

ANDREW KASAMIS

IBLA 81-739

Decided July 30, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented lode mining claims abandoned and void. CA MC 30380 through CA MC 30382.

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 after 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 located. 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: Andrew Kasamis, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Andrew Kasamis appeals from the California State Office, Bureau of Land Management (BLM), decision dated May 7, 1981, which declared unpatented Lead Silver Special #1, #2, and #3 lode mining claims, CA MC 30380 through CA MC 30382, abandoned and void because evidence of assessment work or notice of intent to hold the claims had not been filed with BLM on or before December 30, 1980, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Appellant alleges that the assessment work for the subject claims was timely performed and recorded in Inyo County, California, records in September 1980. A copy of the recorded instrument was allegedly sent to BLM along with proofs of labor for a large number of other claims. It is asserted that the proofs of labor for these claims must have been lost or misplaced by BLM.

BLM asserts that it has checked and rechecked without finding any record of the alleged proofs of labor.

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

Notwithstanding appellant's statement that the documents were 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 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 appellant's 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 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

C. Randall Grant, Jr.
Administrative Judge

