

ORO FINO DREDGING CO.

IBLA 85-700

Decided September 18, 1986

Appeal from a decision of the California State Office, Bureau of Land Management, declaring the Rags to Riches unpatented placer mining claim, CA MC 4288, abandoned and void.

Reversed.

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

A mining claim recordation document sent to the proper office of BLM in an envelope provided by BLM, affixed with the proper postage by weight, and postmarked on or prior to Dec. 30, but returned for additional postage because of the oversize nature of the envelope, will be considered to have been filed in a timely manner pursuant to 43 CFR 3833.0-5(m), when additional postage is affixed, and the letter is received by BLM before Jan. 19 of the following year.

APPEARANCES: Val Ruggerio, Secretary, Oro Fino Dredging Company, Reno, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Oro Fino Dredging Company (Oro Fino) has appealed from a May 14, 1985, decision of the California State Office, Bureau of Land Management (BLM), declaring the Rags to Riches placer mining claim, CA MC 4288, abandoned and void for failure to file evidence of performance of assessment work or a notice of intention to hold the claim in 1984, as required by 43 U.S.C. § 1744(a) (1982), and 43 CFR 3833.2.

The record discloses that on December 21, 1984, appellant mailed a copy of the affidavit of performance of assessment work performed by appellant during the year 1984 to the California State Office, BLM. The affidavit had been enclosed in an envelope provided by BLM and contained sufficient postage for a letter of the weight sent. However, U.S. Postal Service regulations provided for a surcharge of \$0.09 for envelopes measuring larger than 6-1/8 by 11-1/2 inches. The envelope containing the affidavit was received by BLM on December 24, 1984, marked "insufficient postage." As it is not BLM's policy to accept postage-due items, the letter was returned for additional postage. Additional postage was added on January 3, 1985, the envelope was returned, and was received by BLM on January 4, 1985.

On January 4, 1985, BLM sent notice that the failure to file timely might result in a finding that the claim was abandoned and void, but that a final BLM decision would not be issued because of the case pending in the Supreme Court (United States v. Locke, No. 83-1394) challenging the constitutionality of section 314(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982).

Following issuance of United States v. Locke, 105 S.Ct. 1785 (1985), which held section 314(c) of FLPMA to be constitutional, BLM issued its decision holding the claim to be abandoned and void because an affidavit of assessment work or notice of intention to hold for the 1984 assessment year had not been received by the California State Office in a timely manner. An appeal was taken from that decision.

[1] Section 314 of FLPMA, 43 U.S.C. § 1744 (1982), and 43 CFR 3833.2-1 require the owner of an unpatented mining claim located on public land to file evidence of assessment work or a notice of intention to hold the mining claim with the proper BLM office prior to December 31 of each year. Failure to file one or the other of the two instruments within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4.

The Supreme Court noted in Locke, supra at 1796, that "the statute explicitly provides that failure to comply with the applicable filing requirements leads automatically to loss of the claim." However, the Supreme Court also noted that "since 1982 BLM regulations have provided that filings due on or before December 30 will be considered timely if postmarked on or before December 30 and received by BLM by the close of business on the following January 19th. 43 CFR 3833.0-5(m)." United States v. Locke, supra at 1797, fn. 14. 1/ We believe a close examination of this case allows a finding that the filing made by appellant was timely pursuant to 43 CFR 3833.0-5(m). This finding is based in part on the reason that the envelope containing the document was returned for additional postage. 2/ The document was mailed to BLM in an envelope postmarked December 21, 1984, returned for additional postage and received by BLM on January 4, 1985. We conclude the document was filed

1/ 43 CFR 3833.0-5(m) provides in pertinent part:

"For the purpose of complying with § 3833.2-1 of this title, 'timely filed' means being filed within the time period prescribed by law, or received by January 19th after the period prescribed by law in an envelope bearing a clearly dated postmark affixed by the United States Postal Service within the period prescribed by law."

2/ The record contains a document dated Jan. 3, 1985, from the Director, Customer Service, United States Postal Service, Reno, Nevada, to the California State Office, BLM. That letter states:

"Mr. Val Ruggerio, Corporate Secretary of the "Rags to Riches" brought the attached envelope [postmarked Dec. 21, 1984] to our office this date which was returned to him for additional postage.

"As I'm sure you are aware (although Mr. Ruggerio was not), items deposited in the mail stream measuring larger than 6-1/8" X 11-1/2" and weighing less than 1 ounce require a surcharge of \$ .09.

in a timely manner, taking into consideration the provisions of 43 CFR 3833.0-5(m).

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 reversed.

R. W. Mullen  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

Bruce R. Harris  
Administrative Judge

---

"Although Mr. Ruggerio mailed this in sufficient time to meet his December 30, 1984, deadline, since your office does not accept postage due items, it was returned to him. He stated you also supplied him with the envelope since the enclosure should not be folded to fit into a smaller envelope.

"Any consideration you can provide Mr. Ruggerio in accepting this envelope will be appreciated as he was unaware of the postage requirements for oversize material. Also, you might include in your instructions when you send the envelope that a surcharge will be required to be added to the regular postage to prevent a recurrence from other mailers."

