dome, Inc.
SR Box 125
Fillmore, UT 84631

Fillmore Products, Inc.
Lessee
SR Box 125
Fillmore, UT 84631

743 6795



INTERIOR, BLM Utah State Office
Data relative to this document
has been entered into an automated
system and images of all documents
have been microfilmed.

U MC 58767

U MC 58767

000030

RED DOME #1 PLACER MINING CLAIM
MILLARD COUNTY, UTAH

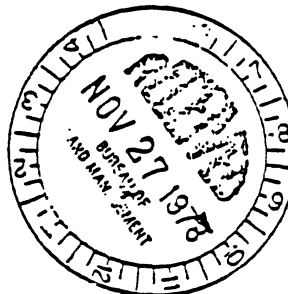
- 1) Notice of Location recorded at Book 11 page 449 on September 5, 1946.
- 2) Claim located September 5, 1946
- 3) Legal Description

Lot 1; & beg. 10 chains West of the Southeast corner of the Northeast 1/4 running thence West 40 chains, thence North 20 chains, thence East 40 chains, thence South 20 chains to beg., all in Sec 26, Township 21 South, Range 6 West, S.L.B. & M.

- 4) Owners are

Red Dome, Inc
SR Box 125
Fillmore, UT 84631

Fillmore Products, Inc
Lessee
SR Box 125
Fillmore, UT 84631



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system and images of all documents
have been microfilmed.

UMC 58768

U MC 58768

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RED DOME #2 PLACER MINING CLAIM
MILLARD COUNTY, UTAH

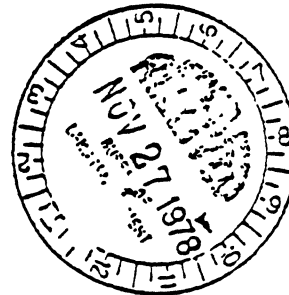
- 1) Notice of Location recorded at Book 9 page 543 on July 21, 1936.
- 2) Claim located on July 21, 1936.
- 3) An amendment recorded at Book 9 page 580 on April 4, 1937.
- 4) Legal Description

The East one-fifth (1/5) of Lot 1, all of Lot 2, and all of Lot 3 in Section 23, Township 21 South, Range 6 West, Salt Lake Base & Meridian. Lot 2, Section 25 Township 21 South, Range 6 West, Salt Lake Base & Meridian.

- 5) Owners:

Red Dome, Inc.
SR Box 125
Fillmore, UT 84631

Fillmore Products, Inc.
Lessee
SR Box 125
Fillmore, UT 84631



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has been entered into an automated
system and images of all documents
have been microfilmed.

UMC 58769

U M C 58769

000041

RED DOME #3 PLACER MINING CLAIM
MILLARD COUNTY, UTAH

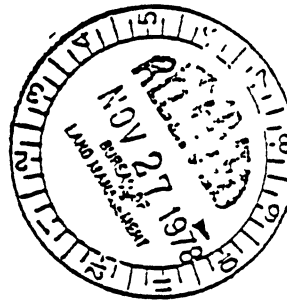
- 1) Notice of Location recorded at Book 9 page 544 on July 21, 1936.
- 2) Claim located on July 21, 1936.
- 3) An amendment recorded at Book 9 page 580 on April 6, 1937.
- 4) Legal Description

The South three-fourths (3/4) of the West four-fifths (4/5) of Lot 1, in Section 23, Township 21 South, Range 6 West, Salt Lake Base & Meridian, and all of Lot 4 in Section 26, Township 21 South, Range 6 West, Salt Lake Base & Meridian.

5) Owners:

Red Dome, Inc.
SR Box 125
Fillmore, UT 84631

Fillmore Products, Inc.
Lessee
SR Box 125
Fillmore, UT 84631



INTERIOR, BLM Utah State Office
Data relative to this document
has been entered into an automated
system and images of all documents
have been microfilmed.

U M 58770

RED DOME #4 PLACER MINING CLAIM
MILLARD COUNTY, UTAH

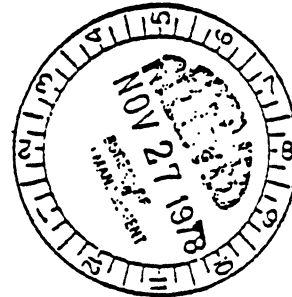
- 1) Notice of Location recorded at Book 9 page 560 on October 26, 1936.
- 2) Claim located on October 19, 1936.
- 3) Legal Description

The North quarter of the West four-fifths (4/5) of Lot 1 and commencing at the Northwest corner of Lot 1 and running thence North 16 chains; thence East 18 chains; thence South 16 chains; and thence West 18 chains; all in Section 23, Township 21 South, Range 6 West, Salt Lake Base & Meridian.

4) Owners:

Red Dome, Inc.
SR Box 125
Fillmore, UT 84631

Fillmore Products, Inc.
Lessee
SR Box 125
Fillmore, UT 84631



INTERIOR. BLM Utah State Office
Data relative to this document
has been entered into an automated
system and images of all documents
have been microfilmed.

U M C 58771

RED DOME #5 PLACER MINING CLAIMS
MILLARD COUNTY, UTAH

- 1) Notice of Location recorded at Book 9 page 560
- 2) Claim located on October 19, 1936.
- 3) Legal Description

4.5 Acres being part of the Northeast 1/4 of the South east 1/4 of Section 27, and also part of the lot 5, Section 26 Township 21 South, Range 6 West, Salt Lake Base & Meridian and more particularly described as follows:

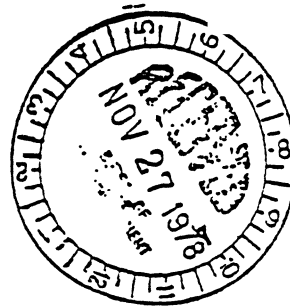
Commencing 3 chains West of the East 1/4 corner of Section 27, Township 21 South, Range 6 West, Salt Lake Base & Meridian, and running thence South 5 chains; thence East 9 chains; thence North 5 chains thence West 9 chains to the point of beginning.

4) Owners:

Red Dome, Inc.
SR Box 125
Fillmore, UT 84631

Fillmore Products, Inc.
Lessee
SR Box 125
Fillmore, UT 84631

INTERIOR, BLM Utah State Office
Data relative to this document
has been entered into an automated
system and images of all documents
have been microfilmed.



U MC 58772

000044

RED DOME #6 PLACER MINING CLAIM
MILLARD COUNTY, UTAH

- 1) Notice of Location recorded at Book 10 page 265 on July 1, 1938.
- 2) Claim located on July 1, 1938.
- 3) Amendment recorded at Book 10 page 318 on June 28, 1939.
- 4) Legal Description

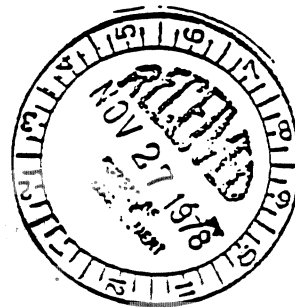
The Northeast 1/4 of the Southwest 1/4 of Section 23,
Township 21 South, Range 6 West, Salt Lake Base &
Meridian.

5) Owners:

Red Dome, Inc.
SR Box 125
Fillmore, UT 84631

Fillmore Products, Inc
Lessee
SR Box 125
Fillmore, UT 84631

INTERIOR. BLM Utah State Office
Data relative to this document
has been entered into an automated
system and images of all documents
have been microfilmed.



U MTC 58773

RED DOME #7 PLACER MINING CLAIM
MILLARD COUNTY, UTAH

- 1) Notice of Location recorded at Book 10 page 265 on July 1, 1938.
- 2) Claim located on July 1, 1938.
- 3) Legal Description

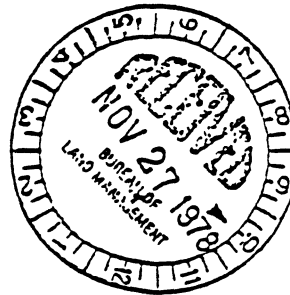
Lot 1 and the North three-fourths (3/4) of Lot 2,
Section 27, Township 21 South, Range 6 West, Salt
Lake Base & Meridian.

- 4) Owners:

Red Dome, Inc.
SR Box 125
Fillmore, UT 84631

Fillmore Products, Inc.
Lessee
SR Box 125
Fillmore, UT 84631

INTERIOR, BLM Utah State Office
Data relative to this document
has been entered into an automated
system and images of all documents
have been microfilmed.



U MC 58774

000048

RED DOME NEW DISCOVERY PLACER MINING CLAIM
MILLARD COUNTY, UTAH

- 1) Notice of Location recorded at Book 12 page 339 on June 2, 1950.
- 2) Claim located on June 21, 1950.
- 3) Legal Description

Beginning at the Southeast corner of Section 22,
Township 21 South, Range 6 West, Salt Lake Base &
Meridian and running thence West 80 rods; thence
North 80 rods; thence East 80 rods; thence South
80 rods to the point of beg.

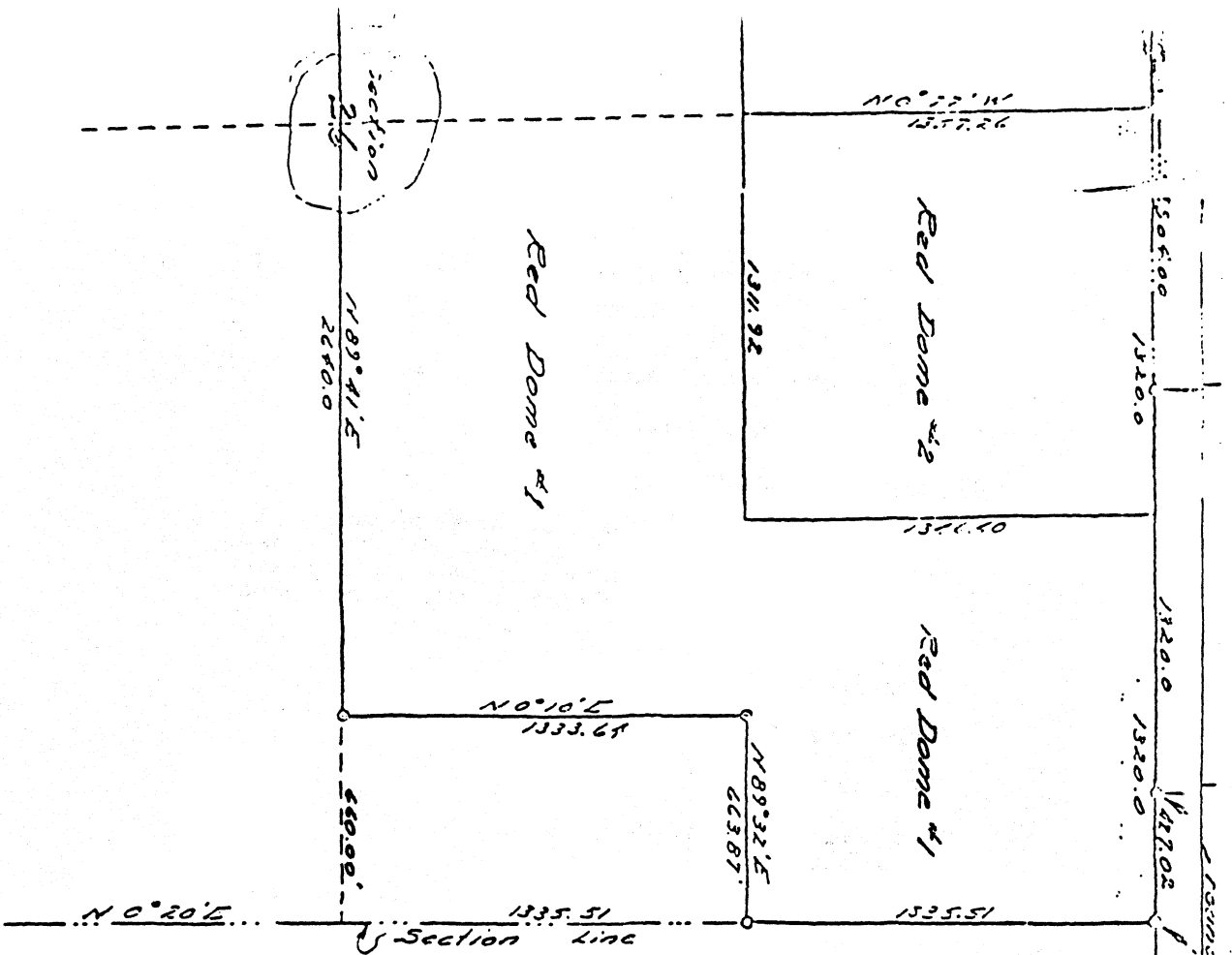
- 4) Owners:

Red Dome, Inc.
SR Box 125
Fillmore, UT 84631

Fillmore Products, Inc.
Lessee
SR Box 125
Fillmore, UT 84631

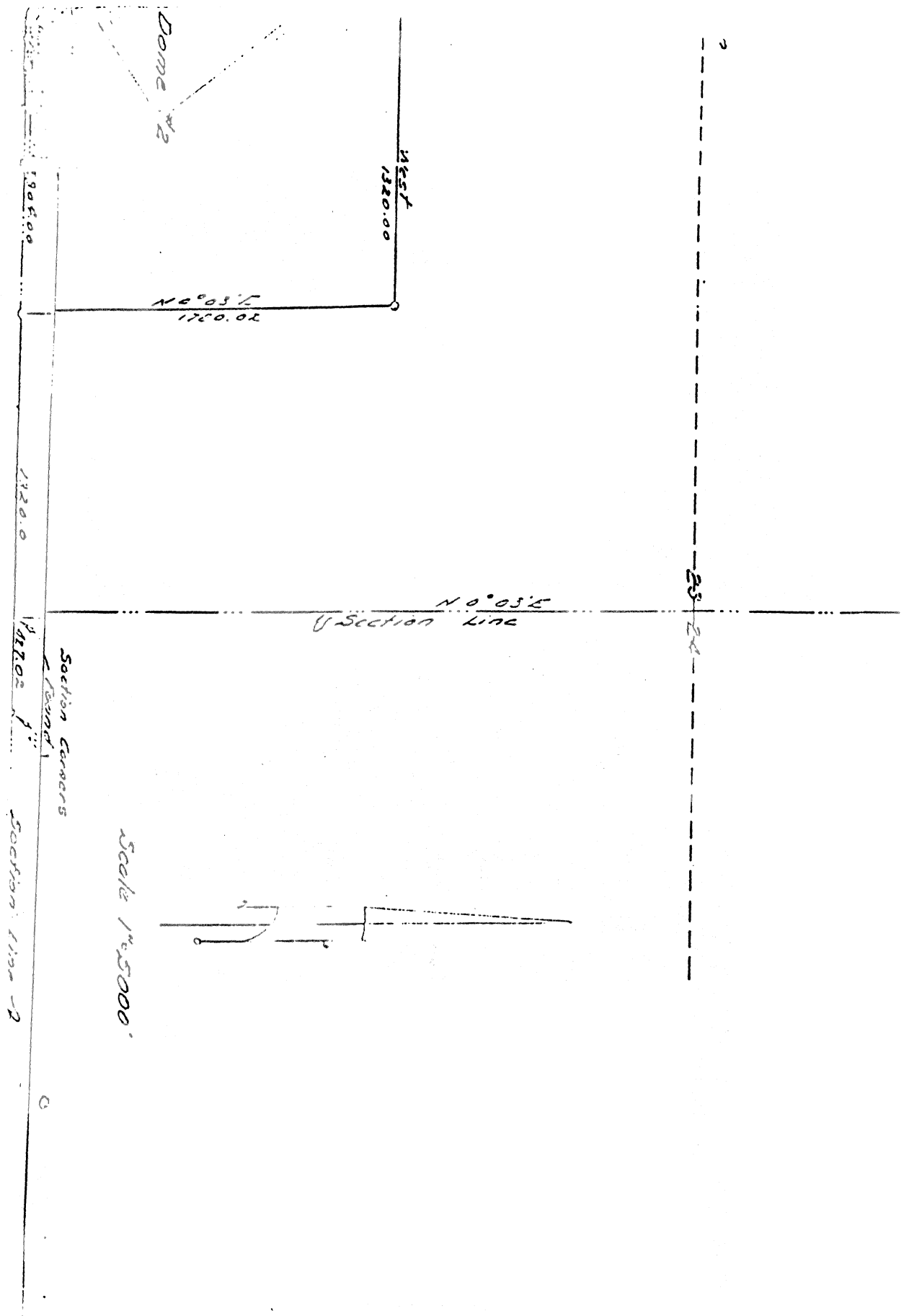
UMC 59192

000047

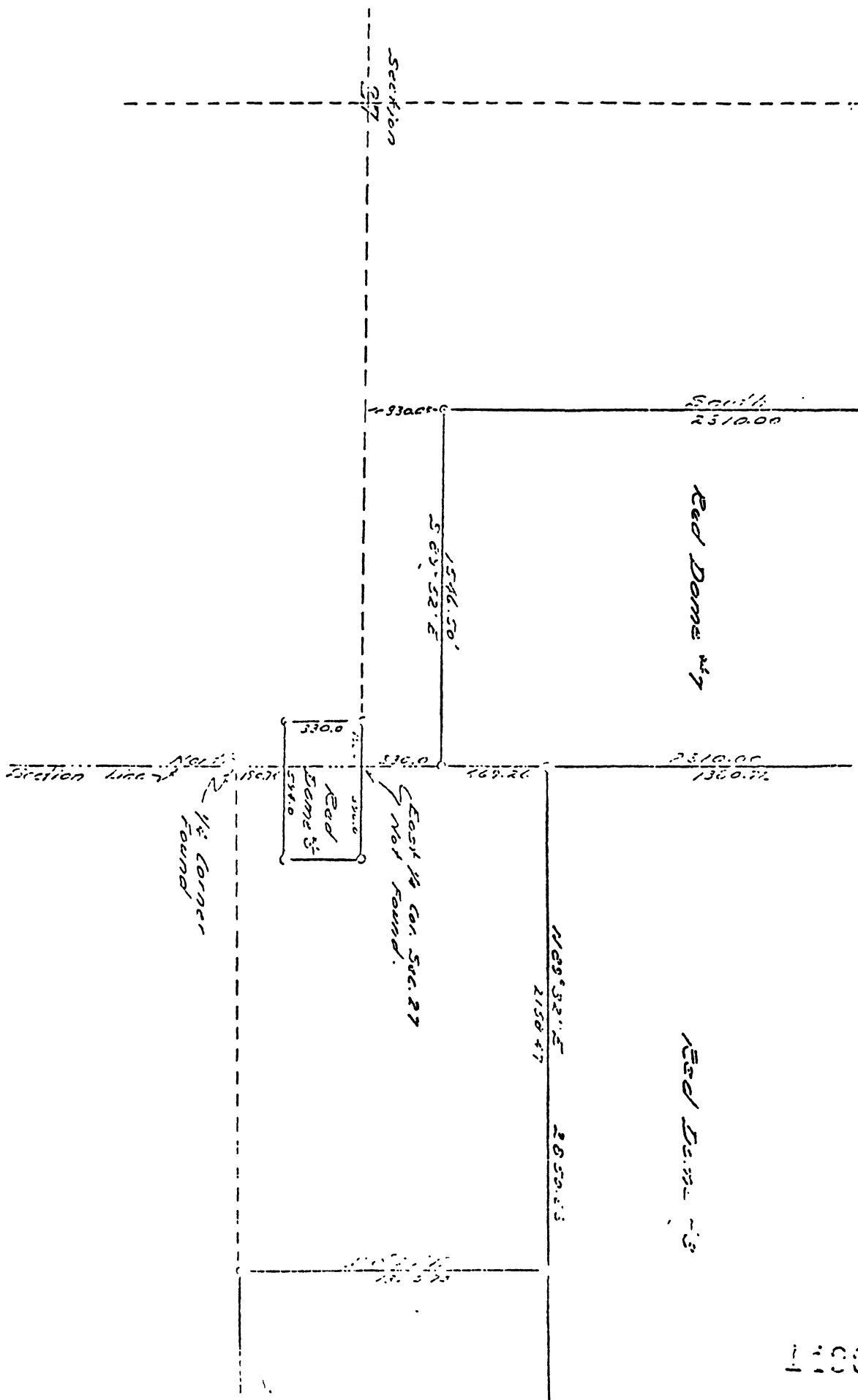


Outside Boundary of Claims
 Surveyed by stadia as shown
 on April 8 and 9, 1955.

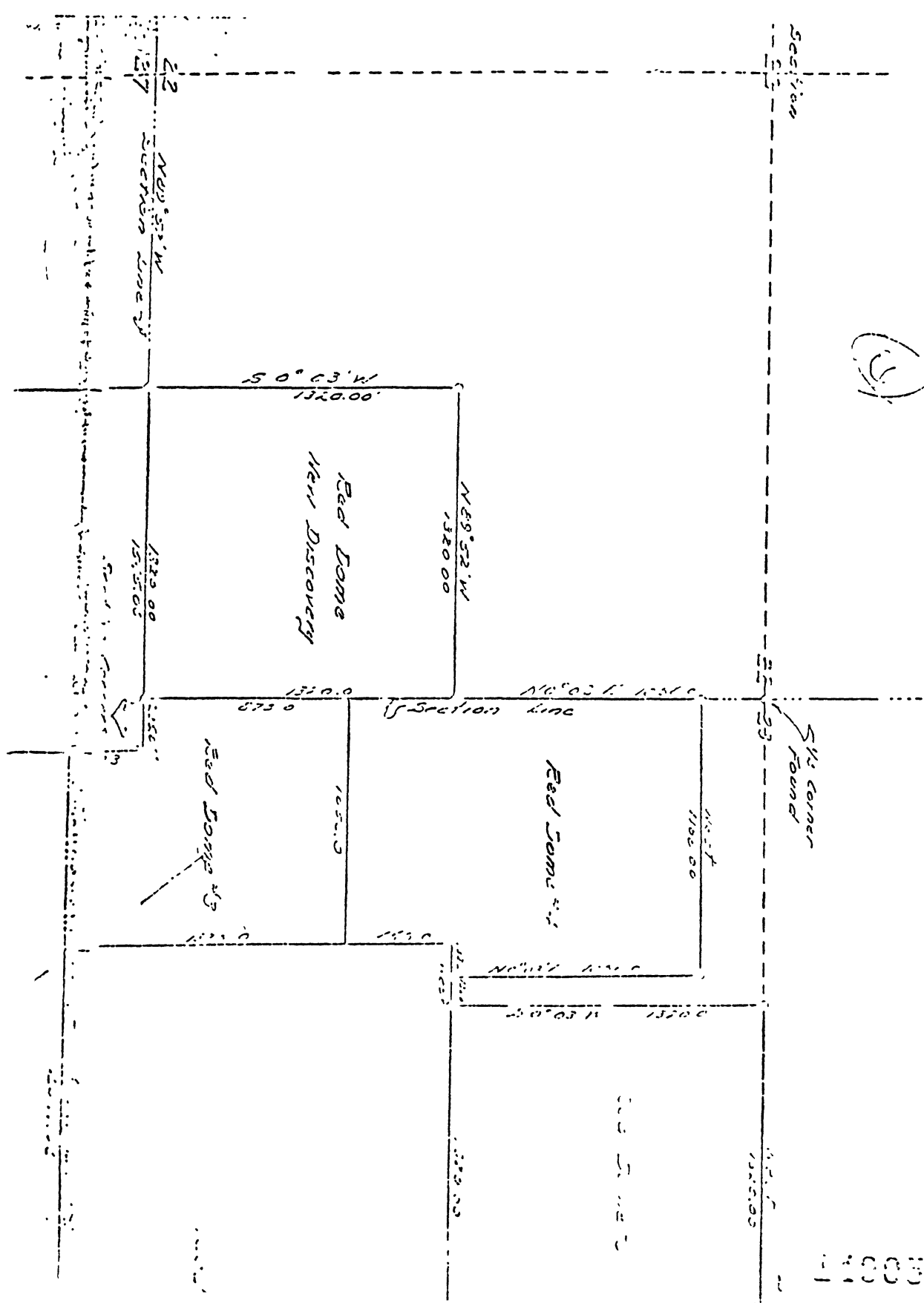
Township 21 South, Range 6 West
 Salt Lake Base & Meridian



(2)



(5)



Tab 18

UNITED STATES ET AL. *v.* LOCKE ET AL.APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEVADA

No. 83-1394. Argued November 6, 1984—Decided April 1, 1985

Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA) establishes a federal recording system that is designed to rid federal lands of stale mining claims and to provide federal land managers with up-to-date information that allows them to make informed land management decisions. Section 314(b) requires that mining claims located prior to FLPMA's enactment be initially recorded with the Bureau of Land Management (BLM) within three years of the enactment, and § 314(a) requires that the claimant, in the year of initial recording and "prior to December 31" of every year after that, file with state officials and the BLM a notice of intention to hold a claim, an affidavit of assessment work performed on the claim, or a detailed reporting form. Section 314(c) provides that failure to comply with either of these requirements "shall be deemed conclusively to constitute an abandonment" of the claim. Appellees, who had purchased mining claims before 1976, complied with the initial recording requirement but failed to meet on time their first annual filing requirement, not filing with the BLM until December 31. Subsequently, the BLM notified appellees that their claims had been declared abandoned and void due to their tardy filing. After an unsuccessful administrative appeal, appellees filed an action in Federal District Court, alleging that § 314(c) effected an unconstitutional taking of their property without just compensation and denied them due process. The District Court issued summary judgment in appellees' favor, holding that § 314(c) created an impermissible irrebuttable presumption that claimants who fail to make a timely filing intended to abandon their claims. Alternatively, the court held that the 1-day late filing "substantially complied" with § 314(a) and the implementing regulations.

Held:

1. Section 314(a)'s plain language—"prior to December 31"—read in conjunction with BLM regulations makes clear that the annual filings must be made on or before December 30. Thus, the BLM did not act *ultra vires* in concluding that appellees' filing was untimely. Pp. 93-96.

2. Congress intended in § 314(c) to extinguish those claims for which timely filings were not made. Specific evidence of intent to abandon is made irrelevant by § 314(c); the failure to file on time, in and of itself, causes a claim to be lost. Pp. 97-100.

3. The annual filing deadline cannot be complied with, substantially or otherwise, by filing late—even by one day. Pp. 100–102.

4. Section 314(c) is not unconstitutional. Pp. 103–110.

(a) Congress was well within its affirmative powers in enacting the filing requirement, in imposing the penalty of extinguishment in § 314(c), and in applying the requirement and sanction to claims located before FLPMA was enacted. Pp. 104–107.

(b) Appellees' property loss was one they could have avoided with minimal burden; it was their failure to file on time, not Congress' action, that caused their property rights to be extinguished. Regulation of property rights does not "take" private property when an individual's reasonable, investment-backed expectations can continue to be realized as long as he complies with reasonable regulations. Pp. 107–108.

(c) FLPMA provides appellees with all the process that is their constitutional due. The Act's recording provisions clearly afford those within the Act's reach a reasonable opportunity both to familiarize themselves with the general requirements imposed and to comply with those requirements. As the Act constitutes purely economic regulation, Congress was entitled to conclude that it was preferable to place a substantial portion of the burden on claimants to make the national recording system work. Pp. 108–110.

573 F. Supp. 472, reversed and remanded.

MARSHALL, J., delivered the opinion of the Court, in which BURGER, C. J., and WHITE, BLACKMUN, REHNQUIST, and O'CONNOR, JJ., joined. O'CONNOR, J., filed a concurring opinion, *post*, p. 110. POWELL, J., filed a dissenting opinion, *post*, p. 112. STEVENS, J., filed a dissenting opinion, in which BRENNAN, J., joined, *post*, p. 117.

Carolyn F. Corwin argued the cause for appellants. With her on the briefs were *Solicitor General Lee*, *Assistant Attorney General Habicht*, *Deputy Solicitor General Claiborne*, *David C. Shilton*, and *Arthur E. Gowran*.

Harold A. Swafford argued the cause for appellees. With him on the brief was *John W. Hoffman*.*

**Laurens H. Silver* and *John Leshy* filed a brief for the Sierra Club as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the State of Nevada by *Brian McKay*, Attorney General, and *James C. Smith*, Deputy Attorney General; for the Alaska Miners Association et al. by *Ronald A. Zumbrun* and *Robin L. Rivett*; for the Colorado Mining Association by

JUSTICE MARSHALL delivered the opinion of the Court.

The primary question presented by this appeal is whether the Constitution prevents Congress from providing that holders of unpatented mining claims who fail to comply with the annual filing requirements of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U. S. C. § 1744, shall forfeit their claims.

I

From the enactment of the general mining laws in the 19th century until 1976, those who sought to make their living by locating and developing minerals on federal lands were virtually unconstrained by the fetters of federal control. The general mining laws, 30 U. S. C. § 22 *et seq.*, still in effect today, allow United States citizens to go onto unappropriated, unreserved public land to prospect for and develop certain minerals. “Discovery” of a mineral deposit, followed by the minimal procedures required to formally “locate” the deposit, gives an individual the right of exclusive possession of the land for mining purposes, 30 U. S. C. § 26; as long as \$100 of assessment work is performed annually, the individual may continue to extract and sell minerals from the claim without paying any royalty to the United States, 30 U. S. C. § 28. For a nominal sum, and after certain statutory conditions are fulfilled, an individual may patent the claim, thereby purchasing from the Federal Government the land and minerals and obtaining ultimate title to them. Patenting, however, is not required, and an unpatented mining claim remains a fully recognized possessory interest. *Best v. Humboldt Placer Mining Co.*, 371 U. S. 334, 335 (1963).

By the 1960’s, it had become clear that this 19th-century laissez-faire regime had created virtual chaos with respect to the public lands. In 1975, it was estimated that more than

Randy L. Parcel; for Mobil Oil Corp. by *Stephen D. Alfers* and *William A. Hillhouse II*; and for the Mountain States Legal Foundation by *K. Preston Oade, Jr.*

6 million unpatented mining claims existed on public lands other than the national forests; in addition, more than half the land in the National Forest System was thought to be covered by such claims. S. Rep. No. 94-583, p. 65 (1975). Many of these claims had been dormant for decades, and many were invalid for other reasons, but in the absence of a federal recording system, no simple way existed for determining which public lands were subject to mining locations, and whether those locations were valid or invalid. *Ibid.* As a result, federal land managers had to proceed slowly and cautiously in taking any action affecting federal land lest the federal property rights of claimants be unlawfully disturbed. Each time the Bureau of Land Management (BLM) proposed a sale or other conveyance of federal land, a title search in the county recorder's office was necessary; if an outstanding mining claim was found, no matter how stale or apparently abandoned, formal administrative adjudication was required to determine the validity of the claim.¹

After more than a decade of studying this problem in the context of a broader inquiry into the proper management of the public lands in the modern era, Congress in 1976 enacted FLPMA, Pub. L. 94-579, 90 Stat. 2743 (codified at 43 U. S. C. §1701 *et seq.*). Section 314 of the Act establishes a federal recording system that is designed both to rid federal lands of stale mining claims and to provide federal land managers with up-to-date information that allows them to make informed land management decisions.² For claims located before FLPMA's enact-

¹ See generally Strauss, Mining Claims on Public Lands: A Study of Interior Department Procedures, 1974 Utah L. Rev. 185, 193, 215-219.

² The text of 43 U. S. C. §1744 provides, in relevant part, as follows:

"Recordation of Mining Claims

"(a) Filing requirements

"The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21,

ment,³ the federal recording system imposes two general requirements. First, the claims must initially be registered with the BLM by filing, within three years of FLPMA's enactment, a copy of the official record of the notice or cer-

1976 and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. . . .

"(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by section 28-1 of title 30, relating thereto.

"(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

"(b) Additional filing requirements

"The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to October 21, 1976 shall, within the three-year period following October 21, 1976, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. The owner of an unpatented lode or placer mining claim or mill or tunnel site located after October 21, 1976 shall, within ninety days after the date of location of such claim, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground.

"(c) Failure to file as constituting abandonment; defective or untimely filing

"The failure to file such instruments as required by subsections (a) and (b) of this subsection shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site."

³ A somewhat different scheme applies to claims located after October 21, 1976, the date the Act took effect.

tificate of location. 90 Stat. 2743, § 314(b), 43 U. S. C. § 1744(b). Second, in the year of the initial recording, and “prior to December 31” of every year after that, the claimant must file with state officials and with BLM a notice of intention to hold the claim, an affidavit of assessment work performed on the claim, or a detailed reporting form. 90 Stat. 2743, § 314(a), 43 U. S. C. § 1744(a). Section 314(c) of the Act provides that failure to comply with either of these requirements “shall be deemed conclusively to constitute an abandonment of the mining claim . . . by the owner.” 43 U. S. C. § 1744(c).

The second of these requirements—the annual filing obligation—has created the dispute underlying this appeal. Appellees, four individuals engaged “in the business of operating mining properties in Nevada,”⁴ purchased in 1960 and 1966 10 unpatented mining claims on public lands near Ely, Nevada. These claims were major sources of gravel and building material: the claims are valued at several million dollars,⁵ and, in the 1979–1980 assessment year alone, appellees’ gross income totaled more than \$1 million.⁶ Throughout the period during which they owned the claims, appellees complied with annual state-law filing and assessment work requirements. In addition, appellees satisfied FLPMA’s initial recording requirement by properly filing with BLM a notice of location, thereby putting their claims on record for purposes of FLPMA.

At the end of 1980, however, appellees failed to meet on time their first annual obligation to file with the Federal Government. After allegedly receiving misleading information from a BLM employee,⁷ appellees waited until December 31

⁴ Complaint ¶ 2.

⁵ *Id.*, ¶ 15.

⁶ 573 F. Supp. 472, 474 (1983). From 1960 to 1980, total gross income from the claims exceeded \$4 million. *Ibid.*

⁷ An affidavit submitted to the District Court by one of appellees’ employees stated that BLM officials in Ely had told the employee that the

to submit to BLM the annual notice of intent to hold or proof of assessment work performed required under §314(a) of FLPMA, 43 U. S. C. §1744(a). As noted above, that section requires these documents to be filed annually "prior to December 31." Had appellees checked, they further would have discovered that BLM regulations made quite clear that claimants were required to make the annual filings in the proper BLM office "on or before December 30 of each calendar year." 43 CFR §3833.2-1(a) (1980) (current version at 43 CFR §3833.2-1(b)(1) (1984)). Thus, appellees' filing was one day too late.

This fact was brought painfully home to appellees when they received a letter from the BLM Nevada State Office informing them that their claims had been declared abandoned and void due to their tardy filing. In many cases, loss of a claim in this way would have minimal practical effect; the

filing could be made at the BLM Reno office "on or before December 31, 1980." Affidavit of Laura C. Locke ¶3. The 1978 version of a BLM question and answer pamphlet erroneously stated that the annual filings had to be made "on or before December 31" of each year. *Staking a Mining Claim on Federal Lands* 9-10 (1978). Later versions have corrected this error to bring the pamphlet into accord with the BLM regulations that require the filings to be made "on or before December 30."

JUSTICE STEVENS and JUSTICE POWELL seek to make much of this pamphlet and of the uncontroverted evidence that appellees were told a December 31 filing would comply with the statute. See *post*, at 117, 122, 128. However, at the time appellees filed in 1980, BLM regulations and the then-current pamphlets made clear that the filing was required "on or before December 30." Thus, the dissenters' reliance on this pamphlet would seem better directed to the claim that the United States was equitably estopped from forfeiting appellees' claims, given the advice of the BLM agent and the objective basis the 1978 pamphlet provides for crediting the claim that such advice was given. The District Court did not consider this estoppel claim. Without expressing any view as to whether, as a matter of law, appellees could prevail on such a theory, see *Heckler v. Community Health Services of Crawford County, Inc.*, 467 U. S. 51 (1984), we leave any further treatment of this issue, including fuller development of the record, to the District Court on remand.

claimant could simply locate the same claim again and then rerecord it with BLM. In this case, however, relocation of appellees' claims, which were initially located by appellees' predecessors in 1952 and 1954, was prohibited by the Common Varieties Act of 1955, 30 U. S. C. § 611; that Act prospectively barred location of the sort of minerals yielded by appellees' claims. Appellees' mineral deposits thus escheated to the Government.

After losing an administrative appeal, appellees filed the present action in the United States District Court for the District of Nevada. Their complaint alleged, *inter alia*, that § 314(c) effected an unconstitutional taking of their property without just compensation and denied them due process. On summary judgment, the District Court held that § 314(c) did indeed deprive appellees of the process to which they were constitutionally due. 573 F. Supp. 472 (1983). The District Court reasoned that § 314(c) created an impermissible irrebuttable presumption that claimants who failed to make a timely filing intended to abandon their claims. Rather than relying on this presumption, the Government was obliged, in the District Court's view, to provide individualized notice to claimants that their claims were in danger of being lost, followed by a post-filing-deadline hearing at which the claimants could demonstrate that they had not, in fact, abandoned a claim. Alternatively, the District Court held that the 1-day late filing "substantially complied" with the Act and regulations.

Because a District Court had held an Act of Congress unconstitutional in a civil suit to which the United States was a party, we noted probable jurisdiction under 28 U. S. C. § 1252. 467 U. S. 1225 (1984).⁸ We now reverse.

⁸That the District Court decided the case on both constitutional and statutory grounds does not affect this Court's obligation under 28 U. S. C. § 1252 to take jurisdiction over the case; as long as the unconstitutionality of an Act of Congress is one of the grounds of decision below in a civil suit

II

Appeal under 28 U. S. C. § 1252 brings before this Court not merely the constitutional question decided below, but the entire case. *McLucas v. DeChamplain*, 421 U. S. 21, 31 (1975); *United States v. Raines*, 362 U. S. 17, 27, n. 7 (1960). The entire case includes nonconstitutional questions actually decided by the lower court as well as nonconstitutional grounds presented to, but not passed on, by the lower court. *United States v. Clark*, 445 U. S. 23, 27–28 (1980).⁹ These principles are important aids in the prudential exercise of our appellate jurisdiction, for when a case arrives here by appeal under 28 U. S. C. § 1252, this Court will not pass on the constitutionality of an Act of Congress if a construction of the Act is fairly possible, or some other nonconstitutional ground fairly available, by which the constitutional question can be avoided. See *Heckler v. Mathews*, 465 U. S. 728, 741–744 (1984); *Johnson v. Robison*, 415 U. S. 361, 366–367 (1974); cf. *United States v. Congress of Industrial Organizations*, 335 U. S. 106, 110 (1948) (appeals under former Criminal Appeals Act); see generally *Ashwander v. TVA*, 297 U. S. 288, 347 (1936) (Brandeis, J., concurring). Thus, we turn first to the nonconstitutional questions pressed below.

to which the United States is a party, appeal lies directly to this Court. *United States v. Rock Royal Co-operative, Inc.*, 307 U. S. 533, 541 (1939).

Another District Court in the West similarly has declared § 314(c) unconstitutional with respect to invalidation of claims based on failure to meet the initial recordation requirements of § 314(a) in timely fashion. *Rogers v. United States*, 575 F. Supp. 4 (Mont. 1982).

⁹When the nonconstitutional questions have not been passed on by the lower court, we may vacate the decision below and remand with instructions that those questions be decided, see *Youakim v. Miller*, 425 U. S. 231 (1976), or we may choose to decide those questions ourselves without benefit of lower court analysis, see *United States v. Clark*. The choice between these options depends on the extent to which lower court factfinding and analysis of the nonconstitutional questions will be necessary or useful to our disposition of those questions.

III

A

Before the District Court, appellees asserted that the § 314(a) requirement of a filing “prior to December 31 of each year” should be construed to require a filing “on or before December 31.” Thus, appellees argued, their December 31 filing had in fact complied with the statute, and the BLM had acted ultra vires in voiding their claims.

Although the District Court did not address this argument, the argument raises a question sufficiently legal in nature that we choose to address it even in the absence of lower court analysis. See, e. g., *United States v. Clark*, *supra*. It is clear to us that the plain language of the statute simply cannot sustain the gloss appellees would put on it. As even counsel for appellees conceded at oral argument, § 314(a) “is a statement that Congress wanted it filed by December 30th. I think that is a clear statement . . .” Tr. of Oral Arg. 27; see also *id.*, at 37 (“A literal reading of the statute would require a December 30th filing . . .”). While we will not allow a literal reading of a statute to produce a result “demonstrably at odds with the intentions of its drafters,” *Griffin v. Oceanic Contractors, Inc.*, 458 U. S. 564, 571 (1982), with respect to filing deadlines a literal reading of Congress’ words is generally the only proper reading of those words. To attempt to decide whether some date other than the one set out in the statute is the date actually “intended” by Congress is to set sail on an aimless journey, for the purpose of a filing deadline would be just as well served by nearly any date a court might choose as by the date Congress has in fact set out in the statute. “Actual purpose is sometimes unknown,” *United States Railroad Retirement Board v. Fritz*, 449 U. S. 166, 180 (1980) (STEVENS, J., concurring), and such is the case with filing deadlines; as might be expected, nothing in the legislative history suggests why Congress chose December 30 over December 31,

or over September 1 (the end of the assessment year for mining claims, 30 U. S. C. §28), as the last day on which the required filings could be made. But “[d]eadlines are inherently arbitrary,” while fixed dates “are often essential to accomplish necessary results.” *United States v. Boyle*, 469 U. S. 241, 249 (1984). Faced with the inherent arbitrariness of filing deadlines, we must, at least in a civil case, apply by its terms the date fixed by the statute. Cf. *United States Railroad Retirement Board v. Fritz*, *supra*, at 179.¹⁰

Moreover, BLM regulations have made absolutely clear since the enactment of FLPMA that “prior to December 31” means what it says. As the current version of the filing regulations states:

“The owner of an unpatented mining claim located on Federal lands . . . shall have filed or caused to have been filed *on or before December 30* of each calendar year . . . evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.” 43 CFR §3833.2-1(b)(1) (1984) (emphasis added).

See also 43 CFR §3833.2-1(a) (1982) (same); 43 CFR §3833.2-1(a) (1981) (same); 43 CFR §3833.2-1(a) (1980) (same); 43 CFR §3833.2-1(a) (1979) (same); 43 CFR §3833.2-1(a)(1) (1978) (“prior to” Dec. 31); 43 CFR §3833.2-1(a)(1) (1977) (“prior to” Dec. 31). Leading mining treatises similarly

¹⁰Statutory filing deadlines are generally subject to the defenses of waiver, estoppel, and equitable tolling. See *Zipes v. Trans World Airlines, Inc.*, 455 U. S. 385, 392-398 (1982). Whether this general principle applies to deadlines that run in favor of the Government is a question on which we express no opinion today. In addition, no showing has been made that appellees were in any way “unable to exercise the usual care and diligence” that would have allowed them to meet the filing deadline or to learn of its existence. See *United States v. Boyle*, 469 U. S. 241, 253 (1985) (BRENNAN, J., concurring). Of course, at issue in *Boyle* was an explicit provision in the Internal Revenue Code that provided a reasonable-cause exception to the Code’s filing deadlines, while FLPMA contains no analogous provision.

inform claimants that “[i]t is important to note that the filing of a notice of intention or evidence of assessment work must be done *prior* to December 31 of each year, *i. e.*, on or before December 30.” 2 American Law of Mining § 7.23D, p. 150.2 (Supp. 1983) (emphasis in original); see also 23 Rocky Mountain Mineral Law Institute 25 (1977) (same). If appellees, who were businessmen involved in the running of a major mining operation for more than 20 years, had any questions about whether a December 31 filing complied with the statute, it was incumbent upon them, as it is upon other businessmen, see *United States v. Boyle*, *supra*, to have checked the regulations or to have consulted an attorney for legal advice. Pursuit of either of these courses, rather than the submission of a last-minute filing, would surely have led appellees to the conclusion that December 30 was the last day on which they could file safely.

In so saying, we are not insensitive to the problems posed by congressional reliance on the words “prior to December 31.” See *post*, p. 117 (STEVENS, J., dissenting). But the fact that Congress might have acted with greater clarity or foresight does not give courts a *carte blanche* to redraft statutes in an effort to achieve that which Congress is perceived to have failed to do. “There is a basic difference between filling a gap left by Congress’ silence and rewriting rules that Congress has affirmatively and specifically enacted.” *Mobil Oil Corp. v. Higginbotham*, 436 U. S. 618, 625 (1978). Nor is the Judiciary licensed to attempt to soften the clear import of Congress’ chosen words whenever a court believes those words lead to a harsh result. See *Northwest Airlines, Inc. v. Transport Workers*, 451 U. S. 77, 98 (1981). On the contrary, deference to the supremacy of the Legislature, as well as recognition that Congressmen typically vote on the language of a bill, generally requires us to assume that “the legislative purpose is expressed by the ordinary meaning of the words used.” *Richards v. United States*, 369 U. S. 1, 9 (1962). “Going behind the plain language of a statute in search of a possibly contrary congressional intent is ‘a step to

be taken cautiously' even under the best of circumstances." *American Tobacco Co. v. Patterson*, 456 U. S. 63, 75 (1982) (quoting *Piper v. Chris-Craft Industries, Inc.*, 430 U. S. 1, 26 (1977)). When even after taking this step nothing in the legislative history remotely suggests a congressional intent contrary to Congress' chosen words, and neither appellees nor the dissenters have pointed to anything that so suggests, any further steps take the courts out of the realm of interpretation and place them in the domain of legislation. The phrase "prior to" may be clumsy, but its meaning is clear.¹¹ Under these circumstances, we are obligated to apply the "prior to December 31" language by its terms. See, e. g., *American Tobacco Co. v. Patterson*, *supra*, at 68; *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U. S. 102, 108 (1980).

The agency's regulations clarify and confirm the import of the statutory language by making clear that the annual filings must be made on or before December 30. These regulations provide a conclusive answer to appellees' claim, for where the language of a filing deadline is plain and the agency's construction completely consistent with that language, the agency's construction simply cannot be found "sufficiently unreasonable" as to be unacceptable. *FEC v. Democratic Senatorial Campaign Committee*, 454 U. S. 27, 39 (1981).

We cannot press statutory construction "to the point of disingenuous evasion" even to avoid a constitutional question. *Moore Ice Cream Co. v. Rose*, 289 U. S. 373, 379 (1933) (Cardozo, J.).¹² We therefore hold that BLM did not act *ultra vires* in concluding that appellees' filing was untimely.

¹¹ Legislative drafting books are filled with suggestions that the phrase "prior to" be replaced with the word "before," see, e. g., R. Dickerson, *Materials on Legal Drafting* 293 (1981), but we have seen no suggestion that "prior to" be replaced with "on or before"—a phrase with obviously different substantive content.

¹² We note that the United States Code is sprinkled with provisions that require action "prior to" some date, including at least 14 provisions that contemplate action "prior to December 31." See 7 U. S. C. § 609(b)(5); 12 U. S. C. § 1709(o)(1)(E); 12 U. S. C. § 1823(g); 12 U. S. C. § 1841(a)(5)(A);

B

Section 314(c) states that failure to comply with the filing requirements of §§ 314(a) and 314(b) “shall be deemed conclusively to constitute an abandonment of the mining claim.” We must next consider whether this provision expresses a congressional intent to extinguish all claims for which filings have not been made, or only those claims for which filings have not been made *and* for which the claimants have a specific intent to abandon the claim. The District Court adopted the latter interpretation, and on that basis concluded that § 314(c) created a constitutionally impermissible irrebuttable presumption of abandonment. The District Court reasoned that, once Congress had chosen to make loss of a claim turn on the specific intent of the claimant, a prior hearing and findings on the claimant’s intent were constitutionally required before the claim of a nonfiling claimant could be extinguished.

In concluding that Congress was concerned with the specific intent of the claimant even when the claimant had failed

22 U. S. C. § 3784(c); 26 U. S. C. § 503(d)(1); 33 U. S. C. § 1319(a)(5)(B); 42 U. S. C. § 415(a)(7)(E)(ii) (1982 ed., Supp. III); 42 U. S. C. § 1962(d)–17(b); 42 U. S. C. § 5614(b)(5); 42 U. S. C. § 7502(a)(2); 42 U. S. C. § 7521(b)(2); 43 U. S. C. § 1744(a); 50 U. S. C. App. § 1741(b)(1). Dozens of state statutes and local ordinances undoubtedly incorporate similar “prior to December 31” deadlines. In addition, legislatures know how to make explicit an intent to allow action on December 31 when they employ a December 31 date in a statute. See, *e. g.*, 7 U. S. C. § 609(b)(2); 22 U. S. C. §§ 3303(b)(3)(B) and (c); 43 U. S. C. § 256a.

It is unclear whether the arguments advanced by the dissenters are meant to apply to all of these provisions, or only to some of them; if the latter, we are given little guidance as to how a court is to go about the rather eclectic task of choosing which “prior to December 31” deadlines it can interpret “flexibly.” Understandably enough, the dissenters seek to disavow any intent to call all these “prior to December 31” deadlines into question and assure us that *this* is a “unique case,” *post*, at 117, n. 4 (POWELL, J., dissenting), involving a “unique factual matrix,” *post*, at 128 (STEVENS, J., dissenting). The only thing we can find unique about this particular December 31 deadline is that the dissenters are willing to go through such tortured reasoning to evade it.

to make the required filings, the District Court began from the fact that neither § 314(c) nor the Act itself defines the term “abandonment” as that term appears in § 314(c). The District Court then noted correctly that the common law of mining traditionally has drawn a distinction between “abandonment” of a claim, which occurs only upon a showing of the claimant’s intent to relinquish the claim, and “forfeiture” of a claim, for which only noncompliance with the requirements of law must be shown. See, *e. g.*, 2 American Law of Mining § 8.2, pp. 195–196 (1983) (relied upon by the District Court). Given that Congress had not expressly stated in the statute any intent to depart from the term-of-art meaning of “abandonment” at common law, the District Court concluded that § 314(c) was intended to incorporate the traditional common-law distinction between abandonment and forfeiture. Thus, reasoned the District Court, Congress did not intend to cause a forfeiture of claims for which the required filings had not been made, but rather to focus on the claimant’s actual intent. As a corollary, the District Court understood the failure to file to have been intended to be merely one piece of evidence in a factual inquiry into whether a claimant had a specific intent to abandon his property.

This construction of the statutory scheme cannot withstand analysis. While reference to common-law conceptions is often a helpful guide to interpreting open-ended or undefined statutory terms, see, *e. g.*, *NLRB v. Amax Coal Co.*, 453 U. S. 322, 329 (1981); *Standard Oil Co. v. United States*, 221 U. S. 1, 59 (1911), this principle is a guide to legislative intent, not a talisman of it, and the principle is not to be applied in defiance of a statute’s overriding purposes and logic. Although § 314(c) is couched in terms of a conclusive presumption of “abandonment,” there can be little doubt that Congress intended § 314(c) to cause a forfeiture of all claims for which the filing requirements of §§ 314(a) and 314(b) had not been met.

To begin with, the Senate version of § 314(c) provided that any claim not properly recorded “shall be conclusively pre-

sumed to be abandoned and shall be void.” S. 507, 94th Cong., 1st Sess., §311 (1975).¹³ The Committee Report accompanying S. 507 repeatedly indicated that failure to comply with the filing requirements would make a claim “void.” See S. Rep. No. 94-583, pp. 65, 66 (1975). The House legislation and Reports merely repeat the statutory language without offering any explanation of it, but it is clear from the Conference Committee Report that the undisputed intent of the Senate—to make “void” those claims for which proper filings were not timely made—was the intent of both Chambers. The Report stated: “Both the Senate bill and House amendments provided for recordation of mining claims and for *extinguishment* of abandoned claims.” H. R. Rep. No. 94-1724, p. 62 (1976) (emphasis added).

In addition, the District Court’s construction fails to give effect to the “deemed conclusively” language of §314(c). If the failure to file merely shifts the burden to the claimant to prove that he intends to keep the claim, nothing “conclusive” is achieved by §314(c). The District Court sought to avoid this conclusion by holding that §314(c) does extinguish automatically those claims for which *initial* recordings, as opposed to annual filings, have not been made; the District Court attempted to justify its distinction between initial recordings and annual filings on the ground that the dominant purpose of §314(c) was to avoid forcing BLM to the “awesome task of searching every local title record” to establish initially a federal recording system. 573 F. Supp., at 477. Once this purpose had been satisfied by an initial recording, the primary purposes of the “deemed conclusively” language, in the District Court’s view, had been met. But the clear language of §314(c) admits of no distinction between

¹³The Senate bill required only initial recordings, not annual filings, but this factor is not significant in light of the actions of the Conference Committee; the clear structure of the Senate bill was to impose the sanction of claim extinguishment on those who failed to make whatever filings federal law required.

initial recordings and annual filings: failure to do either "shall be deemed conclusively to constitute an abandonment." And the District Court's analysis of the purposes of § 314(c) is also misguided, for the annual filing requirements serve a purpose similar to that of the initial recording requirement; millions of claims undoubtedly have now been recorded, and the presence of an annual filing obligation allows BLM to keep the system established in § 314 up to date on a yearly basis. To put the burden on BLM to keep this system current through its own inquiry into the status of recorded claims would lead to a situation similar to that which led Congress initially to make the federal recording system self-executing. The purposes of a self-executing recording system are implicated similarly, if somewhat less substantially, by both the annual filing obligation and the initial recording requirement, and the District Court was not empowered to thwart these purposes or the clear language of § 314(c) by concluding that § 314(c) was actually concerned with only initial recordings.

For these reasons, we find that Congress intended in § 314(c) to extinguish those claims for which timely filings were not made. Specific evidence of intent to abandon is simply made irrelevant by § 314(c); the failure to file on time, in and of itself, causes a claim to be lost. See *Western Mining Council v. Watt*, 643 F. 2d 618, 628 (CA9 1981).

C

A final statutory question must be resolved before we turn to the constitutional holding of the District Court. Relying primarily on *Hickel v. Oil Shale Corp.*, 400 U. S. 48 (1970), the District Court held that, even if the statute required a filing on or before December 30, appellees had "substantially complied" by filing on December 31. We cannot accept this view of the statute.

The notion that a filing deadline can be complied with by filing sometime after the deadline falls due is, to say the

least, a surprising notion, and it is a notion without limiting principle. If 1-day late filings are acceptable, 10-day late filings might be equally acceptable, and so on in a cascade of exceptions that would engulf the rule erected by the filing deadline; yet regardless of where the cutoff line is set, some individuals will always fall just on the other side of it. Filing deadlines, like statutes of limitations, necessarily operate harshly and arbitrarily with respect to individuals who fall just on the other side of them, but if the concept of a filing deadline is to have any content, the deadline must be enforced. "Any less rigid standard would risk encouraging a lax attitude toward filing dates," *United States v. Boyle*, 469 U. S., at 249. A filing deadline cannot be complied with, substantially or otherwise, by filing late—even by one day. *Hickel v. Oil Shale Corp.*, *supra*, does not support a contrary conclusion. *Hickel* suggested, although it did not hold, that failure to meet the annual assessment work requirements of the general mining laws, 30 U. S. C. §28, which require that "not less than \$100 worth of labor shall be performed or improvements made during each year," would not render a claim automatically void. Instead, if an individual complied substantially but not fully with the requirement, he might under some circumstances be able to retain possession of his claim.

These suggestions in *Hickel* do not afford a safe haven to mine owners who fail to meet their filing obligations under any federal mining law. Failure to comply fully with the physical requirement that a certain amount of work be performed each year is significantly different from the complete failure to file on time documents that federal law commands be filed. In addition, the general mining laws at issue in *Hickel* do not clearly provide that a claim will be lost for failure to meet the assessment work requirements. Thus, it was open to the Court to conclude in *Hickel* that Congress had intended to make the assessment work requirement merely an indicium of a claimant's specific intent to retain a

claim. Full compliance with the assessment work requirements would establish conclusively an intent to keep the claim, but less than full compliance would not by force of law operate to deprive the claimant of his claim. Instead, less than full compliance would subject the mine owner to a case-by-case determination of whether he nonetheless intended to keep his claim. See *Hickel, supra*, at 56–57.

In this case, the statute explicitly provides that failure to comply with the applicable filing requirements leads automatically to loss of the claim. See Part II–B, *supra*. Thus, Congress has made it unnecessary to ascertain whether the individual in fact intends to abandon the claim, and there is no room to inquire whether substantial compliance is indicative of the claimant's intent—intent is simply irrelevant if the required filings are not made. *Hickel's* discussion of substantial compliance is therefore inapposite to the statutory scheme at issue here. As a result, *Hickel* gives miners no greater latitude with filing deadlines than other individuals have.¹⁴

¹⁴Since 1982, BLM regulations have provided that filings due on or before December 30 will be considered timely if postmarked on or before December 30 and received by BLM by the close of business on the following January 19. 43 CFR § 3833.0–5(m) (1983). Appellees and the dissenters attempt to transform this regulation into a blank check generally authorizing “substantial compliance” with the filing requirements. We disagree for two reasons. First, the regulation was not in effect when appellees filed in 1980; it therefore cannot now be relied on to validate a purported “substantial compliance” in 1980. Second, that an agency has decided to take account of holiday mail delays by treating as timely filed a document postmarked on the statutory filing date does not require the agency to accept all documents hand-delivered any time before January 19. The agency rationally could decide that either of the options in this sort of situation—requiring mailings to be received by the same date that hand-deliveries must be made or requiring mailings to be postmarked by that date—is a sound way of administering the statute.

JUSTICE STEVENS further suggests that BLM would have been well within its authority to promulgate regulations construing the statute to allow for December 31 filings. Assuming the correctness of this sugges-

IV

Much of the District Court's constitutional discussion necessarily falls with our conclusion that §314(c) automatically deems forfeited those claims for which the required filings are not timely made. The District Court's invalidation of the statute rested heavily on the view that §314(c) creates an "irrebuttable presumption that mining claims are abandoned if the miner fails to timely file" the required documents—that the statute presumes a failure to file to signify a specific intent to abandon the claim. But, as we have just held, §314(c) presumes nothing about a claimant's actual intent; the statute simply and conclusively deems such claims to be forfeited. As a forfeiture provision, §314(c) is not subject to the individualized hearing requirement of such irrebuttable presumption cases as *Vlandis v. Kline*, 412 U. S. 441 (1973), or *Cleveland Bd. of Education v. LaFleur*, 414 U. S. 632 (1974), for there is nothing to suggest that, in enacting §314(c), Congress was in any way concerned with whether a particular claimant's tardy filing or failure to file indicated an actual intent to abandon the claim.

There are suggestions in the District Court's opinion that, even understood as a forfeiture provision, §314(c) might be unconstitutional. We therefore go on to consider whether automatic forfeiture of a claim for failure to make annual filings is constitutionally permissible. The framework for analysis of this question, in both its substantive and procedural dimensions, is set forth by our recent decision in *Texaco, Inc. v. Short*, 454 U. S. 516 (1982). There we upheld a state statute pursuant to which a severed mineral interest that had not been used for a period of 20 years automatically lapsed and reverted to the current surface owner of the property, unless the mineral owner filed a statement of

tion, the fact that two interpretations of a statute are equally reasonable suggests to us that the agency's interpretation is sufficiently reasonable as to be acceptable. See *FEC v. Democratic Senatorial Campaign Committee*, 454 U. S. 27, 39 (1981).

claim in the county recorder's office within 2 years of the statute's passage.

A

Under *Texaco*, we must first address the question of affirmative legislative power: whether Congress is authorized to "provide that property rights of this character shall be extinguished if their owners do not take the affirmative action required by the" statute. *Id.*, at 525. Even with respect to vested property rights, a legislature generally has the power to impose new regulatory constraints on the way in which those rights are used, or to condition their continued retention on performance of certain affirmative duties. As long as the constraint or duty imposed is a reasonable restriction designed to further legitimate legislative objectives, the legislature acts within its powers in imposing such new constraints or duties. See, e. g., *Village of Euclid v. Ambler Realty Co.*, 272 U. S. 365 (1926); *Turner v. New York*, 168 U. S. 90, 94 (1897); *Vance v. Vance*, 108 U. S. 514, 517 (1883); *Terry v. Anderson*, 95 U. S. 628 (1877). "[L]egislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations." *Usery v. Turner Elkhorn Mining Co.*, 428 U. S. 1, 16 (1976) (citations omitted).

This power to qualify existing property rights is particularly broad with respect to the "character" of the property rights at issue here. Although owners of unpatented mining claims hold fully recognized possessory interests in their claims, see *Best v. Humboldt Placer Mining Co.*, 371 U. S. 334, 335 (1963), we have recognized that these interests are a "unique form of property." *Ibid.* The United States, as owner of the underlying fee title to the public domain, maintains broad powers over the terms and conditions upon which the public lands can be used, leased, and acquired. See, e. g., *Kleppe v. New Mexico*, 426 U. S. 529, 539 (1976).

"A mining location which has not gone to patent is of no higher quality and no more immune from attack and in-

vestigation than are unpatented claims under the homestead and kindred laws. If valid, it gives to the claimant certain exclusive possessory rights, and so do homestead and desert claims. But no right arises from an invalid claim of any kind. All must conform to the law under which they are initiated; otherwise they work an unlawful private appropriation in derogation of the rights of the public." *Cameron v. United States*, 252 U. S. 450, 460 (1920).

Claimants thus must take their mineral interests with the knowledge that the Government retains substantial regulatory power over those interests. Cf. *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U. S. 400, 413 (1983). In addition, the property right here is the right to a flow of income from production of the claim. Similar vested economic rights are held subject to the Government's substantial power to regulate for the public good the conditions under which business is carried out and to redistribute the benefits and burdens of economic life. See, e. g., *National Railroad Passenger Corporation v. Atchison, T. & S. F. R. Co.*, 470 U. S. 451, 468–469 (1985); *Usery v. Turner Elkhorn Mining Co.*, *supra*; see generally *Walls v. Midland Carbon Co.*, 254 U. S. 300, 315 (1920) ("[I]n the interest of the community, [government may] limit one [right] that others may be enjoyed").

Against this background, there can be no doubt that Congress could condition initial receipt of an unpatented mining claim upon an agreement to perform annual assessment work and make annual filings. That this requirement was applied to claims already located by the time FLPMA was enacted and thus applies to vested claims does not alter the analysis, for any "retroactive application of [FLPMA] is supported by a legitimate legislative purpose furthered by rational means." *Pension Benefit Guaranty Corporation v. R. A. Gray & Co.*, 467 U. S. 717, 729 (1984). The purposes of applying FLPMA's filing provisions to claims located before the Act was passed—to rid federal lands of stale mining claims and to

provide for centralized collection by federal land managers of comprehensive and up-to-date information on the status of recorded but unpatented mining claims—are clearly legitimate. In addition, § 314(c) is a reasonable, if severe, means of furthering these goals; sanctioning with loss of their claims those claimants who fail to file provides a powerful motivation to comply with the filing requirement, while automatic invalidation for noncompliance enables federal land managers to know with certainty and ease whether a claim is currently valid. Finally, the restriction attached to the continued retention of a mining claim imposes the most minimal of burdens on claimants; they must simply file a paper once a year indicating that the required assessment work has been performed or that they intend to hold the claim.¹⁵ Indeed,

¹⁵ Appellees suggest that *Texaco, Inc. v. Short*, 454 U. S. 516 (1982), further requires that the restriction imposed be substantively reasonable in the sense that it adequately relate to some common-law conception of the nature of the property right involved. Thus, appellees point to the fact that, in *Texaco*, failure to file could produce a forfeiture only if, in addition, the mineral interest had lain dormant for 20 years; according to appellees, conjunction of a 20-year dormancy period with failure to file a statement of claim sufficiently indicated abandonment, as that term is understood at common law, to justify the statute.

Common-law principles do not, however, entitle an individual to retain his property until the common law would recognize it as abandoned. Legislatures can enact substantive rules of law that treat property as forfeited under conditions that the common law would not consider sufficient to indicate abandonment. See *Hawkins v. Barney's Lessee*, 5 Pet. 457, 467 (1831) ("What is the evidence of an individual having abandoned his rights or property? It is clear that the subject is one over which every community is at liberty to make a rule for itself"). As long as proper notice of these rules exists, and the burdens they impose are not so wholly disproportionate to the burdens other individuals face in a highly regulated society that some people are being forced "alone to bear public burdens which, in all fairness and justice, must be borne by the public as a whole," *Armstrong v. United States*, 364 U. S. 40, 49 (1960), the burden imposed is a reasonable restriction on the property right. Here Congress has chosen to redefine the way in which an unpatented mining claim can be lost through imposition of a filing requirement that serves valid public objec-

appellees could have fully protected their interests against the effect of the statute by taking the minimal additional step of patenting the claims. As a result, Congress was well within its affirmative powers in enacting the filing requirement, in imposing the penalty of extinguishment set forth in §314(c), and in applying the requirement and sanction to claims located before FLPMA was passed.

B

We look next to the substantive effect of §314(c) to determine whether Congress is nonetheless barred from enacting it because it works an impermissible intrusion on constitutionally protected rights. With respect to the regulation of private property, any such protection must come from the Fifth Amendment's proscription against the taking of private property without just compensation. On this point, however, *Texaco* is controlling: "this Court has never required [Congress] to compensate the owner for the consequences of his own neglect." 454 U. S., at 530. Appellees failed to inform themselves of the proper filing deadline and failed to file in timely fashion the documents required by federal law. Their property loss was one appellees could have avoided with minimal burden; it was their failure to file on time—not the action of Congress—that caused the property right to be extinguished. Regulation of property rights does not "take" private property when an individual's reasonable, investment-backed expectations can continue to be realized as long as he complies with reasonable regulatory restrictions the legislature has imposed. See, e. g., *Miller v. Schoene*, 276 U. S. 272, 279–280 (1928); *Terry v. Anderson*, 95 U. S., at 632–633; cf. *Hawkins v. Barney's Lessee*, 5 Pet. 457, 465

tives, imposes the most minimal of burdens on property holders, and takes effect only after appellees have had sufficient notice of their need to comply and a reasonable opportunity to do so. That the filing requirement meets these standards is sufficient, under *Texaco*, to make it a reasonable restriction on the continued retention of the property right.

(1831) ("What right has any one to complain, when a reasonable time has been given him, if he has not been vigilant in asserting his rights?").

C

Finally, the Act provides appellees with all the process that is their constitutional due. In altering substantive rights through enactment of rules of general applicability, a legislature generally provides constitutionally adequate process simply by enacting the statute, publishing it, and, to the extent the statute regulates private conduct, affording those within the statute's reach a reasonable opportunity both to familiarize themselves with the general requirements imposed and to comply with those requirements. *Texaco*, 454 U. S., at 532; see also *Anderson National Bank v. Lockett*, 321 U. S. 233, 243 (1944); *North Laramie Land Co. v. Hoffman*, 268 U. S. 276, 283 (1925). Here there can be no doubt that the Act's recording provisions meet these minimal requirements. Although FLPMA was enacted in 1976, owners of existing claims, such as appellees, were not required to make an initial recording until October 1979. This 3-year period, during which individuals could become familiar with the requirements of the new law, surpasses the 2-year grace period we upheld in the context of a similar regulation of mineral interests in *Texaco*. Moreover, the specific annual filing obligation at issue in this case is not triggered until the year after which the claim is recorded initially; thus, every claimant in appellees' position already has filed once before the annual filing obligations come due. That these claimants already have made one filing under the Act indicates that they know, or must be presumed to know, of the existence of the Act and of their need to inquire into its demands.¹⁶ The

¹⁶ As a result, this is not a case in which individual notice of a statutory change must be given because a statute is "sufficiently unusual in character, and triggered in circumstances so commonplace, that an average citizen would have no reason to regard the triggering event as calling for a heightened awareness of one's legal obligations." *Texaco*, 454 U. S., at 547 (BRENNAN, J., dissenting).

requirement of an annual filing thus was not so unlikely to come to the attention of those in the position of appellees as to render unconstitutional the notice provided by the 3-year grace period.¹⁷

Despite the fact that FLPMA meets the three standards laid down in *Texaco* for the imposition of new regulatory restraints on existing property rights, the District Court seemed to believe that individualized notice of the filing deadlines was nonetheless constitutionally required. The District Court felt that such a requirement would not be "overly burdensome" to the Government and would be of great benefit to mining claimants. The District Court may well be right that such an individualized notice scheme would be a sound means of administering the Act.¹⁸ But in the regulation of private property rights, the Constitution offers the courts no warrant to inquire into whether some other scheme might be more rational or desirable than the one chosen by Congress; as long as the legislative scheme is a rational way of reaching Congress' objectives, the efficacy of alternative routes is for Congress alone to consider. "It is enough to say that the Act approaches the problem of [developing a national recording system] rationally; whether a [different notice scheme] would have been wiser or more practical under the circumstances is not a question of constitutional dimension." *Usery v. Turner Elkhorn Mining*, 428 U. S., at 19. Because we deal here with purely economic legislation, Congress was entitled to conclude that it was preferable

¹⁷ BLM does provide for notice and a hearing on the adjudicative fact of whether the required filings were actually made, and appellees availed themselves of this process by appealing, to the Department of Interior Board of Land Appeals, the BLM order that extinguished their claims for failure to make a timely filing.

¹⁸ In the exercise of its administrative discretion, BLM for the last several years has chosen to mail annual reminder notices to claimants several months before the end of the year; according to the Government, these notices state: "[Y]ou must file on or before 12/30 [of the relevant year]. Failure to file timely with the proper BLM office will render your claim abandoned." Brief for Appellants 31-32, n. 22.

to place a substantial portion of the burden on claimants to make the national recording system work. See *ibid.*; *Weinberger v. Salfi*, 422 U. S. 749 (1975); *Mourning v. Family Publications Service, Inc.*, 411 U. S. 356 (1973). The District Court therefore erred in invoking the Constitution to supplant the valid administrative scheme established by Congress. The judgment below is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE O'CONNOR, concurring.

I agree that the District Court erred in holding that § 314(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U. S. C. § 1744(c), violates due process by creating an "irrebuttable presumption" of abandonment. Whatever the force of *Vlandis v. Kline*, 412 U. S. 441 (1973), beyond the facts underlying that case, I believe that § 314(c) comports with due process under the analysis of our later decision in *Weinberger v. Salfi*, 422 U. S. 749 (1975). Because I also believe that the statute does not otherwise violate the Fifth Amendment and that the District Court erred in its alternative holding that substantial compliance satisfies the filing requirements of § 314 and corresponding regulations, I agree that the judgment below must be reversed. Nonetheless, I share many of the concerns expressed in the dissenting opinions of JUSTICE POWELL and JUSTICE STEVENS. If the facts are as alleged by appellees, allowing the Bureau of Land Management (BLM) to extinguish active mining claims that appellees have owned and worked for more than 20 years would seem both unfair and inconsistent with the purposes underlying FLPMA.

The Government has not disputed that appellees sought in good faith to comply with the statutory deadline. Appellees contend that in order to meet the requirements of § 314, they contacted the BLM and were informed by agency personnel

that they could file the required materials on December 31, 1980. Appellees apparently relied on this advice and hand-delivered the appropriate documents to the local BLM office on that date. The BLM accepted the documents for filing, but some three months later sent appellees a notice stating that their mining claims were "abandoned and void" because the filing was made on, rather than prior to, December 31, 1980. Although BLM regulations clarify the filing deadlines contained in § 314, the existence of those regulations does not imply that appellees were unjustified in their confusion concerning the deadlines or in their reliance on the advice provided by BLM's local office. The BLM itself in 1978 issued an explanatory pamphlet stating that the annual filings were to be made "on or before December 31" of each year. *Ante*, at 89–90, n. 7. Moreover, the BLM evidently has come to understand the need to clarify the nature of the annual filing requirement, because it now sends reminder notices every year to holders of recorded mining claims warning them that the deadline is approaching and that filings must be made on or before December 30.

The unusual facts alleged by appellees suggest that the BLM's actions might estop the Government from relying on § 314(c) to obliterate a property interest that has provided a family's livelihood for decades. The Court properly notes that the estoppel issue was not addressed by the District Court and will be open on remand. *Ante*, at 89–90, n. 7. In this regard, I merely note that in my view our previous decisions do not preclude application of estoppel in this context. In *Heckler v. Community Health Services of Crawford County, Inc.*, 467 U. S. 51 (1984), we expressly declined to adopt "a flat rule that estoppel may not in any circumstances run against the Government." *Id.*, at 60. Such a rule was unnecessary to the decision in that case, and we noted our reluctance to hold that "there are *no cases* in which the public interest in ensuring that the Government can enforce the law free from estoppel might be outweighed by the countervail-

ing interest of citizens in some minimum standard of decency, honor, and reliability in their dealings with their Government." *Id.*, at 60–61 (footnote omitted).

Although "it is well settled that the Government may not be estopped on the same terms as any other litigant," *id.*, at 60 (footnote omitted), we have never held that the Government can extinguish a vested property interest that has been legally held and actively maintained for more than 20 years merely because the private owners relied on advice from agency personnel concerning a poorly worded statutory deadline and consequently missed a filing deadline by one day. Thus, if the District Court ultimately determines that appellees reasonably relied on communications from the BLM in making their annual filing on December 31, 1980, our previous decisions would not necessarily bar application of the doctrine of equitable estoppel. Accordingly, the fact that the Court reverses the decision of the District Court does not establish that appellees must ultimately forfeit their mining claims.

JUSTICE POWELL, dissenting.

I agree with much of JUSTICE STEVENS' dissent. I write separately only because under the special circumstances of this case I do not believe it necessary to decide what Congress actually intended. Even if the Court is correct in believing that Congress intended to require filings on or before the next-to-the-last day of the year, rather than, more reasonably, by the end of the calendar year itself, the statutory deadline is too uncertain to satisfy constitutional requirements. It simply fails to give property holders clear and definite notice of what they must do to protect their existing property interests.

As the Court acknowledges, *ante*, at 86, the Government since the 19th century has encouraged its citizens to discover and develop certain minerals on the public lands. Under the general mining laws, 30 U. S. C. § 22 *et seq.*, an individual who locates a mining claim has the right of exclusive posses-

sion of the land for mining purposes and may extract and sell minerals he finds there without paying a royalty to the Federal Government. § 26. After making a valuable mineral discovery, the claimant may hold the claim so long as he performs \$100 worth of assessment work each year. § 28. If he performs certain additional conditions, the claimant may patent the claim for a nominal sum and thereby obtain further rights over the land and minerals. See § 29. Until recently, there were no federal recordation requirements.

Faced with the uncertainty stale mining claims had created as to property rights on public lands, Congress enacted § 314 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2769, 43 U. S. C. § 1744.¹ This provision required existing claimholders to record their claims in order to retain them. More specifically, it required that "within the three-year period following October 21, 1976 and prior to December 31 of each year thereafter," § 1744(a), claimholders file with

¹ Section 314(a), 43 U. S. C. § 1744(a), states in its entirety:

"Recordation of Mining Claims

"(a) Filing requirements

"The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976 and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after October 21, 1976 shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

"(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on *[sic]* a detailed report provided by section 28-1 of title 30, relating thereto.

"(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground."

the Bureau of Land Management (BLM) a copy of a notice of intention to retain their claims, an affidavit of assessment work, or a special form, §§ 1744(a)(1) and (2). Failure to make either the initial or a subsequent yearly filing was to "be deemed conclusively to constitute an abandonment of the mining claim" § 1744(c).

Appellees (the Lockes) are owners of 10 unpatented mining claims on federal land in Nevada. Appellees' predecessors located these claims in 1952 and 1954, and appellees have, since they purchased the claims in 1960, earned their livelihood by producing gravel and other building materials from them. From 1960 to the present, they have produced approximately \$4 million worth of materials. During the 1979-1980 assessment year alone, they produced gravel and other materials worth more than \$1 million. In no sense were their claims stale.

The Lockes fully complied with § 314's initial recordation requirement by properly filing a notice of location on October 19, 1979. In order to ascertain how to comply with the subsequent yearly recordation requirements, the Lockes sent their daughter, who worked in their business office, to the Ely, Nevada, office of the BLM. There she inquired into how and when they should file the assessment notice and was told, among other things, that the documents should be filed at the Reno office "on or before December 31, 1980." 573 F. Supp. 472, 474 (Nev. 1983). Following this advice, the Lockes hand-delivered their documents at the Reno office on that date. On April 4, 1981, they received notice from the BLM that their mining claims were "abandoned and void," App. to Juris. Statement 22a, because they had filed *on*, rather than *prior to*, December 31.² It is this 1-day differ-

²The notice from the BLM also stated that "[s]ubject to valid intervening rights of third parties or the United States void or abandoned claims or sites may be relocated and, based on the new location date, the appropriate instruments may be refiled within the time periods prescribed by the regulations." App. to Juris. Statement 22a. Unlike most claimants, however,

ence in good-faith interpretation of the statutory deadline that gives rise to the present controversy.

JUSTICE STEVENS correctly points to a number of circumstances that cast doubt both on the care with which Congress drafted § 314 and on its meaning. Specifically, he notes that (i) the section does not clearly describe *what* must be filed, let alone *when* it must be filed; (ii) BLM's rewording of the deadline in its implementing regulations, 43 CFR § 3833.2-1(a)(1) (1984), indicates that the BLM itself considered the statutory deadline confusing; (iii) lest there be any doubt that the BLM recognized this possible confusion, even it had described the section in a pamphlet distributed to miners in 1978 as requiring filing "*on or before December 31*"; (iv) BLM, charged with enforcing the section, has interpreted it quite flexibly; and (v) irrationally requiring property holders to file by one day before the end of the year, rather than by the end of the year itself, creates "a trap for the unwary," *post*, at 123. As JUSTICE STEVENS also states, these facts, particularly the last, suggest not only that Congress drafted § 314 inartfully but also that Congress may actually have intended to require filing "on or before," not "prior to," December 31. This is certainly the more reasonable interpretation of congressional intent and is consistent with all the policies of the Act.

I do not believe, however, that given the special circumstances of this case we need determine what Congress actually intended. As the Court today recognizes, the Takings Clause imposes some limitations on the Government's power to impose forfeitures. *Ante*, at 103-108. In *Texaco, Inc. v. Short*, 454 U. S. 516 (1982), we identified one of the most important of these limitations when we stated that "the State has the power to condition the permanent retention of [a]

the Lockes were unable to relocate their claims because the Common Varieties Act of 1955, 30 U. S. C. § 611 *et seq.*, had withdrawn deposits of common building materials from coverage of the general mining laws. To them, forfeiture meant not relocation and refiling, but rather irrevocable loss of their claims—the source of their livelihood.

property right on the performance of *reasonable conditions*” *Id.*, at 526 (emphasis added); accord, *Jackson v. Lamphire*, 3 Pet. 280, 290 (1830) (“Cases may occur where the [forfeiture] provisio[n] . . . may be so unreasonable as to amount to a denial of a right, and call for the interposition of the court . . .”). Furthermore, conditions, like those here, imposed after a property interest is created must also meet due process standards. *Usery v. Turner Elkhorn Mining Co.*, 428 U. S. 1, 16–17 (1976). These standards require, among other things, that there be no question as to what actions an individual must take to protect his interests. *Texaco, Inc. v. Short*, *supra*, at 532–533. Together the Takings and Due Process Clauses prevent the Government from depriving an individual of property rights arbitrarily.

In the present case there is no claim that a yearly filing requirement is itself unreasonable. Rather, the claim arises from the fact that the language “prior to December 31” creates uncertainty as to when an otherwise reasonable filing period ends.³ Given the natural tendency to interpret this phrase as “by the end of the calendar year,” rather than “on or before the next-to-the-last day of the calendar year,” I believe this uncertainty violated the standard of certainty

³The Court believes it is “obligated to apply the ‘prior to December 31’ language by its terms” because “its meaning is clear.” *Ante*, at 96. Such clarity, however, is not to be found in the words themselves. Courts, for example, have used these same words in similar contexts clearly to mean “by the end of the year,” *e. g.*, *AMF Inc. v. Jewett*, 711 F. 2d 1096, 1108, 1115 (CA1 1983); *Bay State Gas Co. v. Commissioner*, 689 F. 2d 1, 2 (CA1 1982), or have contrasted them with other phrases such as “[f]rom January 1,” *NYSA-ILA Vacation & Holiday Fund v. Waterfront Comm’n of New York Harbor*, 732 F. 2d 292, 295, and n. 6 (CA2), cert. denied, 469 U. S. 852 (1984), or “after December 31,” *Peabody Coal Co. v. Lewis*, 708 F. 2d 266, 267, n. 3 (CA7 1983), in ways that strongly suggest this meaning. Various administrative agencies have also followed this same usage in promulgating their regulations. *E. g.*, 24 CFR § 570.423(b) (1984); 31 CFR § 515.560(i) (1984); 40 CFR § 52.1174 (1984).

and definiteness that the Constitution requires. The statement in at least one of the Government's own publications that filing was required "on or before December 31," Department of the Interior, *Staking a Mining Claim on Federal Lands* 10 (1978), supports this conclusion. Terminating a property interest because a property holder reasonably believed that under the statute he had an additional day to satisfy any filing requirements is no less arbitrary than terminating it for failure to satisfy these same conditions in an unreasonable amount of time. Cf. *Wilson v. Iseminger*, 185 U. S. 55, 62 (1902); *Terry v. Anderson*, 95 U. S. 628, 632-633 (1877). Although the latter may rest on impossibility, the former rests on good-faith performance a day late of what easily could have been performed the day before. Neither serves a purpose other than forcing an arbitrary forfeiture of property rights to the State.

I believe the Constitution requires that the law inform the property holder with more certainty and definiteness than did §314 when he must fulfill any recording requirements imposed after a property interest is created. Given the statutory uncertainty here, I would find a forfeiture imposed for filing on December 31 to be invalid.⁴

I accordingly dissent.

JUSTICE STEVENS, with whom JUSTICE BRENNAN joins, dissenting.

The Court's opinion is contrary to the intent of Congress, engages in unnecessary constitutional adjudication, and unjustly creates a trap for unwary property owners. First, the choice of the language "prior to December 31" when read in

⁴ Parties, of course, ordinarily are bound to the consequences of their failing strictly to meet statutory deadlines. This is true, for example, as to statutes of limitations and other filing deadlines clearly specified. Because of the special circumstances JUSTICE STEVENS identifies and the constitutional concerns identified above, this case is unique.

context in 43 U. S. C. § 1744(a)¹ is, at least, ambiguous, and, at best, “the consequence of a legislative *accident*, perhaps caused by nothing more than the unfortunate fact that Con-

¹The full text of 43 U. S. C. § 1744 reads as follows:

“Recordation of Mining Claims

“(a) Filing requirements

“The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976 and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after October 21, 1976 shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

“(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by section 28-1 of title 30, relating thereto.

“(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

“(b) Additional filing requirements

“The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to October 21, 1976 shall, within the three-year period following October 21, 1976, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. The owner of an unpatented lode or placer mining claim or mill or tunnel site located after October 21, 1976 shall, within ninety days after the date of location of such claim, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground.

“(c) Failure to file as constituting abandonment; defective or untimely filing

“The failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandon-

gress is too busy to do all of its work as carefully as it should."² In my view, Congress actually intended to authorize an annual filing at any time prior to the close of business on December 31st, that is, prior to the end of the calendar year to which the filing pertains.³ Second, even if Congress irrationally intended that the applicable deadline for a calendar year should end *one day before* the end of the calendar year that has been recognized since the amendment of the Julian Calendar in 8 B.C., it is clear that appellees have substantially complied with the requirements of the statute, in large part because the Bureau of Land Management has issued interpreting regulations that recognize sub-

ment of the mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site.

"(d) Validity of claims, waiver of assessment, etc., as unaffected

"Such recordation or application by itself shall not render valid any claim which would not be otherwise valid under applicable law. Nothing in this section shall be construed as a waiver of the assessment and other requirements of such law."

²*Delaware Tribal Business Committee v. Weeks*, 430 U. S. 73, 97 (1977) (STEVENS, J., dissenting) (emphasis added).

³This view was expressed at the Rocky Mountain Mineral Law Institute in July 1977:

"It is plain that Congress intended the filing requirement to expire with the last day of the year, but inartful draftsmanship requires all filings under Subsection 314(a) of the Act to be made on or before December 30th. Such is the result of the unfortunate use of the words 'prior to December 31.' And since December 31st bears no relationship to the assessment year, which ends at noon on September 1st of each year, the statutory requirement that the locator shall file the necessary documents on or before December 30th of each year following the calendar year in which a claim was located, means that where a claim is located after noon on September 1st in any calendar year, the locator must file in the next full calendar year a notice of intention to hold, because no assessment work requirement has yet arisen." Sherwood, *Mining-claim Recordation and Prospecting under The Federal Land Policy and Management Act of 1976*, 23 *Rocky Mountain Mineral Law Institute* 1, 25 (1977) (footnotes omitted).

stantial compliance. Further, the Court today violates not only the long-followed principle that a court should “not pass on the constitutionality of an Act of Congress if a construction of the statute is fairly possible by which the question may be avoided,”⁴ but also the principle that a court should “not decide a constitutional question if there is some other ground upon which to dispose of the case.”⁵

I

Congress enacted §314 of the Federal Land Policy and Management Act to establish for federal land planners and managers a federal recording system designed to cope with the problem of stale claims, and to provide “an easy way of discovering which Federal lands are subject to either valid or invalid mining claim locations.”⁶ I submit that the appellees’ actions in this case did not diminish the importance of these congressional purposes; to the contrary, their actions were entirely consistent with the statutory purposes, despite the confusion created by the “inartful draftsmanship” of the statutory language.⁷

A careful reading of §314 discloses at least three respects in which its text cannot possibly reflect the actual intent of Congress. First, the description of what must be filed in the initial filing and subsequent annual filings is quite obviously garbled. Read literally, §314(a)(2) seems to require that a

⁴ *United States v. Clark*, 445 U. S. 23, 27 (1980).

⁵ *Escambia County v. McMillan*, 466 U. S. 48, 51 (1984) (*per curiam*); see also *Ashwander v. TVA*, 297 U. S. 288, 347 (1936) (Brandeis, J., concurring).

⁶ S. Rep. No. 94-583, p. 65 (1975). The Court agrees regarding the first purpose, but inexplicably and without citation concludes that another purpose of §314 is “to provide federal land managers with up-to-date information that allows them to make informed management decisions.” *Ante*, at 87. This latter statutory “purpose” is not mentioned in the legislative history; rather, it is a variation of a “purpose,” equally without citation, offered by appellants. See Brief for Appellants 45, 47.

⁷ See n. 3, *supra*.

notice of intent to hold the claim and an affidavit of assessment work performed on the claim must be filed "on a detailed report provided by § 28-1 of Title 30." One must substitute the word "or" for the word "on" to make any sense at all out of this provision. This error should cause us to pause before concluding that Congress commanded blind allegiance to the remainder of the literal text of § 314.

Second, the express language of the statute is unambiguous in describing the place where the second annual filing shall be made. If the statute is read inflexibly, the owner must "file in the office of the Bureau" the required documents.⁸ Yet the regulations that the Bureau itself has drafted, quite reasonably, construe the statute to allow filing in a mailbox, provided that the document is actually received by the Bureau prior to the close of business on January 19th of the year following the year in which the statute requires the filing to be made.⁹ A notice mailed on December 30, 1982, and received by the Bureau on January 19, 1983, was filed "in the office of the Bureau" during 1982 within the meaning of the statute, but one that is hand-delivered to the office on December 31, 1982, cannot be accepted as a 1982 "filing."

The Court finds comfort in the fact that the implementing regulations have eliminated the risk of injustice. *Ante*, at 94. But if one must rely on those regulations, it should be apparent that the meaning of the statute itself is not all that obvi-

⁸See 43 U. S. C. § 1744(a)(2).

⁹Title 43 CFR § 3833.0-5(m) (1984) provides:

"'Filed or file' means being received and date stamped by the proper BLM office. For the purpose of complying with § 3833.2-1 of this title, 'timely filed' means being filed within the time period prescribed by law, or received by January 19th after the period prescribed by law in an envelope bearing a clearly dated postmark affixed by the United States Postal Service within the period prescribed by law. This 20 day period does not apply to a notice of location filed pursuant to § 3833.1-2 of this title. (See § 1821.2-2(e) of this title where the last day falls on a date the office is closed.)"

ous. To begin with, the regulations do not use the language "prior to December 31"; instead, they use "on or before December 30 of each year."¹⁰ The Bureau's drafting of the regulations using this latter phrase indicates that the meaning of the statute itself is not quite as "plain," *ante*, at 93, as the Court assumes; if the language were plain, it is doubtful that the Bureau would have found it necessary to change the language at all. Moreover, the Bureau, under the aegis of the Department of the Interior, once issued a pamphlet entitled "Staking a Mining Claim on Federal Lands" that contained the following information:

"Owners of claims or sites located on or before Oct. 21, 1976, have until Oct. 22, 1979, to file evidence of assessment work performed the preceding year or to file a notice of intent to hold the claim or site. Once the claim or site is recorded with BLM, *these documents must be filed on or before December 31 of each subsequent year.*" *Id.*, at 9-10 (1978) (emphasis added).

"Plain language," *ante*, at 93, indeed.

There is a more important reason why the implementing regulations cannot be supportive of the result the Court reaches today: the Bureau's own deviation from the statutory language in its mail-filing regulation. See n. 9, *supra*. If the Bureau had issued regulations expressly stating that a

¹⁰ 43 CFR § 3833.2-1(b)(1) (1984). It is undisputed that the regulations did not come to the attention of the appellees. To justify the forfeiture in this case on the ground that appellees are chargeable with constructive notice of the contents of the Federal Register is no more acceptable to me today than it would have been to Justice Jackson in 1947. "To my mind, it is an absurdity to hold that every farmer who insures his crops knows what the Federal Register contains or even knows that there is such a publication. If he were to peruse this voluminous and dull publication as it is issued from time to time in order to make sure whether anything has been promulgated that affects his rights, he would never need crop insurance, for he would never get time to plant any crops." *Federal Crop Insurance Corporation v. Merrill*, 332 U. S. 380, 387 (1947) (Jackson, J., dissenting).

December 31 filing would be considered timely—just as it has stated that a mail filing received on January 19 is timely—it is inconceivable that anyone would question the validity of its regulation. It appears, however, that the Bureau has more power to interpret an awkwardly drafted statute in an enlightened manner consistent with Congress' intent than does this Court.¹¹

In light of the foregoing, I cannot believe that Congress intended the words "prior to December 31 of each year" to be given the literal reading the Court adopts today. The statutory scheme requires periodic filings on a calendar-year basis. The end of the calendar year is, of course, correctly described either as "prior to the close of business on December 31," or "on or before December 31," but it is surely understandable that the author of §314 might inadvertently use the words "prior to December 31" when he meant to refer to the end of the calendar year. As the facts of this case demonstrate, the scrivener's error is one that can be made in good faith. The risk of such an error is, of course, the greatest when the reference is to the end of the calendar year. That it was in fact an error seems rather clear to me because no one has suggested any rational basis for omitting just one day from the period in which an annual filing may be made, and I would not presume that Congress deliberately created a trap for the unwary by such an omission.

¹¹ The Court, *ante*, at 102–103, n. 14, criticizes my citation of the BLM regulations to demonstrate that the agency has itself departed from the "plain" statutory language by allowing mail filings to be received by January 19th. In the same breath, the Court acknowledges that the agency is not bound by the "plain" language in "administering the statute." *Ibid.* The mail-delivery deadline makes it clear that the Court's judicially created "up-to-date" statutory purpose is utterly lacking in foundation. The agency's adoption of the January 19 deadline illustrates that it does not need the information by December 30; that it is not bound by the language of the provision; and that substantial compliance does not interfere with the agency's statutory functions or with the intent of Congress.

It would be fully consistent with the intent of Congress to treat any filing received during the 1980 calendar year as a timely filing for that year. Such an interpretation certainly does not interfere with Congress' intent to establish a federal recording system designed to cope with the problem of stale mining claims on federal lands. The system is established, and apparently, functioning.¹² Moreover, the claims here were *active*; the Bureau was well aware that the appellees intended to hold and to operate their claims.

Additionally, a sensible construction of the statute does not interfere with Congress' intention to provide "an easy way of discovering which Federal lands are subject to either valid or

¹² Several *amici* have filed materials listing numerous cases in which it is asserted that the Bureau is using every technical construction of the statute to suck up active mining claims much as a vacuum cleaner, if not watched closely, will suck up jewelry or loose money. See Brief for Mountain States Legal Foundation as *Amicus Curiae* 2 (claiming that an "overwhelming number of mining claims have been lost to the pitfalls of section 314"), 3 (claiming that from 1977 to 1984 "unpatented mining claimants lost almost 20,000 active locations due to the technical rigors and conclusive presumption of section 314"); App. 1-86 (listing cases); Brief for Alaska Miners Association, California Mining Association, Nevada Mining Association, Miners Advocacy Council, and Placer Miners Association as *Amici Curiae*, Exhibit A (letter from Bureau's Utah State Office stating that well over 1,400 claims were invalidated from 1979-1983 because § 1744(a)(1) filings were made on December 31), Exhibit B (letter from Bureau's Billings, Montana Office stating that 198 claims were invalidated from 1979-1983 because § 1744(a)(1) filings were made on December 31), Exhibit C (letter from Bureau's Wyoming State Office stating that 11 claims were invalidated in 1980-1982 because § 1744(a)(2) filings were made on December 31), Exhibit D (letter from Bureau's Arizona State Office stating that "approximately 500 claims have been invalidated due to filing an affidavit one day late"); Brief for Mobil Oil Corporation as *Amicus Curiae* 2-4 (claiming to be in a situation similar to the appellees). According to the Bureau's own calculations, thousands of active mining claims have been terminated because filings made on December 31 were considered untimely. These representations confirm the picture painted by *amici* of a federal bureaucracy virtually running amok, and surely operating contrary to the intent of Congress, by terminating the valuable property rights of hardworking, productive citizens of our country.

invalid mining claim locations.”¹³ The Bureau in this case was well aware of the existence and production of appellees’ mining claims; only by blinking reality could the Bureau reach the decision that it did. It is undisputed that the appellees made the first 1980 filing on August 29, 1980, and made the second required filing on December 31, 1980; the Bureau did not declare the mining claims “abandoned and void” until April 4, 1981. Thus, appellees lost their entire livelihood for no practical reason, contrary to the intent of Congress, and because of the hypertechnical construction of a poorly drafted statute, which an agency interprets to allow “filings” far beyond December 30 in some circumstances, but then interprets inflexibly in others.¹⁴ Appellants acknowledge that “[i]t may well be that Congress wished to require filing by the end of the calendar year and that the earlier deadline resulted from careless draftmanship.” Brief for Appellants 42, n. 31. I have no doubt that Congress would have chosen to adopt a construction of the statute that filing take place by the end of the calendar year if its attention had been focused on this precise issue. Cf. *DelCostello v. Teamsters*, 462 U. S. 151, 158 (1983).¹⁵

¹³S. Rep. No. 94-583, p. 65 (1975).

¹⁴The Court suggests that appellees’ failure to file by December 30 “caused the property right to be extinguished.” *Ante*, at 107. However, the Court, on the one hand, carefully avoids mentioning the 3-month period that elapsed after December 31 before the Bureau declared the appellees’ mining claims abandoned, and, on the other hand, describes the Bureau as needing “up-to-date information that allows them to make informed land management decisions.” *Ante*, at 87, 107.

¹⁵The Court, *ante*, at 96-97, n. 12, lists several provisions in the United States Code as supportive of its position that “prior to December 31” is somehow less ambiguous because of its occasional use in various statutory provisions. It then states that it “is unclear whether the arguments advanced by the dissenters are meant to apply to all of the provisions, or only to some of them.” *Ibid.* However, the provisions cited for support illustrate the lack of justification for the Court’s approach, and highlight the uniqueness of the provision in this case. Eleven of the provisions refer to a one-time specific date; the provision at issue here requires specific action

II

After concluding its constitutional analysis, the District Court also held that "the standard to be applied to assessment notice requirements is substantial compliance. Measured against this, the Lockes have satisfied their statutory duties under Section 1744 by filing their notices one day late."¹⁸ The District Court grounded its holding on this Court's analysis in *Hickel v. Oil Shale Corp.*, 400 U. S. 48 (1970).

In *Hickel*, the Court construed 30 U. S. C. § 28, which reads:

"On each claim located after the 10th day of May 1872, and until a patent has been issued therefor, not less than \$100 worth of labor shall be performed or improvements

on a continual annual basis, thus involving a much greater risk of creating a trap for the unwary. Further, each of the specific dates mentioned in the 11 provisions is long past; thus, contrary to the Court's premise, this decision would have no effect on them because they require no future action. See 7 U. S. C. § 609(b)(5) ("prior to December 31, 1937"); 12 U. S. C. § 1709(o)(1)(E) ("prior to December 31, 1976"); 12 U. S. C. § 1823(g) ("prior to December 31, 1950"); 12 U. S. C. § 1841(a)(5)(A) ("prior to December 31, 1970"); 26 U. S. C. § 503(d)(1) ("prior to December 31, 1955"); 33 U. S. C. § 1319(a)(5)(B) ("prior to December 31, 1974"); 42 U. S. C. § 415(a)(7)(E)(ii) (1982, ed., Supp. III) ("prior to December 31, 1983"); 42 U. S. C. § 1962d-17(b) ("prior to December 31, 1969"); 42 U. S. C. § 5614(b)(5) ("after the first year following October 3, 1977, prior to December 31"); 42 U. S. C. § 7502(a)(2) ("prior to December 31, 1982"); 42 U. S. C. § 7521(b)(2) ("prior to December 31, 1970"); 50 U. S. C. App. § 1741(b)(1) ("prior to December 31, 1946"). The remaining provision cited as authority by the Court, 22 U. S. C. § 3784(c), states that the Panama Canal and certain other property "shall not be transferred to the Republic of Panama prior to December 31, 1999." The legislative history indicates that that language was added to make "clear that the President is not authorized to accelerate the final transfer of the Panama Canal in 1999, as provided by the Panama Canal Treaty of 1977." H. R. Conf. Rep. No. 96-473, p. 61 (1979). The Panama Canal Treaty of 1977, Art. II, indicates that it "shall terminate at noon, Panama time, December 31, 1999." Therefore, the language of § 3784(c) was tailored to a unique treaty provision.

¹⁸573 F. Supp. 472, 479 (Nev. 1983).

made during each year. . . . [U]pon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location." (Emphasis added.)

Recognizing that a claimant's "possessory title" should not be disturbed on "flimsy or insubstantial grounds," 400 U. S., at 57, the Court wrote:

"We agree . . . that every default in assessment work does not cause the claim to be lost. Defaults, however, might be the equivalent of abandonment; and we now hold that token assessment work, or assessment work that does not substantially satisfy the requirements of 30 U. S. C. § 28, is not adequate to 'maintain' the claims within the meaning of § 37 of the Leasing Act. To hold otherwise would help defeat the policy that made the United States, as the prospective recipient of royalties, a beneficiary of these oil shale claims. We cannot support [*Wilbur v. Krushnic*, 280 U. S. 306 (1930),] and [*Ickes v. Virginia-Colorado Development Corp.*, 295 U. S. 639 (1935)], on so broad a ground. Rather, their dicta to the contrary, we conclude that they must be confined to situations where there had been substantial compliance with the assessment work requirements. . . ." *Ibid.*

Hickel thus demonstrates that the District Court was correct that substantial-compliance analysis was appropriate in this case, and that appellees substantially complied with the statute. Appellees earned their livelihood since 1960 by mining the 10 unpatented mining claims now in dispute.¹⁷ They paid income taxes, and property and production taxes to the State of Nevada, which appears as an *amicus* in sup-

¹⁷ *Id.*, at 474.

port of appellees. The statute, passed in 1976, required appellees to register their mining claims "in the office where the location notice or certificate is recorded" and "in the office of the Bureau" by October 21, 1979; it is not disputed that appellees met the statute's two initial filing requirements.¹⁸ Moreover, the statute required, within three years of October 21, 1976, that appellees file "in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location."¹⁹ Appellees also met this third requirement, thus completely informing the Bureau of the existence, the sizes, the locations, and the ownership of appellees' active mining claims. After the three initial filing requirements, the statute required that appellees make two separate annual filings: (1) an initial filing with the county recorder; and (2) a copy of the official record of the first filing filed with the Bureau. Appellees made the first of these filings for the 1980 calendar year on August 29, 1980. Because 1980 was generally the first year that claimants—including appellees—had to comply with the annual filing requirements that the new legislation mandated, the Bureau began the practice of mailing reminder notices about the filing due in the Bureau's office. Appellants acknowledge that appellees did not receive a reminder notice.²⁰ Nevertheless, appellees responsibly inquired about the date of filing with the Bureau for the 1980 calendar year; it is undisputed that Bureau personnel informed them that the filing was due "on or before December 31, 1980."²¹ On December 31, 1980, appellees made a 700-mile round trip from Ely to Reno, Nevada, to hand-deliver their filings to the Bureau. The Bureau accepted the filings on that date.

In my view, this unique factual matrix unequivocally contradicts the statutory presumption of an intent to abandon by

¹⁸ *Ibid.*

¹⁹ 43 U. S. C. § 1744(b).

²⁰ Reply Brief for Appellants 13, n. 12.

²¹ Affidavit of Laura C. Locke ¶ 3.

reason of a late filing. In sum, this case presents an ambiguous statute, which, if strictly construed, will destroy valuable rights of appellees, property owners who have complied with all local and federal statutory filing requirements apart from a 1-day "late" filing caused by the Bureau's own failure to mail a reminder notice necessary because of the statute's ambiguity and caused by the Bureau's information to appellees that the date on which the filing occurred would be acceptable. Further, long before the Bureau declared a technical "abandonment," it was in complete possession of all information necessary to assess the activity, locations, and ownership of appellees' mining claims and it possessed all information needed to carry out its statutory functions. Finally, the Bureau has not claimed that the filing is contrary to the congressional purposes behind the statute, that the filing affected the Bureau's land-use planning functions in any manner, or that it interfered "in any measurable way" with the Bureau's need to obtain information.² A showing of substantial compliance necessitates a significant burden of proof; appellees, whose active mining claims will be destroyed contrary to Congress' intent, have convinced me that they have substantially complied with the statute.

I respectfully dissent.

² Brief for Appellants 45.

Tab 19

Historical Note

References in Text. This Act, referred to in subsec. (a)(1), (2), is Pub.L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables volume.

Legislative History. For legislative history and purpose of Pub.L. 94-579, see 1976 U.S. Code Cong. and Adm. News, p. 6175.

West's Federal Forms

Sentence and fine, see § 7531 et seq.

§ 1744. Recordation of mining claims**(a) Filing requirements**

The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after October 21, 1976 shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by section 28-1 of Title 30, relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

(b) Additional filing requirements

The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to October 21, 1976 shall, within the three-year period following October 21, 1976, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. The owner of an unpatented lode or placer mining claim or mill or tunnel site located after October 21, 1976 shall, within ninety days after the date of location of such claim, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground.

(c) Failure to file as constituting abandonment; defective or untimely filing

The failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of

Tab 20

patent under 30 U.S.C. 29 and 43 CFR Part 3860 has not been issued.

(c) "Mill site" means any land located under 30 U.S.C. 42 for which patent under 30 U.S.C. 42 and 43 CFR Part 3860 has not been issued.

(d) "Tunnel site" means a tunnel located pursuant to 30 U.S.C. 27.

(e) "Owner" means the person who is the holder of the right to sell or transfer all or any part of the unpatented mining claim, mill or tunnel site. The owner shall be identified in the instruments required by these regulations by a notation on those instruments.

(f) "Federal lands" means any lands or interest in lands owned by the United States, except lands within units of the National Park System, which are subject to location under the General Mining Law of 1872, supra, including, but not limited to, those lands within forest reservations in the National Forest System and wildlife refuges in the National Wildlife Refuge System.

(g) "Proper BLM office" means the Bureau of Land Management office listed in § 1821.2-1(d) of this title as having jurisdiction over the area in which the claims or sites are located. Notwithstanding the requirements of § 1821.2-1(d) of this title, filings made under this subpart in Alaska may be filed in either office in that State.

(h) "Date of location" or "located" means the date determined by State law in the local jurisdiction in which the unpatented mining claim, mill or tunnel site is situated.

(i) "Copy of the official record" means a legible reproduction or duplicate, except microfilm, of the instrument which was or will be filed under state law in the local jurisdiction where the claim or site is located. It also includes an exact reproduction, duplicate, except microfilm, of an amended instrument which may change or alter the description of the claim or site.

(j) "Affidavit of assessment work" means the instrument required under state law that certifies that assessment work required by 30 U.S.C. 28 has been performed on, or for the benefit of, a mining claim or, if state law does not require the filing of such an

instrument, an affidavit evidencing the performance of such assessment work; and

(k) "Notice of intention to hold a mining claim" means an instrument containing the information required in § 3833.2-3 of this title which has been or will be filed under state law in the local jurisdiction indicating that the owner continues to have an interest in the claim.

(l) "Notice of intention to hold a mill or tunnel site" means an instrument containing the information in the form required in § 3833.2-3 of this title indicating that the owner continues to hold an interest in the site.

(m) "Filed or file" means being received and date stamped by the proper BLM office. For the purpose of complying with § 3833.2-1 of this title, "timely filed" means being filed within the time period prescribed by law, or received by January 19th after the period prescribed by law in an envelope bearing a clearly dated postmark affixed by the United States Postal Service within the period prescribed by law. This 20 day period does not apply to a notice of location filed pursuant to § 3833.1-2 of this title. (See § 1821.2-2(e) of this title where the last day falls on a date the office is closed.)

(n) "Assessment year" is defined in 30 U.S.C. 28 and commences at 12 o'clock noon on September 1st of each year. For the purpose of complying with the requirements of section 314(a) of the Act, the calendar year in which the assessment year ends is the year for which the evidence of annual assessment work shall be filed.

(o) "Filing year" for the purposes of complying with the Act begins on January 1st of each year and continues through December 30th.

(p) "Amended location" means a location that is in furtherance of an earlier valid location and that may or may not take in different or additional unappropriated ground. An amendment may:

(1) Correct or clarify defects or omissions in the original notice or certificate of location; or

(2) Change the legal description, mining claim name, position of discov-

Tab 21

PATRICK J. GARVER (A1167)
DEREK LANGTON (A4068)
HAL J. POS (A4500)
of and for
PARSONS, BEHLE & LATIMER
Attorneys for Defendants
185 South State Street, Suite 700
P.O. Box 11898
Salt Lake City, Utah 84147-0898
Telephone: (801) 532-1234

IN THE FOURTH JUDICIAL DISTRICT COURT OF MILLARD COUNTY

STATE OF UTAH

* * * * *

GORDON GRIFFIN and RED DOME,)	
INC.,	)	ORDER VACATING PRIOR
	)	RULING AND JUDGMENT
Plaintiffs,	)	REGARDING PARTIES' CROSS
	)	MOTIONS FOR PARTIAL
vs.	)	SUMMARY JUDGMENT
)	
SANDRA MEMMOTT, RALPH MEMMOTT,)	
SUE BUSHNELL, SHEREE BUSHNELL,)	
JIM BUSHNELL, BRETT SANDERS,	)	Civil No. 7975
PAM SANDERS, and CRAIG SANDERS,)	
	)	Judge Ray M. Harding
Defendants.)	

* * * * *

The parties in the above-entitled action brought cross motions for summary judgment on the quiet title claims asserted by each party. On September 30, 1986, the Court, after having considered the pleadings, memoranda, affidavits, depositions, and responses to written discovery, issued a "Ruling on Plaintiffs' First and Second Motions for Summary Judgment and Defendants' Motion for Summary Judgment", denying Plaintiffs' Motions for

Summary Judgment and granting, in part, Defendants' Motion for Summary Judgment.

Subsequently, Plaintiffs filed a Motion for Reconsideration of said ruling, and the parties then submitted additional memoranda with respect thereto. On January 2, 1987, the Court, after having reviewed the additional memoranda, issued a "Ruling on Plaintiffs' Motion for Relief From and Reconsideration of Ruling" in which the Court granted Plaintiffs' motion to set aside the Court's Ruling of September 30, 1986, pursuant to Rule 60(b)(7) of the Utah Rules of Civil Procedure, on the ground that the Court, in its Ruling of September 30, 1986, had improperly relied on the current version of the federal regulation defining "copy" as used in 43 U.S.C. § 1744 (i.e., 43 C.F.R. § 3833.0-5(i)), rather than the version of said regulation (hereinafter referred to as "the 1979 version" of said regulation) that was in effect from March 16, 1979 through and including October 21, 1979, which was the deadline for filing the documents required pursuant to 43 U.S.C. § 1744(b).

In its Ruling of January 2, 1987, the Court set aside its earlier Ruling of September 30, 1986. Further, the Court denied Plaintiffs' First Motion for Summary Judgment, except that the Court determined that Plaintiffs had submitted "other evidence, acceptable to the proper BLM office, of such instrument of recordation", in accordance with the 1979 version of 43 C.F.R. § 3833.0-5(i), and therefore, the Court found that Plaintiffs had

complied with 43 U.S.C. § 1744(b), and, on that basis, granted partial summary judgment on Plaintiffs' First Motion for Summary Judgment as to that issue only. The Court further determined that there was a genuine issue of material fact as to whether Plaintiffs had complied with 43 U.S.C. § 1744(a) with respect to whether Plaintiffs have properly maintained their "Red Dome" mining claims by performing the required assessment work. The Court further found that there remained genuine issues of material fact concerning Plaintiffs' Second Motion for Summary Judgment and Defendants' Motion for Summary Judgment, and therefore, denied said motions.

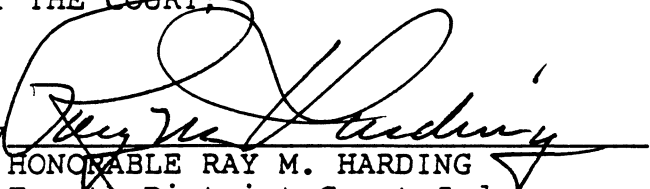
Subsequently, on February 17, 1987, Defendants filed their Motion to Vacate Ruling and Judgment Granting Partial Summary Judgment in Favor of Plaintiffs in which Defendants sought to have the Court vacate its Ruling of January 2, 1987 on a number of grounds. The parties then submitted additional memoranda with respect to said Motion. After full consideration of said memoranda, and good cause appearing therefor, the Court issued its Ruling [regarding Defendants' Motion to Vacate Ruling and Judgment Granting Partial Summary Judgment in Favor of Plaintiffs], dated April 20, 1987, which is on file in the records of this action and is incorporated herein by this reference. In accordance therewith

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants' Motion to Vacate Ruling and Judgment Granting Partial

Summary Judgment in Favor of Plaintiffs is hereby granted, and accordingly, the Court's Ruling of January 2, 1987, and the Order entered in connection therewith (denominated "Order of Relief From and Reconsideration of Ruling; Partial Summary Judgment"), dated February 5, 1987, are hereby vacated. Additionally, because the Court has determined, as set forth more particularly in its Ruling of April 20, 1987, that there are genuine issues of material fact regarding whether Plaintiffs have complied with the requirements of 43 U.S.C. § 1744(a) and (b), it is further ORDERED that Plaintiffs' First and Second Motions for Summary Judgment, and Defendants' Motion for Summary Judgment, are hereby denied.

ENTERED this 13th day of May, 1987.

BY THE COURT:

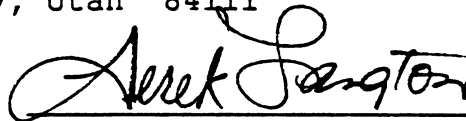
By 
HONORABLE RAY M. HARDING
Fourth District Court Judge

MAILING CERTIFICATE

The foregoing ORDER VACATING PRIOR RULING AND JUDGMENT REGARDING PARTIES' CROSS MOTIONS FOR PARTIAL SUMMARY JUDGMENT was prepared by Derek Langton, of and for Parsons, Behle & Latimer, attorneys for Defendants, and was, prior to execution by the Court, submitted to the following by mailing a copy thereof, postage prepaid, this 30th day of April, 1987:

Dexter L. Anderson, Esq.
S.R. Route 52
Fillmore, Utah 84631

Robert G. Pruitt, Jr., Esq.
PRUITT, GUSHEE & FLETCHER
36 South State Street
Beneficial Life Tower Building
Suite 1850
Salt Lake City, Utah 84111



321:042987A

Tab 22

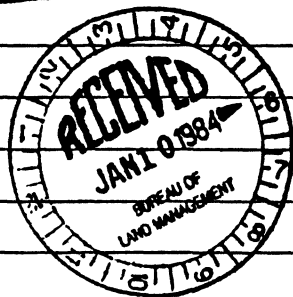
NOTICE OF LOCATION OF PLACER CLAIM

NOTICE IS HEREBY GIVEN, that the undersigned located and now claim the following described placer mining ground, containing 134.96 acres, more or less, situated in unknown Mining District, Hillard County, State of Utah and being more particularly described and marked on the ground as follows:

N 1/2 of NE 1/4 of Sec. 26 and SW 1/4 of SE 1/4 of Sec. 23 Township 21 South
Range 6 West S.L.R.M. containing 134.96 acres more or less.

INTERIOR, BLM Utah State Office
Data relative to this document
has been entered into an automated
system and images of all documents
have been microfilmed.

Entry No. 50591 Book 172 Page 828
Recorded Feb 14 1983 Time 2:36 p.m. Fee 5.75
Request of Sandra Memmott
LAVOY MARTIN MILLARD CO. RECORDER BY SM



RECEIVED
UTAH STATE OFFICE
1984 JAN 10 PM 1:09
DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT

This claim is located upon a placer deposit of valuable minerals.

This claim is named the Feather Lite No. 1

Placer Mining Claim.

Located this 14 day of November, 1983.

NAMES OF LOCATORS

<u>Sandra Memmott</u>	<u>Sherree Bushnell</u>
<u>Burt Bushnell</u>	<u>Brett Sanders</u>
<u>Jim Bushnell</u>	
<u>Pat Sanders</u>	<u>Sandra Memmott</u>
<u>Craig Sanders</u>	<u>Box 603</u>
	<u>Fillmore, Utah 84631</u>

(*In this description, refer to some natural object or permanent monument and to stakes or monuments or exterior lines and discovery.)

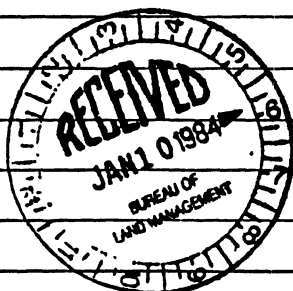
NOTICE OF LOCATION OF PLACER CLAIM

NOTICE IS HEREBY GIVEN, that the undersigned located and now claim the following described placer mining ground, containing 125.48 acres, more or less, situated in unknown Mining District, Millard County, State of Utah and being more particularly described and marked on the ground as follows:*

SE 1/4 of NW 1/4 and N 1/2 of NW 1/4 of Section 26 Township 21 South
Range 6 West S.L.R.M. containing 125.48 acres more or less.

NOTICE: From Utah State Office
Data relative to this document
has been entered into an automated
system and images of all documents
have been microfilmed.

Entry No. 50592 Book 177 Page 829
Recorded Dec 14, 1983 Time 8:36 am Fee \$ 7.50
Request of Sandra Kemmott
LAVOY MARTIN MILLARD CO. RECORDER by SM



RECEIVED
UTAH STATE OFFICE
1984 JAN 10 PM 1:09
DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT

This claim is located upon a placer deposit of valuable minerals.

This claim is named the Feather Lite No. 2

Placer Mining Claim.

Located this 14 day of November, 1983.

NAMES OF LOCATORS

<u>Sandra Kemmott</u>	<u>Sheree Bushnell</u>
<u>Sue Bushnell</u>	<u>Brett Sanders</u>
<u>Jim Bushnell</u>	
<u>Pam Sanders</u>	
<u>Graig Sanders</u>	

29 (*In this description, refer to some natural object or permanent monument and to stakes or monuments or exterior lines and discovery.)

NOTICE OF LOCATION OF PLACER CLAIM

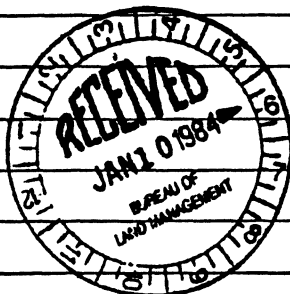
NOTICE IS HEREBY GIVEN, that the undersigned located and now claim the following described placer mining ground, containing 145.48 acres, more or less, situated in unknown Mining District, Millard County, State of Utah and being more particularly described and marked on the ground as follows:*

S 1/2 of SW 1/4 and NE 1/4 of SW 1/4 of Sec. 23 Township 21 South

Range 6 West S.L.B.M. containing 145.48 acres more or less.

INTERIOR, BLM Utah State Office
Data relative to this document
has been entered into an automated
system and images of all documents
have been microfilmed.

Entry No. 50593 Book 177 Page 130
Recorded Dec 12, 1983 Time 2:36 p.m. Fee \$ 8.00
Request of Sandra Memmott
LAVOY MARTIN MILLARD CO. RECORDER by in



RECEIVED
JAN 10 1984
DEPT. OF LAND
BUREAU OF LAND
MANAGEMENT

This claim is located upon a placer deposit of valuable minerals.

This claim is named the Feather Lite No. 3

Placer Mining Claim.

Located this 14 day of November, 1983.

NAMES OF LOCATORS

Sandra Memmott

Sheree Rushnell

Sue Rushnell

Shelli Rushnell

Jim Rushnell

Brett Sanders

Pam Sanders

Craig Sanders

(*In this description, refer to some natural object or permanent monument and to stakes or monuments or exterior lines and discovery.)

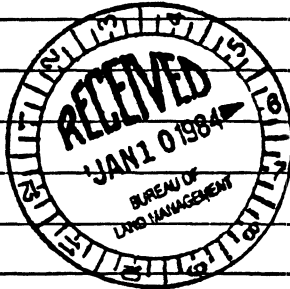
NOTICE OF LOCATION OF PLACER CLAIM

NOTICE IS HEREBY GIVEN, that the undersigned located and now claim the following described placer mining ground, containing 126.85 acres, more or less, situated in unknown Mining District, Millard County, State of Utah and being more particularly described and marked on the ground as follows:

NW 1/4 of SW 1/4 of Sec. 23 and SE 1/4 of SE 1/4 of Sec. 22 and NE 1/4 of NE 1/4 of Sec. 27 Township 21 South Range 6 West S.L.R.M. containing
126.85 acres more or less.

INTERIOR, BLM Utah State Office
Data relative to this document
has been entered into an automated
system and images of all documents
have been microfilmed.

50594 Book 177 Page 931
Entry No. Dec 13, 1983 Time 3:35 PM Fee \$ 7.50
Recorded of Sandra M. Sanders
Request of LAVOY MARTIN MILLARD CO. RECORDER by [Signature]



RECEIVED
UTAH STATE OFFICE
JAN 10 PM 1:03
DEPT OF INTERIOR
BUREAU OF LAND MGMT

This claim is located upon a placer deposit of valuable minerals.

This claim is named the Feather Lite No. 4

Placer Mining Claim.

Located this 14 day of November, 19 83.

NAMES OF LOCATORS

<u>Sandra Kemmott</u>	<u>Shera Bushnell</u>
<u>Sue Bushnell</u>	<u>Brett Sanders</u>
<u>Jim Bushnell</u>	
<u>Pam Sanders</u>	
<u>Craig Sanders</u>	

31 (*In this description, refer to some natural object or permanent monument and to stakes or monuments or exterior lines and discovery.)

NOTICE OF LOCATION OF PLACER CLAIM

To Whom It May Concern:

NOTICE IS HEREBY GIVEN that the undersigned citizens of the United States, over the age of 21 years, have this day located under and in pursuance of and having complied with Sections 2329, 2330, 2331, of the Revised Statutes of the United States, and the laws of the State of.....Utah.....and the local laws and customs and regulations of this district, have this day located the following described Placer Mining Ground, situated in the.....unknown.....Mining District

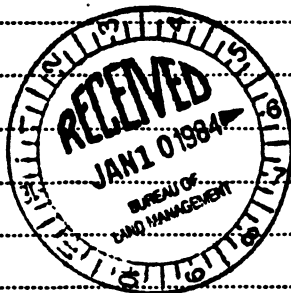
.....Millard.....County, State of.....Utah....., viz.:

.....N. 3/4 of SE 1/4 of NE 1/4 of Sec. 27 and S. 1/2 of SW 1/4 of NW 1/4 of Sec.

.....26 and N. 1/2 of NE 1/4 of SE 1/4 of Section 27 Township 21 South Range

.....6 West S.L.R.M. containing 81.89 acres more or less.

INTERIOR, BLM Utah State Office
Data relative to this document
has been entered into an automated
system and images of all documents
have been microfilmed.



50595 Book 177 Page 832
Entry No. 177 Page 832
Recorded 12:36 PM Fee \$ 6.22
Request of Sandra Memmott
LAVOY MARTIN MILLARD CO. RECORDER by [Signature]
RECEIVED
UTAH STATE OFFICE
JAN 10 PM 1:09
DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT

This claim is located upon a valuable deposit, bearing gold and other precious metals, situated in.....Township 21 South Range 6 West.....

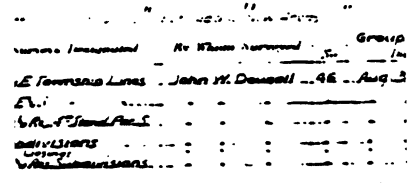
This claim shall be known as the.....Feather Lite No. 5.....
Placer Mining Claim, and we intend to work the same in accordance with local customs and rules of miners in said mining district, and each of the undersigned have an undivided
.....1/5.....interest therein.

Located this.....14.....day of.....November.....19..83.

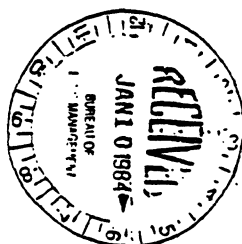
NAMES OF LOCATORS

Sandra Memmott	
Sue Bushnell	
Jim Bushnell	
Pam Sanders	
Craig Sanders	

Faint



RECEIVED
UTAH STATE OFFICE
1984 JAN 10 PM 4:09
DEPT OF THE ARMY
BUREAU OF LAND MGMT.



Tab 23



IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

INTERIOR BOARD OF LAND APPEALS

4015 WILSON BOULEVARD

ARLINGTON, VIRGINIA 22203

SANDRA MEMMOTT
(ON RECONSIDERATION)

IBLA 84-888

88 IBLA 379

Decided July 24, 1986

Petition for reconsideration of Sandra Memmott, 88 IBLA 379 (1985), upon motion submitted by appellant. UMC 58767 through UMC 58774.

Petition granted; BLM decision of August 21, 1984, vacated; 88 IBLA 379, reaffirmed as modified.

1. Contests and Protests: Generally--Mining Claims: Abandonment--Mining Claims: Contests--Mining Claims: Recordation--Rules of Practice: Private Contests

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim because of a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982). A decision by BLM, written in response to a request by a rival claimant that claims be declared abandoned and void, and going to the merits of the rival claimant's allegations may properly be vacated by this Board.

APPEARANCES: Patrick J. Garver, Esq., Salt Lake City, Utah, for appellant-petitioner; David K. Grayson, Esq., Department of the Interior, Office of the Solicitor, Salt Lake City, Utah, for the Department of the Interior-respondent; Dexter L. Anderson, Esq., Fillmore, Utah, for Red Dome, Inc., and Gordon Griffith-respondents.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

This is a reconsideration of a decision of this Board dismissing an appeal by Sandra Memmott (Memmott) from an August 21, 1984, decision by the Bureau of Land Management (BLM) denying Memmott's request that certain claims owned by Red Dome, Inc. (Red Dome), be declared abandoned and void. The

EXHIBIT "A"

determination by this Board that the appeal should be dismissed is found at Sandra Memmott, 88 IBLA 379 (1985).

Appellant had initially requested a declaration that Red Dome's mining claims were conclusively deemed to be abandoned because of Red Dome's alleged failure to comply with 43 U.S.C. § 1744 (1982). The Board found the matter was not appropriate for consideration, as a private contest is not available. Compliance with 43 U.S.C. § 1744 (1982) can be determined from the record, whereas 43 CFR 4.450-1 allows a party to "initiate proceedings to have the claim of title or interest adverse to his claim invalidated for any reason not shown by the records of the Bureau of Land Management." (Emphasis added.) Further, noting the Department is without authority to resolve the right of possession to mining claims between rival claimants, we held BLM properly rejected appellant's request for a ruling that the conflicting claims were abandoned and void.

In her petition for reconsideration, appellant alleges the initial action was not a private contest but was an appeal from an August 21, 1984, determination of the Utah State Office, BLM, "declaring that the Red Dome group of mining claims had been properly filed in compliance with Section 314 of the Federal Land Policy and Management Act [43 U.S.C. § 1744 (1982)]." Appellant alleges the Board's decision dismissing the appeal without reaching the merits is in error, because BLM had made a determination that Red Dome's filings were in compliance with the mining claim recordation statutes. Appellant argues that, by dismissing the appeal, the Board decision effectively precluded consideration of the merits of that determination, and she will be faced with a final Department determination that Red Dome complied with the mining claim recordation filing requirements in any attempt to litigate this matter before a state court. We find some merit in this contention.

Had BLM merely refused to take action on appellant's request, the matter would properly be subject to dismissal. IMCO Services, 73 IBLA 374 (1983). The BLM decision did more, however. The August 21, 1984, decision states, in pertinent part:

According to our records, the Red Dome and Red Dome Nos. 1-7 placer mining claims were located 5/24/1935, 9/5/1946, 7/21/1936, 7/21/1936, 10/19/1936, 10/19/1936, 7/1/1938, 8/1/1938 respectively and the information received in this office November 27, 1978 showing the claim name, date of location, recording information, legal description, and the owners name and address. Additional information was requested regarding the land description for the Red Dome Claim Nos. 1, 4, and 7. This information was received January 31, 1979, which was prior to the October 22, 1979, filing date established by the Federal Land Policy and Management Act of 1976 for mining claims located prior to the Act.

This evidence showing that a recording of the mining claims had been made was accepted and made part of our records. The

annual affidavits of assessment work performed have been timely filed for each year since then. The Red Dome and Red Dome Nos. 1-7 placer claims are considered in compliance with Section 314 of the Federal Land Policy and Management Act.

Notice of transfer of interest should be filed with this office within 60 days however, no penalty for failure to file is assessed.

For the reasons stated in the preceding paragraphs, your request that we declare the Red Dome mining claims invalid for noncompliance with the Federal Land Policy and Management Act of 1976 is denied.

[1] As can be seen, rather than refusing to take action on appellant's request, as was the case in IMCO Services, supra, the BLM decision addressed the merits of appellant's contentions. Doing so was contrary to the stated policy of BLM that it "will not become the forum for the resolution of private party disputes between rival claimants." BLM Manual at 3833.41B. The Department has been consistent in its position that it is without authority to determine the question of right of possession as to claims between rival claimants. IMCO Services, supra; Gold Depository & Loan Co. v. Mary Brock, 69 IBLA 194 (1982); W. W. Allstead, 58 IBLA 46 (1981); John R. Meadows, 43 IBLA 35 (1979); John W. Pope, 17 IBLA 73 (1974). While a determination regarding sufficiency of mining claim recordation documents may be made by BLM and this Board, 1/ such determinations in response to third party requests should be avoided. 2/ Therefore, BLM's response to appellant's request should not have addressed the merits of the appellant's contentions. For that reason, we find it appropriate to vacate the August 21, 1984, BLM decision.

Having vacated the BLM decision without addressing the sufficiency or correctness of that decision, we do not find it necessary to address the other issues raised by Memmott.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for

1/ See, e.g., Precious Minerals Unlimited, Inc., 61 IBLA 136 (1982); John J. Vikarcik, 58 IBLA 377 (1981); Walter Everly, 52 IBLA 58 (1981); William E. Talbott, 52 IBLA 12 (1981); W. C. Miles, 48 IBLA 214 (1980); Wilma Hartley, 48 IBLA 83 (1980).

2/ We do not disparage the right of BLM on its own initiative to adjudicate any mining claim in terms of compliance with section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982). Clearly, this is BLM's responsibility in administering the statute. We note, however, that upon review of the sufficiency of the section 314 filings for a claim, no decision would ordinarily be issued approving the filings.

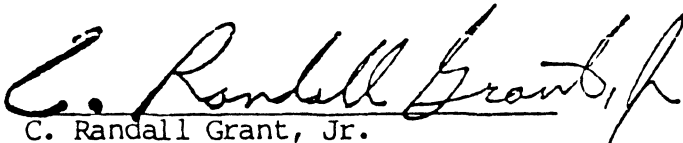
IBLA 84-888
88 IBLA 379

reconsideration is granted; the August 21, 1984, BLM decision is vacated; and the Board's prior decision in the matter, reported at 88 IBLA 379 (1985), is hereby reaffirmed as modified by this decision.



R. W. Mullen
Administrative Judge

We concur:



C. Randall Grant, Jr.
Administrative Judge



Wm. Philip Horton
Chief Administrative Judge

Tab 24

§ 3862.1-3

§ 3862.1-3 Evidence of title.

(a) Each patent application must be supported by either a certificate of title or an abstract of title certified to by the legal custodian of the records of locations and transfers of mining claims or by an abstracter of titles. The certificate of title or certificate to an abstract of title must be by a person, association, or corporation authorized by the State laws to execute such a certificate and acceptable to the Bureau of Land Management.

(b) A certificate of title must conform substantially to a form approved by the Director.

(c) Each certificate of title or abstract of title must be accompanied by single copies of the certificate or notice of the original location of each claim, and of the certificates of amended or supplemental locations thereof, certified to by the legal custodian of the record of mining locations.

(d) A certificate to an abstract of title must state that the abstract is a full, true, and complete abstract of the location certificates or notices, and all amendments thereof, and of all deeds, instruments, or actions appearing of record purporting to convey or to affect the title to each claim.

(e) The application for patent will be received and filed if the certificate of title or an abstract is brought down to a day reasonably near the date of the presentation of the application and shows full title in the applicant, who must as soon as practicable thereafter file a supplemental certificate of title or an abstract brought down so as to include the date of the filing of the application.

§ 3862.1-4 Evidence relating to destroyed or lost records.

In the event of the mining records in any case having been destroyed by fire or otherwise lost, a statement of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the statement of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be

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in the claimant's possession and tend to establish his claim, should be filed.

§ 3862.1-5 Statement required that land is unreserved, unoccupied, unimproved and unappropriated.

Each person making application for patent under the mining laws, for lands in Alaska, must furnish a duly corroborated statement showing that no portion of the land applied for is occupied or reserved by the United States, so as to prevent its acquisition under said laws; that the land is not occupied or claimed by natives of Alaska; and that the land is unoccupied, unimproved and unappropriated by any person claiming the same other than the applicant.

§ 3862.2 Citizenship.

§ 3862.2-1 Citizenship of corporations and of associations acting through agents.

The proof necessary to establish the citizenship of applicants for mining patents must be made in the following manner: In case of an incorporated company, a certified copy of its charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the statement of their duly authorized agent, made upon his own knowledge or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This statement must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the citizenship showing to act for them in the matter of their application of patent.

§ 3862.2-2 Citizenship of individuals.

(a) In case of an individual or an association of individuals who do not appear by their duly authorized agent, the statement of each applicant, showing whether he is a native or naturalized citizen, when and where born, and his residence, will be required.

(b) In case an applicant has declared his intention to become a citizen or has been naturalized, his statement must show the date, place, and the court before which he declared his intention, or from which his certificate