

JAMES K. POPE, ET AL.

IBLA 81-498

Decided June 8, 1981

Appeal from decisions of California State Office, Bureau of Land Management, declaring mining claims CA MC 47088 through 47094 abandoned and void.

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

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the letter is actually received by the proper BLM office before such date, even if the mail was delayed through no fault of the sender.

APPEARANCES: James K. Pope, Eric Rocque, Carl Olsen, and Carl Bane, pro sese.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

James K. Pope, Eric Rocque, Carl Olsen, and Carl Bane have joined in an appeal from decisions of the California State Office, Bureau of Land Management (BLM), dated March 20, 1981, declaring their mining claims, CA MC 47088 through 47094, abandoned and void for failure to file evidence of annual assessment work on or before December 30, 1980, pursuant to section 314, Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and its implementing regulations, 43 CFR 3833.2-1(a)(c) and 3833.4.

All of appellants' claims, except CA MC 47090, were located in 1975. Claim CA MC 47090 was located in 1979. All claims were duly recorded with BLM on October 15, 1979. The cited regulations therefore require that annual assessment work, or a notice of intent to hold, be filed on or before December 30, 1980, with respect to all of the claims. BLM received appellants' evidence of assessment work for these claims on January 2, 1981, 3 days late.

In their statement of reasons, appellants explain that since they were not sure of how to comply with BLM's requirements, they delayed filing until the procedure could be explained to them by an officer of the Western Mining Council. Then, before going on vacation, they left the documents in their mail box for pickup, in what they thought would be plenty of time for the documents to reach BLM. However, the documents were delayed in delivery because of the heavy postal service workload during the holiday season.

[1] The failure to file the instruments required by section 314 of FLPMA in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner. See 43 CFR 3833.4.

[2] The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the letter is actually received by the proper BLM office before such date, even if the mail was delayed through no fault of the sender. 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. Western Mining Council v. Watt, 643 F.2d 618, 628 (9th Cir. 1981); 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 of the California State Office is affirmed.

Bernard V. Parrette  
Chief Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Gail M. Frazier  
Administrative Judge

