

INEZ CREWS ET AL.

IBLA 81-1103

Decided October 29, 1981

Appeal from decision of Montana State Office, Bureau of Land Management, declaring unpatented lode and placer mining claims and a millsite claim abandoned and void. M MC 55708 through M MC 55732.

Affirmed in part; reversed and remanded in part.

1. 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 timely filed because it was delayed in the mail, the consequences must be borne by the claimant.

2. Federal Land Policy and Management Act of 1976: Assessment Work -- Mining Claims: Millsites

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect, and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

APPEARANCES: Earl M. Genzberger, Esq., Butte, Montana, for appellants.

Appeal has been taken 1/ from the Montana State Office, Bureau of Land Management (BLM), decision dated August 18, 1981, which declared unpatented lode and placer mining claims and a millsite, M MC 55708 through M MC 55732 2/ abandoned and void because evidence of assessment work or notice of intention to hold, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, had not been filed with BLM on or before December 30, 1980.

The claims were located in November 1979. The affidavits of assessment work, recorded August 26, 1980, in the records of Jefferson County, Montana, were received by BLM on January 2, 1981. The envelope shows a postmark of "Whittier, California, PM, Dec. 29, 1980."

Appellants state that the engineering report reciting the situs of each claim by quarter-quarter section, township, and range, filed

1/ The appellants are heirs of Crystal C. Crews, Inez Crews, Randall Eaton, John D. Brown, Michael J. Brown, Lena J. Slauson, Beulah Brown, Delephine Brown, Frank Brown, Genevieve Brown, Irvin Brown, Lena Brown, Toni Brown, Jim Eaton, Randy Eaton, Jr., Durrel Johnson, Virginia Eaton, Ronald C. Eaton, Kirk Schuster, Lorraine Schuster. (Crystal C. Crews died Apr. 24, 1981).

<u>2/ Claim Name</u>	<u>Serial Number</u>	<u>Type of Claim</u>
Amended Ajax	M MC 55708	lode
Amended Bettie	M MC 55709	lode
Amended Clara Bow	M MC 55710	lode
Amended Delephine	M MC 55711	lode
Amended Golden Bar	M MC 55712	placer
Amended Harvest Moon	M MC 55713	lode
Homestake Amended Millsite	M MC 55714	millsite
Minnetonka Amended	M MC 55715	placer
Amended Nellie Lode	M MC 55716	lode
North Star Amended	M MC 55717	lode
Amended Red Cloud	M MC 55718	lode
Amended Sleepy Lagoon	M MC 55719	lode
Amended Smoky	M MC 55720	lode
Amended Venture	M MC 55721	lode
Bear Gulch Amended	M MC 55722	placer
J.M.D. Amended	M MC 55723	placer
Browns Park Amended	M MC 55724	placer
Amended Golden Bar Placer	M MC 55725	placer
Golden Leaf Amended	M MC 55726	placer
Amended Golden Nugget	M MC 55727	placer
Homestake, Amended	M MC 55728	placer
Jennette Amended	M MC 55729	placer
Amended Morning Glory	M MC 55730	placer
Morning Star Amended	M MC 55731	placer
Mogul Amended	M MC 55732	placer

with BLM in September 1980, had cost more than the annual requirements of \$100 in assessment work per claim, and that additional assessment work had been performed on the claims as set forth in the affidavits received by BLM January 2, 1981.

[1] Section 314 of the FLPMA, 43 U.S.C. § 1744 (1976), and the implementing regulations, 43 CFR 3833.2-1(a) and 3833.4, require that evidence of assessment work or a notice of intention to hold for each mining claim located after October 21, 1976, be filed both in the county recorder's office and in the proper BLM office prior to December 31 of each year following the calendar year in which the claims were located, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely and properly filed.

Despite appellants' statement that the documents were properly and timely mailed, the regulations define "file" to mean "being received and date stamped by the proper BLM office" (43 CFR 3833.1-2(a)). Thus, even though the document was mailed and the Postal Service delayed it from reaching the BLM office timely, that fact would not excuse appellants' failure to comply with the cited regulations. Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of untimely delivery of his filings. Edward P. Murphy, 48 IBLA 211 (1981); Everett Yount, *supra*; James E. Yates, *supra*; Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f).

Although 43 CFR 3833.2-1(d) requires the owner of an unpatented millsite claim to file a notice of intention to hold the claim on or before December 30 of each year following the year of location, section 314 of FLPMA, *supra*, does not require the filing of more than a notice of location of a millsite claim.

[2] In Mrs. Otis Teaford, 56 IBLA 367 (1981), we held that the failure of a holder of a millsite claim which has been properly recorded under FLPMA to file an annual notice of intention to hold the millsite is a curable defect, and that the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of the deficiency, citing Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), and Feldslite Corporation of America, 56 IBLA 78, 88 I.D. (1981). So, in this case it must be held to be error for BLM to have declared the Homestake Amended Millsite abandoned and void. Appellant must be afforded an opportunity to comply with the regulatory requirement. *See* 43 CFR 3833.2-1(d); 43 CFR 3833.2-3.

Appellants may wish to consult with BLM about the possibility of relocating these lode and placer claims.

Accordingly, 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 as to its holding that the lode and placer mining claims are abandoned, but set aside as to the millsite claim, which is remanded for action consistent herewith.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

