

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring mining claims abandoned and void. OR MC 24870 through OR MC 24903.

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.

2. Mining Claims: Assessment Work

Delivering evidence of annual assessment work after BLM's office hours on Dec. 30, 1980, to the home of a BLM employee does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1. Filing is accomplished only when a document is delivered to and received by the proper BLM office.

APPEARANCES: Linda Meyer, Chairman of the Board, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Linda Meyer, on behalf of M.D.C., Inc., appeals from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated

February 6, 1981, declaring the mining claims listed in the Appendix abandoned and void for failure to file timely evidence of annual assessment work pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulation, 43 CFR 3833.2-1.

All of the mining claims were located on or before October 21, 1976, with the exception of OR MC 024891, OR MC 024896, OR MC 024897, OR MC 024898, OR MC 024901, OR MC 024902, and OR MC 024903 which were located in October 1979. All claims were recorded with BLM on October 16, 1979.

BLM's decision explained the circumstances which led to the late filing as follows:

You encountered unusual problems in filing affidavits for these claims. At 10:00 a.m., on December 30, 1980, a United Air Lines representative at Fort Meyers, Florida called this office. He explained that while you had been scheduled to travel from Chicago, Illinois to Portland, Oregon to submit your affidavits before 4:15 p.m. you had been misdirected to Fort Meyers, Florida and would be unable to reach Portland until several hours after the office was closed.

The Chief, Branch of Records and Data Management advised you that there was no authority for receiving your affidavit filings after 4:15 p.m. and that he would consult with the Bureau's Washington Office for further advise [sic].

You called from Chicago at 2:15 p.m., and the Branch Chief reaffirmed the lack of authority to receive the instrument filings after office hours but stated that you could deliver the filings to his home after your arrival at Portland, Oregon. You delivered at the Branch Chief's home at 7:45 p.m., and departed from Portland to Chicago at about 10 p.m. to be with your hospitalized brother.

The Branch Chief delivered your filings to the office the following morning and they were stamped as received at 7:30 a.m., on December 31st to avoid violation of the prohibition established by section 1821.2-1(b) of the regulations: "Applications and other documents cannot be received for filing by the authorized officer out of office hours, nor elsewhere than at his office; nor can affidavits or proofs be taken by him except in the regular and public discharge of his ordinary duties."

BLM concluded that since the affidavit of assessment work filings were received on December 31, 1980, after the specified time for filing,

the claims are deemed abandoned by operation of the statute and the filings rejected.

In her statement of reasons, appellant explains that other governmental agencies will accept official documents which are postmarked as of midnight on the due date. She contends that the BLM regulation requiring a document to be filed in the BLM office on the due date is not fair to individuals who make a serious attempt to comply with the regulations. Appellant asserts that consideration should be given to the extenuating circumstances in this case.

[1] In accordance with section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), 43 CFR 3833.2-1(a) provides:

The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Thus, regarding the claims located prior to October 21, 1976, one or the other of the documents had to be filed on or before December 30, 1980.

Section 314(a)(1) and (2) of FLPMA, 43 U.S.C. § 1744(a)(1) and (2) (1976), and the pertinent regulation, 43 CFR 3833.2-1(c), require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with BLM evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. The seven claims located after October 21, 1976, were located in October 1979. Thus, the claimant was required to file one or the other of the documents prior to December 31, 1980, the year following the calendar year in which the claims were located, in order to comply with the law. Failure to file the necessary instruments within the time period prescribed conclusively constitutes abandonment of the claims and renders the claims void. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Charles M. Lowe, 55 IBLA 384 (1981); James C. Prebelich, 53 IBLA 34 (1981).

[2] Delivering the evidence of annual assessment work after BLM's office hours on December 30 to the home of BLM's Branch Chief does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1. See 43 CFR 1821.2-1(b).

Appellant argues that other agencies accept documents which are postmarked on the due date. Departmental regulations define "file" to mean "being received and date stamped by the proper BLM Office." 43 CFR

3833.1-2(a). Filing is accomplished only when a document is delivered to and received by the proper BLM office. 43 CFR 1821.2-2(f). 1/

While we appreciate appellant's situation and the unusual efforts made to file the documents, this Board has no authority to excuse lack of compliance with the statute or to afford relief from statutory consequences. Western Mining Council v. Watt, 643 F.2d 618, 628 (9th Cir. 1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); Charles M. Lowe, *supra*. This is true even if the filing is only 1 day late. Melvin Darby, 56 IBLA 41 (1981); *see also* John Plutt, Jr., 53 IBLA 313, 318 (1981) (Administrative Judge Burski concurring).

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.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Douglas E. Henriques
Administrative Judge

1/ 43 CFR 1821.2-2(d) provides:

"Any document required or permitted to be filed under the regulations of this chapter, which is received in the proper office, either in the mail or by personal delivery when the office is not open to the public, shall be deemed to be filed as of the day and hour the office next opens to the public."

APPENDIX

<u>Serial No.</u>	<u>Claim Name</u>	<u>Date of Location</u>
OR MC 024870	Eagle	October 4, 1952
OR MC 024871	Newport	July 1, 1952
OR MC 024872	Gold Coin No. 1	July 25, 1969
OR MC 024873	Gold Coin No. 2	July 25, 1969
OR MC 024874	Gold Coin No. 3	July 25, 1969
OR MC 024875	Gold Coin No. 4	July 25, 1969
OR MC 024876	Gold Coin No. 5	July 25, 1969
OR MC 024877	Mammoth Fraction	November 21, 1964
OR MC 024878	JO, R.	May 3, 1968
OR MC 024879	Edith R.	May 3, 1968
OR MC 024880	Gladys P.	May 3, 1968
OR MC 024881	Edith R. Fraction	August 15, 1968
OR MC 024882	Audrey M.	May 10, 1968
OR MC 024883	Jumbo Lead	July 16, 1956
OR MC 024884	Copper King	July 16, 1956
OR MC 024885	Jumbo #1	August 27, 1966
OR MC 024886	Jumbo #2	August 27, 1966
OR MC 024887	Jumbo #3	August 26, 1966
OR MC 024888	Jumbo #4	August 26, 1966
OR MC 024889	Jumbo #5	August 25, 1966
OR MC 024890	Jumbo Fraction #6	August 25, 1966
OR MC 024891	Jumbo Fraction #7	October 4, 1979
OR MC 024892	Comet Fraction (Amended June 10, 1930)	January 1, 1910
OR MC 024893	Hidden Treasure Fraction	February 8, 1924
OR MC 024894	Hidden Treasure (Amended Feb. 8, 1924)	January 2, 1911
OR MC 024895	Hidden Treasure No. 2 (Amended Feb. 8, 1924)	March 27, 1911
OR MC 024896	Hidden Treasure No. 3	October 10, 1979
OR MC 024897	Hidden Treasure No. 4	October 11, 1979
OR MC 024898	Hidden Treasure No. 5	October 11, 1979
OR MC 024899	Treasure Chest	November 11, 1964
OR MC 024900	Hidden Gold	November 11, 1964
OR MC 024901	Hidden Gold #2	October 12, 1979
OR MC 024902	Hidden Gold #3	October 13, 1979
OR MC 024903	Hidden Gold #4	October 13, 1979

