

EDWARD McNALLY
MERRILL PORTER

IBLA 81-769

Decided July 20, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented placer mining claims abandoned and void. CA MC 38787 through CA MC 38796.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was recorded with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

APPEARANCES: Edward McNally and Merrill Porter, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Edward McNally and Merrill Porter appeal from the California State Office, Bureau of Land Management (BLM), decision dated May 22, 1981, which declared 10 unpatented placer mining claims, CA MC 38787 through CA MC 38796 1/ abandoned and void because evidence of assessment work or notice of intent to hold, as required by the Federal

1/ Patty, Spiv, Babe, Portions of Protection #1 and #2, Anna, June, Dude, Dick and Protection #4 placer mining claims.

Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2, had not been filed with BLM on or before December 30, 1980.

Appellants allege that the required proof of assessment work had been mailed to BLM from Vista, California, on October 6, 1980, and that if BLM did not receive the document, it was lost by the Postal Service.

[1] Section 314 of FLPMA, 43 U.S.C. § 1744 (1976), and the implementing regulations, 43 CFR 3833.2-1(a) and 3833.4, 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 for recordation.

Despite appellants' statement that the document was properly and timely mailed, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 3833.1-2(a). See also 43 CFR 1821.2-2(f). 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). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, supra; James E. Yates, supra; Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f).

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.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge