

DONALD D. VESELY ET AL.

IBLA 80-783

Decided October 6, 1980

Appeal from decision of the California State Office, Bureau of Land Management declaring mining claim abandoned and void. CA MC 9710.

Affirmed as modified.

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

Where the owners of an unpatented mining claim located prior to Oct. 21, 1976, fail to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, having filed a copy of the notice of location with BLM during calendar year 1978, the claim is properly deemed to be abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

Where appellants assert on appeal that evidence of assessment work was timely mailed to BLM, but there exists no record of its receipt the documents cannot be considered as filed.

APPEARANCES: Donald D. Vesely, for appellants.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is taken from a decision dated July 7, 1980, by the California State Office, Bureau of Land Management (BLM), declaring the Anita Mine placer mining claim, located February 16, 1971, in Calaveras County, California, abandoned and void for failure to file

evidence of assessment work on or before December 30, 1979. The decision was based on the requirements of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 CFR 3833.2-1(a), which states:

The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, which ever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. [Emphasis supplied.]

43 CFR 3833.4 provides:

(a) The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void.

Appellants recorded their notice of location with BLM on March 6, 1978. They state in their statement of reasons that evidence of annual assessment work was due in the State Office on or before December 30, 1979. <sup>1/</sup> Although their claim's location certificate had been recorded with BLM on March 6, 1978, the "sooner" date provided by law and regulations is October 22, 1979. Appellants say that they mailed the documents from San Andreas on August 30, 1979, by regular mail. Appellants regret not having mailed certified or registered and assumed that their papers were received by the State Office.

[1] Although appellants assert that the required evidence of assessment was mailed to BLM, the record does not show that BLM received the documents. Since there is no proof that they were actually received we must find that there was not a timely filing. Appellants, who chose the manner of mailing, must bear the consequences of nondelivery. Gary L. Barton, 47 IBLA 386 (1980); Carl Oberg, 46 IBLA 319 (1980). The above regulations are mandatory, Robert Alameda, 48 IBLA 178 (1980), and since they were not complied with BLM properly declared the claims abandoned and void.

If the lands remain open to mineral location, and subject to intervening rights of third parties, including those of the Government, appellants may relocate their claim for locatable minerals and thereafter meet the recordation requirements.

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<sup>1/</sup> As shown below, the correct last date for filing was October 22, 1979. 43 CFR 3833.2-1(a) is clear on this point.

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.

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Frederick Fishman  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

