

DAN CREEK PLACER MINES

IBLA 81-155

Decided February 6, 1981

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring certain placer mining claims, AA-31885 through AA-31912, abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on Federal lands on or before Oct. 21, 1976, must file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

2. Mining Claim: Assessment Work

Failure to timely file evidence of annual assessment work may not be excused because the claimant was unexpectedly called out of town or because the recorded copy of his affidavit of annual labor was not timely returned by the local recording office. Regulation 43 CFR 3833.2-2 does not require the filing of a copy of the recorded affidavit.

APPEARANCES: Phil O'Neill, pro se.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Phil O'Neill as agent for the Dan Creek Placer Mines has appealed the decision of the Alaska State Office, Bureau of Land Management (BLM), dated August 25, 1980, declaring 28 placer mining claims, AA-31885 through AA-31912, abandoned and void for failure to file evidence of annual assessment work for the claims on or before October 22, 1979.

In his statement of reasons, appellant explains that he sent the affidavit of annual labor to the Chitna recording district by mail on September 18, 1979; it was returned to him for insufficient filing fees; and he resubmitted it with the proper amount on September 29, 1979. Before the recording office returned the affidavit to him, he was called out of town because of the death of a family member. 1/ When he returned on November 3, 1979, the recorded affidavit had been returned to him and he promptly submitted it to BLM which received it on November 7, 1979.

[1] Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), requires the owner of an unpatented mining claim located prior to October 21, 1976, to file evidence of assessment work for the claim with BLM within the 3-year period following that date and prior to December 31 of each year thereafter. The corresponding Departmental regulation 43 CFR 3833.2-1(a) reads:

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Failure to so file is considered conclusively to constitute abandonment of a claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

[2] Departmental regulation 43 CFR 3833.2-2 states that evidence of assessment work must be in the form of "[a]n exact legible reproduction or duplicate, except microfilm, of the affidavit of assessment

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1/ The death of his relative occurred in Seattle, where he went first. However, he then proceeded to Spokane, Washington, to attend a business meeting from October 10-15, 1979, which business was unrelated to his relative's death. He then returned to Seattle on business relating to settlement of the decedent's estate.

work performed which was or will be filed for record \* \* \* in the local jurisdiction of the State where the claim or group of claims is located and recorded." (Emphasis added.) Thus a copy of the recorded affidavit is not necessary to meet the requirements of section 314 of FLPMA, supra.

It is regrettable that appellant was called out of town due to a death in his family. Nevertheless, the responsibility for complying with the recordation requirements rested with appellant. This Board has no authority under the statute to excuse lack of compliance. Glen J. McCrorey, 46 IBLA 355 (1980).

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.

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Douglas E. Henriques  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

