<u>Editor's note</u>: <u>appealed</u> - <u>aff'd</u>, Civ.No. 80-0825-N(I) (S.D.Cal. 1981)

DARLEEN PORTER

IBLA 80-348 Decided May 29, 1980

Appeal from decision of the Sacramento, California, State Office, Bureau of Land Management, declaring mining claims abandoned and void. CA MC 61488.

Affirmed.

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

   43 CFR 3833.1-2(a) states that the owner of an unpatented mining claim, millsite, or tunnel site on Federal lands on or before Oct. 21, 1976, shall file (file shall mean being received and date stamped by the proper BLM office) on or before Oct. 22, 1979, a copy of the official record of the notice or certificate of location of the claim or site filed under State law. The depositing of a copy of the document in the mail does not constitute a "filing" within the context of the regulation.

APPEARANCES: N. James Richardson, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

This appeal is from a decision dated December 26, 1979, of the California State Office, Bureau of Land Management (BLM), declaring the Rocky Bar, Bear Valley, Last Chance, Rocky Ford, Sunnyside, Big Flat, Badgely Cabben, Darleen, and King Mine mining claims abandoned and void for failure to timely file a copy of the official record of the notice of location, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the applicable regulation, 43 CFR 3833.1-2(a).

The above-stated claims were located between September 1, 1903, and May 21, 1968. Therefore, under 43 CFR 3833.1-2(a), a copy of the official record of the notices of location for the claims were required to be filed with BLM on or before October 22, 1979. The copies for appellant's claims were received for recording by BLM on October 24, 1979. The decision appealed from states, "Your location notices * * * were not filed on or before October 22, 1979" (Emphasis added).

[1] The provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and the pertinent regulations, 43 CFR 3833.1-2(a), require that the owner of an unpatented mining claim located prior to October 21, 1976, file with the proper BLM office an official location notice of said claim on or before October 22, 1979. Failure to file the required instrument is deemed conclusively to constitute an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4.

FLPMA and its implementing regulations mandate the consequences of failure to file. This Board has repeatedly held that when the recordation requirements are not met the mining claims must be deemed abandoned and void. Charles and Pete Caress, 41 IBLA 302 (1979); Nuclear Power and Energy Co., 41 IBLA 142 (1979); Al Sherman, 38 IBLA 300 (1978); Ronald L. Nordwick, 36 IBLA 238 (1978); Paul S. Coupey, 35 IBLA 112 (1978).

Appellant seeks to justify her late filing by asserting the following reasons and grounds as stated:

> 1. DARLEEN J. PORTER excepts to the said administrative decision which states that the location notices for her mining claims were not filed timely and, therefore, appellant has been determined to have abandoned her mining claims; that DARLEEN J. PORTER did in fact fully comply with the Federal Land Policy and Management Act of October 21, 1976, (43 U.S.C. § 1744) by mailing said location notices to The Bureau of Land Management on October 22, 1979, and thereafter, were received by the Bureau on October 24, 1979; that deposit in the mail in October 22, 1979, was proper filing of said notices on a timely basis.
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> 3. That DARLEEN J. PORTER did, in fact, substantially comply with The Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. § 1744), if not fully in compliance with said Act, by mailing said location notices to The Bureau of Land Management on October 22,

1979 and, thereafter, were received by said Bureau on October 24, 1979; and any deviation from the requirements as stated in the Act was de minimus.

4. That DARLEEN J. PORTER has and had, at the relevant times herein, personal, tragic and emotional problems which have affected her daily life to an extreme which caused her to delay the filing of said location notices until the end of the period set forth in 43 U.S.C. § 1744 for filing said notices, which, in this court of equity, excuses her failure to file said notices on a timely basis, if in fact, said notices were not timely filed.

5. That courts of equity abhor forfeitures and a forfeiture in this case would cause great hardship on appellant and her failure of performance, if any, was slight, not justifying the harsh result.

We deal here only with those issues that are pertinent to our determination of the case at bar.

Appellant's arguments cannot be accepted on this appeal. Appellant chose the method of mailing and the date, therefore she must bear the consequences of her choice. Donald E. Jordan (supp.), 41 IBLA 60 (1979); Mobil Oil Corp., 35 IBLA 265 (1978). Furthermore, filing is accomplished only when a document is delivered to and received by the proper BLM office. As stated in H. P. Saunders, Jr., 59 I.D. 41, 42-43 (1945):

Filing, it must be observed, is not complete until the document is delivered and received. "Shall file" means to deliver to the office and not send through the United States mails. * * * A paper is filed when it is delivered to the proper official and by him received and filed. United States v. Lombardo, 241 U.S. 73, 76 (1916); Poynor v. Commissioner of Internal Revenue, 81 F. (2d) 521, 522 (C.C.A. 5th, 1936); Weaver v. United States, 72 F. (2d) 20, 21 (C.C.A. 4th, 1934); Tyson v. United States, 76 F. (2d) 553, 534 (C.C.A. 4th, 1935); Wampler v. Snyder, 66 F. (2d) 195, 196 (App. D.C., 1933); Stebbins' Estate v. Helvering, 74 App. D.C. 21, 121 F. (2d) 892, 894 (1941); Creasy v. United States, 4 F. Supp. 175, 177-178 (D.C.W.D. Va., 1933). Even if, as claimed by Saunders, the letter, in the usual course of the mails, should have reached the register at Las Cruces prior to the expiration of the lease, the fact nevertheless remains that the applications were not filed on time, for a paper is considered filed only at the time when it is actually delivered to and received by the office concerned, not when it could have reached that office in the

> regular course of the mails. Polynor v. Commissioner of Internal Revenue, supra; Weaver v. United States, supra. It is thus immaterial whether or not there was any unusual delay in the delivery of the letter and whether or not the post office was "negligent." [Footnote omitted.]

Cf. Mar-Win Development Co., 20 IBLA 383 (1975). Accordingly since the documents were not timely filed, BLM properly declared the claim abandoned and void.

Claims which are not recorded within the prescribed period are, by statute, "[D]eemed conclusively to constitute an abandonment of the mining claim." The consequence is a matter of law, and this Department has no authority to waive the statute to afford equitable relief.

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.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge