

DEAN SAYLOR

IBLA 80-760

Decided February 19, 1981

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring the Big Country #1 through #3 lode mining claims abandoned and void. N MC 11472 through 11474.

Affirmed.

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

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, the owner of an unpatented mining claim located after Oct. 21, 1976, must file in the proper Bureau of Land Management Office evidence of annual assessment work or a notice of intention to hold the claim on or before Dec. 30 of each calendar year following the calendar year in which the claim was located. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

2. Mining Claims: Abandonment--Mining Claims: Assessment Work

Where the mining claimant alleges that he timely submitted his yearly affidavit of assessment work to BLM, but that it apparently was lost in the mail, this circumstance will not excuse a late filing. One who selects a means of delivering a document must bear the responsibility for any consequential delay or failure of delivery by that means.

APPEARANCES: Dean Saylor, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Dean Saylor has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated June 5, 1980, declaring the Big Country #1 through #3 lode mining claims abandoned and void for failure to file an affidavit of annual assessment work or notice of intention to hold the claims by December 30, 1978, as required by 43 CFR 3833.2.

The Big Country lode mining claims were located September 8, 1977, and recorded with BLM December 7, 1977, under serial Nos. N-MC 11472 through 11474.

Appellant states that, "I believe that the Notice of Proof of Labor for 1977 and 1978, that I sent to the Nevada State Office at 300 Booth Street, Reno, was lost in the mail or mislaid along the way somewhere."

[1] Section 314(a)(1) and (2) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a)(1) and (2) (1976), and the pertinent regulation, 43 CFR 3833.2-1(a), require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with BLM evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Failure to file the required instrument is conclusively deemed to constitute an abandonment of the mining claims under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). The Big Country claims were located after October 21, 1976, in 1977. Thus, one or the other of the documents had to be filed prior to December 31, 1978, the year following the calendar year in which the claim was located, in order to satisfy the requirements of the law.

When appellant failed to file timely either an affidavit of assessment work or a notice of intention to hold these claims, BLM properly held the claims to have been abandoned and declared them void. Robert R. Eisenman, 50 IBLA 145 (1980); Geomet Exploration, Inc., 47 IBLA 135 (1980); Northwest Mining & Mercantile Inc., 46 IBLA 360 (1980); Willene Minnier, 45 IBLA 1 (1980); Juan Munoz, 39 IBLA 72 (1979); Donald H. Little, 37 IBLA 1 (1978). The procedures established pursuant to section 314 of FLPMA, *supra*, are mandatory and may not be waived. Lo Lo M. Cosby, 46 IBLA 363 (1980); Donald H. Little, *supra*.

[2] It is unfortunate that the documents may have been lost in the mail, but this circumstance will not excuse the late filing. This Board has repeatedly held that one who selects a means of delivering a

document must bear the responsibility for any consequential delay or failure of delivery by that means. Cleghorn and Washburn Mining Co., 51 IBLA 265 (1980); Henry D. Friedman, 49 IBLA 97 (1980), and cases cited therein.

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.

Anne Poindexter Lewis

Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Bruce R. Harris
Administrative Judge

