

PARISH CHEMICAL CO.

IBLA 81-913

Decided August 27, 1981

Appeal from decision of New Mexico State Office, Bureau of Land Management, declaring mining claims abandoned and void. NM MC 82326 through NM MC 82375.

Reversed.

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

It is gross error for the Bureau of Land Management to declare unpatented mining claims abandoned and void for failure to submit a proof of labor when the case files of the subject mining claims reflect that a proof of labor was timely submitted to BLM and BLM had acknowledged receipt thereof.

APPEARANCES: Paul J. Parish, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Parish Chemical Company (Parish) was notified by decision dated May 26, 1981, that the New Mexico State Office, Bureau of Land Management (BLM), had declared the company's unpatented Wild Blue #1 through #30 placer mining claims and the MAC #1 through #5 and #7 through #21 placer mining claims, NM MC 82326 through NM MC 82375, abandoned and void because no proof of labor or notice of intent to hold the claims had been received by BLM on or before December 30, 1980, as required by 43 CFR 3833.2-1.

Parish, in a letter received by BLM June 3, 1981, asked for an explanation of the decision, enclosing a copy of the BLM acknowledgement of receipt of the proof of labor, dated December 19, 1980. The record does not show any response by BLM to this letter. BLM received a second letter from Parish on June 17, 1981, with a copy of the first letter enclosed. The second letter asked two questions: "Please advise if there remains a problem. Please confirm if everything is in order." As before, BLM made no response.

Thereafter, BLM apparently stamped its records on June 29, 1981, that the subject case was closed, despite the two letters from Parish, either one of which BLM could easily have considered an appeal of the May 26, 1981, decision.

On August 3, 1981, BLM received a third letter from Parish which stated plainly that it was a notice of appeal. It was not timely under the Department's rules of practice, being received by BLM much beyond the 30th day after receipt of the May 26, 1981, decision. However, because of the letters received by BLM on June 3 and June 17, we assume jurisdiction of the appeal.

Examination of the case files discloses that on October 22, 1979, BLM received from Parish copies of location notices for the Wild Blue and MAC groups of placer mining claims and a copy of a proof of labor as recorded in the records of Rio Arriba County, New Mexico, on September 7, 1979. On October 10, 1980, BLM received a copy of the proof of labor for these claims that had been recorded in Rio Arriba County on August 22, 1980. BLM acknowledged the latter filing by notice dated December 19, 1980.

We cannot understand the motivation of BLM that prompted the decision of May 26, 1981, declaring these mining claims abandoned and void on the ground that no proof of labor had been timely filed, nor do we understand the cavalier attitude shown by BLM in repeatedly ignoring the letters of inquiry from appellant, each of which clearly demonstrated the error in the BLM decision by enclosing a copy of the BLM acknowledgement of its receipt of the proof of labor in question.

As the BLM decision is patently incorrect, it must be reversed.

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 reversed, and the case remanded to BLM with instructions to reinstate the mining claims in issue.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

