

Editor's note: appealed - stipulated dismissal with prejudice, Civ.No. 81-1356 (D.Idaho Apr. 25, 1986)

PHILIP CRAMER

IBLA 81-923

Decided September 10, 1981

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 29221 through I MC 29231.

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 before October 21, 1976, must file in the proper BLM office 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 such notice or evidence was first filed 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: Philip Cramer, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Philip Cramer appeals the July 10, 1981, decision of the Idaho State Office, Bureau of Land Management (BLM), which declared the

unpatented Belle Stoddard, Western Star, Ruby, White Rat, Portland, Home Fraction, Marjorie, Roosevelt, Mary Ann, Home, and Ruth Ann lode mining claims, I MC 29221 through I MC 29231, 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 43 CFR 3833.2-1, implementing section 314 of the Federal Land Policy and Management Act of 1976, (FLPMA), 43 U.S.C. § 1744 (1976).

Appellant states that the proof of labor was filed with the county recorder of Owyhee County, Idaho, on June 30, 1980, and alleges that photocopies of the recorded instruments were mailed to BLM in September 1980, to meet an October 21 deadline. Copies of the recorded proofs of labor as recorded in Owyhee County June 30, 1980, were submitted with the appeal. Appellant states that he has performed the annual assessment work each year for the past 25 years he has held these claims.

[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 assessment year be filed in the proper BLM office on or before December 30 of each year following the calendar year in which evidence of assessment work was first filed with BLM, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed for recordation with BLM.

Despite 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). Thus, even if the documents had been mailed and an error by the postal service prevented them 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, 48 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 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 delivered to and received by the proper BLM office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f).

This Board has no authority to excuse lack of compliance with the statutes or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Appellant may wish to consult with BLM about the possibility of relocating the claims.

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

Anne Poindexter Lewis
Administrative Judge

