

JEROME F. BROWN

IBLA 81-696

Decided August 3, 1981

Appeal from decision of the California State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. CA MC 38374.

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: Jerome F. Brown, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Jerome F. Brown 1/ has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated May 14, 1981, which declared the unpatented Ha Ha (a.k.a. Little Jackie) placer mining claim abandoned and void for failure to file timely evidence of annual assessment work or a notice of intent to hold for calendar year 1980 with BLM on or before December 30, 1980.

1/ Jerome F. Brown has appealed in this case as the current owner of the Ha Ha claim by virtue of a quitclaim deed executed by Ms. Nalani Seydel Feb. 27, 1981.

The essence of appellant's argument is that he presumed that Nalani Seydel, the previous owner of the claim, had made a proper filing with BLM of the evidence of the assessment work for the year 1980 inasmuch as Ms. Seydel had carefully explained to him the need for filing such proof both in Siskiyou County and with BLM when she gave him the quitclaim deed to the mining claim.

The record includes a letter from Seydel received by BLM on May 22, 1981, which states that on the same day that she received her proof of labor she made a special trip to Yreka, California, to record the proof of labor with the county, and sent a copy of the proof of labor to BLM immediately after recording with the county. Attached to Seydel's letter was a copy of the proof of labor which shows it had been recorded in the Siskiyou County, California, recorder's office August 18, 1980.

Appellant suggests that BLM could have made an error in that there appears to be two mining claims recorded under the name "Ha Ha" in the area where his claim is situated, and possibly BLM misfiled the proof of labor assertedly sent by Seydel.

BLM has reported that it has checked and cross-checked its records and has not been able to find any indication that a proof of labor was received from Seydel or anyone else for the year 1980 for the Ha Ha claim.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and its implementing regulations, 43 CFR 3833.1-2, 3833.2-1(a), and 3833.4, require that location notices of claims on Federal lands and evidence of annual assessment work be filed in the proper BLM office within specified time limits. For claims located before October 21, 1976, the required instruments must be filed on or before October 22, 1979, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed. Evidence of assessment work for each assessment year or notice of intention to hold for unpatented mining claims must be filed by December 30 of each year thereafter. 43 U.S.C. § 1744(a) (1976); 43 CFR 3833.2-1(a). The filing of such instruments with the State or county does not satisfy this requirement.

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 a timely mailed instrument was prevented by postal service error from reaching the BLM office, that fact would not excuse the claimant'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). This 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 documents. 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 received by BLM. Merely placing it in the mails does not constitute filing with BLM. 43 CFR 1821.2-2(f).

Appellant has indicated that he has relocated the subject mining claim. BLM has reported that the new claim is recorded under serial number CA MC 89730.

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

