

ROBERT W. SOEHNER

IBLA 81-827

Decided August 3, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. CA MC 58894.

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: Robert W. Soehner, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Robert W. Soehner appeals from the California State Office, Bureau of Land Management (BLM), decision dated June 17, 1981, which declared the unpatented Rio Viejo placer mining claim, CA MC 58894, 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. The instant claim was recorded with BLM on November 19, 1979.

Appellant alleges that the required proof of assessment work had been mailed to BLM in November 1980, and that if BLM did not receive the document, it was lost by the Postal Service.

BLM reports that it received proofs of labor for other unpatented mining claims of this appellant, but there is no record of a proof of labor for this claim.

[1] Section 314 of FLPMA, supra, and the implementing regulations, 43 CFR 3833.2-1(a) and 3833.4, require that evidence of assessment work for each year be filed with the proper BLM office within the specified time limits, under penalty of a conclusive presumption that the claim has been abandoned if the document is not timely or properly filed for recordation with BLM.

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). 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 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

James L. Burski
Administrative Judge

