

LORRAINE MOHR

IBLA 80-524

Decided September 26, 1980

Appeal from decisions of Utah State Office, Bureau of Land Management, holding Good-Go 4, 5, 6, 7, 8, and 9; the Helen Nos. 1 through 3; and the Pete No. 4 mining claims abandoned and void.

Affirmed.

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

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

APPEARANCES: Lorraine Mohr, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Lorraine Mohr appeals from decisions of the Utah State Office, Bureau of Land Management (BLM), dated November 13, 1979, and January 18, 1980, declaring the Good-Go 4, 5, 6, 7, 8, and 9; Helen Nos. 1 through 3; and the Pete No. 4 mining claims abandoned and void. 1/ BLM stated that their filings and service fees were returned

1/ Claims Good-Go 4, 5, 6, 7, 8, and 9 inclusive are located in Moab Mining District, Grand County, Utah. Helen Nos. 1 through 3 and Pete No. 4 are located in Lawrence County, South Dakota.

in accordance with 43 CFR 3833.1-2 because the mining claims filings for these claims were not received on or before October 22, 1979, the date for filing claims located before October 21, 1976.

Appellant asks that she be able to keep these claims because her filing was received only 1 day late.

[1] Section 314(b), 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 pertinent 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. If state law does not require the recordation of a notice or certificate of location [of the claim or site, a certificate of location 2/] containing the information in paragraph (c) of this section shall be filed.

The above quoted regulation notes that "file" shall mean being received and date stamped by the proper BLM office. Therefore, the documents had to be received and date stamped by the appropriate BLM state offices by October 22, 1979, in order to be filed timely. Norman E. Brooks, 48 IBLA 16 (1980); Ray F. Coffee, 47 IBLA 217 (1980); John Sloan, 47 IBLA 146 (1980); E. F. Linn, 45 IBLA 217 (1980). The documents were not received by the Utah State Office until October 23, 1979. 3/ Failure to comply must result in a conclusive finding that the claims have been abandoned and are void. 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

2/ The bracketed language was inadvertently omitted from 43 CFR 3833.1-2(a) (1979) upon printing. The correctly promulgated regulation appeared at 44 FR 20430 (Apr. 5, 1979).

3/ The documents for the Helen Nos. 1 through 3 and the Pete No. 4 located in Lawrence County, South Dakota, were inadvertently filed by appellant with the Utah State Office October 23, 1979. They had to be received by the Montana State Office by October 22, 1979.

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:

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge

