

DORIS MCFALL  
DONALD DUNCAN  
CLARENCE DUNCAN

IBLA 81-362

Decided June 1, 1981

Appeal from the decision of the California State Office, Bureau of Land Management, declaring certain mining claims abandoned and void. CA MC 61850 through CA MC 61857.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and 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: Timely Filing

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: Doris McFall, pro se.

## OPINION BY ADMINISTRATIVE JUDGE LEWIS

Doris McFall has appealed the decision of the California State Office, Bureau of Land Management (BLM), declaring mining claims CA MC 61850 through CA MC 61857 abandoned and void for failure to file timely evidence of assessment work for the claims by December 30, 1980. Evidence of assessment work notice for the period September 1, 1979 - September 1, 1980, was due in the BLM office on or before December 30, 1980. These notices were received January 2, 1981.

On appeal, appellant asserts she had assumed that the date of mailing was controlling and that she sent the required papers by special delivery on December 29.

[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. [Emphasis added.]

Failure so to 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.

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). Glenn D. Graham, 55 IBLA 39 (1981). 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). 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).

Accordingly, 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

Gail M. Frazier  
Administrative Judge

