

ROBERT A. SANDSTEDT
PRILEY STEMWELD

IBLA 82-944

Decided July 20, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. M MC 32700 (SD).

Affirmed.

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 on or before Oct. 21, 1976, must file evidence of performance of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, not discretionary. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it was delayed in the mail, the statutory consequence must be borne by the claimant.

APPEARANCES: Robert A. Sandstedt, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On August 31, 1979, Priley Stemweld and Robert A. Sandstedt filed location notices and proofs of labor for the Sandy #1 lode mining claim and the Christy #1 placer mining claim, in the Montana State Office, Bureau of Land Management (BLM), where the claims were given serial identification, M MC 32700 (SD) to the Christy #1 and M MC 32701 (SD) to the Sandy #1. The claims are situated in sec. 1, T. 1 N., R. 5 E., Black Hills meridian, Pennington County, South Dakota. Proofs of labor for each claim were submitted to BLM November 28, 1980.

By decision of December 10, 1980, BLM declared the Sandy #1 lode mining claim, M MC 32701 (SD), null and void ab initio because it had been located on land withdrawn under the First Form for Reclamation purposes by Order of December 14, 1980. No appeal was taken from this decision.

By decision of May 19, 1982, BLM declared the Christy #1 placer mining claim, M MC 32700 (SD), abandoned and void because no proof of labor of notice of intention to hold the claim was submitted to BLM on or before December 30, 1981. BLM also returned a proof of labor for the Sandy #1 lode mining claim, M MC 32701 (SD), received December 31, 1981, stating the Sandy #1 claim had been declared null and void by decision of December 10, 1980. The envelope containing the proof of labor was postmarked "Portland, Oregon, Dec. 29, 1981." This appeal followed.

Appellants state BLM erred in its decision as the Christy #1 claim is within the withdrawn area, not the Sandy #1 claim.

The case record does not clearly indicate which claim is situated where in sec. 1, T. 1 N., R. 5 E. A topographic map shows the Christy #1 indicated by lode claim dimensions in SE 1/4 SW 1/4 sec. 1, land not withdrawn, and the Sandy #1 indicated with placer claim dimensions in NW 1/4 sec. 1, land withdrawn under the First Form for Reclamation in 1940.

Apart from the confusion over the exact location of each claim, there has not been compliance with the requirements of section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

[1] Notwithstanding that the proof of labor was properly mailed December 29, 1981, from Portland, Oregon, the statute clearly requires the filing to be accomplished prior to December 31 each year. The regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f), 43 CFR 3833.1-2(a). Thus, the mailing on December 29 from Portland cannot excuse appellants' failure to comply with the cited regulations. Regina McMahon, 56 IBLA 372 (1981); Don Chris A. Coyne, 52 IBLA 1 (1981). 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). This Board has no authority to waive failure to comply with the statute. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Thus, regardless of which claim was or was not invalidated by reason of being located on withdrawn land, no evidence of annual labor was timely filed for either claim.

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

James L. Burski
Administrative Judge

