

TOM PHELPS

IBLA 80-324

Decided May 21, 1980

Appeal from decision of the California State Office, Bureau of Land Management, in effect, holding the Recovery, Silver Star, Lucky Strike, North Star, and Tip Top No. 1 mining claims abandoned and void. CA MC 61470-61474.

Affirmed.

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

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact the Post Office returned mail enclosing the documents to the claimant because the envelope did not conform to postal requirements affords no basis for relief where the documents subsequently were received by BLM after Oct. 22, 1979, as the statute gives no authority for waiving the late filing.

APPEARANCES: Tom Phelps, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Tom Phelps appeals the decision of the California State Office, Bureau of Land Management (BLM), dated December 26, 1979, declaring the Recovery, Silver Star, Lucky Strike, North Star, and Tip Top No. 1 mining claims abandoned and void.

The decision stated: "Your location notices for the above named mining claims are returned, together with the filing fee, since they were not filed on or before October 22, 1979, as required by the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1744) and the regulations in 43 CFR 3833.1-2(a)." Appellant's filings were not received by BLM until November 1, 1979. BLM indicated that failure to file within the time period shall be deemed conclusively to constitute an abandonment of the mining claim.

On appeal, appellant states that the Post Office returned the envelope originally mailed to BLM because it was of nonconforming size, requiring appellant to mail the documents a second time which resulted in their late arrival. This affords no basis for relief.

[1] Section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(a), reads as follows:

[§] 3833.1-2 Manner of recordation -- Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, \* \* \* shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law.

Appellant did not file the documents required with the BLM office on or before October 22, 1979. Failure to comply must result in a conclusive finding that the claims have been abandoned and are void 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). The statute gives no authority to this Department to waive the late filing.

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.

Joan B. Thompson  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

