

MI-ORO MINING CO.

IBLA 81-694

Decided July 20, 1981

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented lode mining claims abandoned and void. I MC 19350 through I MC 19371.

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 an unpatented 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: Orville G. Divine, President, Mi-Oro Mining Company.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Mi-Oro Mining Company appeals from the Idaho State Office, Bureau of Land Management (BLM), decision dated April 30, 1981, which declared 22 unpatented lode mining claims 1/ abandoned and void because evidence of assessment work or notice of intent to hold, as required by the Federal 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.

1/ See Appendix.

Appellant alleges that the required proof of assessment work had been mailed to BLM from Soda Springs, Idaho, during September 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.

Despite appellant's 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 was prevented by Postal Service error from reaching the BLM office, that fact would not excuse appellant's failure to comply with the cited regulate. 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 mails 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

James L. Burski
Administrative Judge

APPENDIX

<u>IMC Number</u>	<u>Claim Name</u>
19350	Mi-Oro-Uno
19351	Mi-Oro-Dos
19352	Mi-Oro-Tres
19353	Mi-Oro-Quatro
19354	Mi-Oro-Cinco
19355	Mi-Oro-Sies
19356	Mi-Oro-Stet
19357	Mi-Oro-Ocho
19358	Mi-Oro-Nueve
19359	Mi-Oro-Deiz
19360	Mi-Oro-Once
19361	Mi-Oro-Doce
19362	Mi-Oro-Trece
19363	Mi-Oro-Catorce
19364	Mi-Oro-Decimoquinto
19365	Mi-Oro-Dieciseis
19366	Mi-Oro-Diecistete
19367	Mi-Oro-Dieceocho
19368	Mi-Oro-Dieceneuve
19369	Mi-Oro-Veinte
19370	Mi-Oro-Veinteuno
19371	Mi-Oro-Veintedos