

GLENN D. GRAHAM  
LYNNE L. GRAHAM

IBLA 81-560

Decided May 28, 1981

Appeal from the decision of the California State Office, Bureau of Land Management, declaring various placer mining claims abandoned and void. CA MC 48494 through CA MC 48496.

Affirmed.

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

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Assessment Work

Evidence of assessment work must be delivered to and received by the proper Bureau of Land Management office by the due date in order to be timely filed. Depositing a document in the mails does not constitute filing.

APPEARANCES: Glenn D. Graham, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Glenn D. Graham and Lynne L. Graham have appealed the decision of the California State Office, Bureau of Land Management (BLM), dated

March 20, 1981, declaring the A & A Nos. 2-4 placer mining claims, <sup>1/</sup> CA MC 48494 through CA MC 48496, abandoned and void for failure to file timely evidence of annual assessment work or notice of intention to hold the claims on or before December 30, 1980. BLM received appellants' proofs of labor on January 7, 1981.

In their statement of reasons, appellants explain that proofs of labor for the claims were mailed to BLM in sufficient time to meet the due date but apparently did not arrive. They indicate that they became aware that the filings had not been received when they received the BLM 1980 assessment reminder. They were out-of-town at the time and were unable to get to their records for the claims to resubmit the filings until they returned home on January 7, 1981.

[1, 2] 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.

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 appellants' claims, BLM properly declared the claims abandoned and void. Gary L. Barton, 47 IBLA 386 (1980). This Board has no authority to excuse lack of compliance with the statute or to afford relief from statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

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<sup>1/</sup> The claims were relocated on September 6, 1954, in sec. 10, T. 39 N., R. 9 W., Mount Diablo meridian, Siskiyou County, California.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the California State Office is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Bruce R. Harris  
Administrative Judge

