

RANDAL ANGELONI
DOUGLAS BLIXT

IBLA 80-744

Decided April 9, 1981

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claim abandoned and void. CA MC 13605.

Affirmed.

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

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There

is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

APPEARANCES: Randal Angeloni, pro se; Douglas Blixt, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Randall Angeloni and Douglas Blixt 1/ appeal from the decision dated June 10, 1980, of the California State Office, Bureau of Land Management (BLM), declaring the Triad placer mining claim located on June 24, 1978, in Placer County, California, abandoned and void for failure to file evidence of assessment work as required by 43 CFR 3833.2-1(b)(1). The notice of location was recorded with BLM on June 26, 1978.

[1] Sections 314(a)(1) and (2) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a)(1) and (2) (1976), and the pertinent regulation, 43 CFR 3833.2-1(b)(1), require that the owner of an unpatented mining claim located after October 21, 1976, shall prior to December 31 of each year following the calendar year in which the claim was located, file with BLM evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Failure to file the required instruments is deemed conclusively to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). This claim was located and recorded in 1978. Thus, one or the other of the documents had to be filed prior to December 31 of 1979, the year following the calendar year in which the claims were located.

When appellants failed to file either an affidavit or notice of intention, BLM properly held the claim to have been abandoned and declared it void. Blackburn Enterprises, 41 IBLA 115 (1979); Juan Munoz, 39 IBLA 72 (1979); Public Service Co. of Oklahoma, 38 IBLA 193 (1978); John R. Caurruthers, 38 IBLA 77 (1978); Donald H. Little, 37 IBLA 1 (1978); Donald L. Nordwick, 36 IBLA 238 (1978); Paul S. Coupey, 35 IBLA 112 (1978).

[2] Appellants state on appeal that the proof of labor was mailed on August 31, 1979, but that the document must have gotten lost in the mails. The Department has consistently held that one who entrusts to

1/ Randal Angeloni and Douglas Blixt located the claim along with Aaron R. Hoffeditz who did not participate in this appeal.

the Postal Service instruments for delivery to a BLM office is employing the Postal Service as his agent and, consequently, must suffer the penalty for delay or nondelivery of the mailed item. See Cleghorn and Washburn Mining Co., 51 IBLA 265 (1981); Mobil Oil Corp., 35 IBLA 265 (1978); Vern H. Bolinder, 30 IBLA 26 (1977); A. E. White, 28 IBLA 91 (1976).

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.

Gail M. Frazier
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

