

CHARLES M. LOWE ET AL.

IBLA 81-572

Decided June 29, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring mining claim CA MC 57781 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.

APPEARANCES: Dale B. Deatherage, Esq., for appellants.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Charles M. Lowe and James R. Lowe appeal from a decision of the California State Office, Bureau of Land Management (BLM), dated March 13, 1981, declaring appellants' mining claim, the Gold Bug Mine, CA MC 57781, abandoned and void for failure to file by December 30, 1980, evidence of assessment work for the year ending September 1, 1980, as required by 43 CFR 3833.2-1 of the regulations.

With their statement of reasons, dated April 17, 1981, appellants enclose a proof of labor filed in San Bernardino County, California, on October 6, 1980, and indicate that the proof was not previously filed with BLM through inadvertence.

[1] Section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and its implementing regulations, 43 CFR 3833.2-1(a) and 3833.4(a), require that evidence of assessment

work for each assessment year be filed in the proper BLM office within the specified time limits, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed.

Although appellants' statement of reasons notes that a copy of their proof of labor "was supposed to have been sent to the BLM but apparently never reached that office," they offer no evidence that such proof was ever actually mailed. Even if it had been mailed, however, the regulations define "file" to mean being received and date stamped by the proper BLM office. 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if the mailing were prevented by postal service error from reaching the BLM office, that fact would not excuse appellants' failure to comply with the cited regulations. Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979); Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979).

In the absence of evidence that it did timely receive proof of assessment work performed on appellants' claim, BLM properly declared the claim 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:

Anne Poindexter Lewis  
Administrative Judge

Douglas E. Henriques  
Administrative Judge.

