

POLAR RESOURCES CO. (ON RECONSIDERATION)

IBLA 81-730

Decided August 27, 1981

Petition for reconsideration of the Board's Order of July 1, 1981, dismissing appeal from a decision of Utah State Office, Bureau of Land Management, deeming unpatented mining claims to be abandoned and void. U MC 10647 through U MC 10819 and U MC 67257.

Bureau of Land Management decision 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.

APPEARANCES: C. Warren Hunt, President, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The Board's Order of July 1, 1981, dismissed the appeal of Polar Resources Co. from a decision of the Utah State Office, Bureau of Land Management (BLM), which had deemed certain unpatented mining claims abandoned and void for failure to file evidence of assessment work or notice of intention to hold the claims on or before December 30, 1980. The appeal was dismissed because no statement of reasons had been filed with the Board within the prescribed time.

Appellant now seeks reconsideration of the appeal, asserting that information submitted with appeal IBLA 81-662 should be accepted as a statement of reasons in support of this appeal, IBLA 81-730.

The appeal docketed as IBLA 81-730 concerned the Sun Group of unpatented mining claims, U MC 10647 through U MC 10819 and U MC 67527. In the appeal docketed as IBLA 81-662, we find a copy of a telegram apparently submitted for transmission to CNCP Telecommunications, Calgary, Alberta, Canada, on December 23, 1980, addressed to the Bureau of Land Management, Salt Lake City, Utah, and intended to be a notice of intention to hold a large number of unpatented mining claims for 1980. Among the claims listed in the telegram are the Sun Group, U MC 10647 through U MC 10819 and U MC 67257. Appellant made no reference to this telegram in the appeal which was dismissed.

[1] The record clearly shows, however, that the telegram was not delivered to BLM on or before December 30, 1980. It was received in the afternoon of December 31, 1980. The regulations provide that in order for documents for mining claim recordation purposes to be filed with BLM, the documents must be received and date stamped by the proper BLM office. 43 CFR 3833.1-2. Filing is accomplished only when a document is delivered to and received by the proper office. Depositing the document in the mails does not constitute filing. 43 CFR 1821.2-2(f); Glenn D. Graham, 55 IBLA 39 (1981). Similarly, we hold that transmitting a telegram which is not timely delivered to the proper BLM office does not constitute filing. Having chosen the means of delivery, appellant must bear the consequences of untimely delivery of his filings. Glenn D. Graham, supra.

The applicable statute, section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires that the owner of an unpatented mining claim shall, prior to December 31 each year, file for record in the office where the location notice for the claim is recorded a notice of intention to hold the claim or an affidavit of assessment work performed on or for the claim, and likewise prior to December 31 each year shall file in the proper office of BLM a copy of the official record of the instrument filed in the county records. Ted Dilday, 56 IBLA 337, 88 I.D. 682 (1981). There is nothing in the record to indicate the notice filed with BLM was also filed with the local recording office.

As the required filings for the unpatented mining claims in the Sun Group, U MC 10647 through U MC 10819 and U MC 67257, were not made with BLM prior to December 31, 1980, the claims were properly deemed to be abandoned and void. This Board has no authority to excuse a late filing or to waive the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

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.

Douglas E. Henriques  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

