

CLEATUS SYPULT

IBLA 80-933

Decided March 16, 1981

Appeal from the decision of the Montana State Office, Bureau of Land Management, declaring mining claims M MC 12329 and M MC 12330 abandoned and void.

Affirmed.

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

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1979, or the claims are conclusively deemed abandoned and, thus, void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

APPEARANCES: Cleatus Sypult, pro se.

OPINION BY ACTING ADMINISTRATIVE JUDGE GRANT

Cleatus Sypult has appealed the decision of the Montana State Office, Bureau of Land Management (BLM), dated August 15, 1980, declaring mining claims 3 C's No. 1 and 3 C's No. 2, M MC 12329 and

M MC 12330, abandoned and void for failure to file evidence of assessment work or a notice of intention to hold the claims by December 30, 1979. ^{1/}

In his notice of appeal filed September 3, 1980, appellant submitted to BLM a copy of an affidavit of 1979 assessment work. Appellant alleges that he had previously mailed BLM a copy after recording the assessment work with the county recorder's office in November, 1979.

[1] Under section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located after October 21, 1976, is required to file either evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the claim, on or before December 30 of each calendar year following the calendar year in which the claim was located. Failure to file such instruments within the prescribed time period is conclusively presumed to constitute abandonment of the claim by the owner and the claim is void. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4; Silvertip Exploration & Mining, 43 IBLA 250 (1979); Juan Munoz, 39 IBLA 72 (1979); Donald H. Little, 37 IBLA 1 (1978).

Appellant's claims were located on July 4, 1978. Therefore, appellants were required to file either evidence of assessment work or a notice of intention to hold the claims on or before December 30, 1979, the calendar year following the calendar year in which the claims were located.

The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979); Amanda Mining and Manufacturing Assoc., 42 IBLA 144 (1979). Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). In the absence of evidence that BLM did timely receive evidence of assessment work performed on appellant's claims, BLM properly declared the claims abandoned and void. Gary L. Barton, 47 IBLA 386 (1980).

^{1/} Connie Ferris and Chester M. Forest are also claimants of record for these two claims. However, neither has joined in the appeal herein.

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.

C. Randall Grant, Jr.
Acting Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

