

Appeal from decision of California State Office, Bureau of Land Management, declaring placer mining claim abandoned and void. CA MC 16377.

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

The filing of evidence of annual assessment work in the county recording office or any office other than the proper BLM office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

APPEARANCES: Michael J. Mealue, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Michael J. Mealue has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated March 4, 1981, declaring the Mealue Mine placer mining claim abandoned and void for

failure to file timely evidence of annual assessment work or a notice of intention to hold the claim pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR Subpart 3833.

Appellant's mining claim was located on August 4, 1978, and filed for recordation with BLM on October 20, 1978, along with proof of labor for the 1978 assessment year. The claim was located for 20 acres of land situated in secs. 26 and 35, T. 16 N., R. 1 E., Humboldt meridian, Del Norte County, California. On March 6, 1979, appellant filed an "amended location" indicating that the claim was located for 20 acres of land situated in sec. 35, T. 17 N., R. 1 E., Humboldt meridian, Del Norte County, California. ^{1/} No further proof of labor for the claim was filed with BLM by appellant prior to the issuance of the March 4, 1981, decision.

In his statement of reasons for appeal, appellant contends that he filed a proof of labor for the 1979 assessment year with the county and that the failure to file with BLM was an "oversight." Appellant explains that while working the claim during the summer of 1979, he was beset by adverse claimants. He submits a copy of his 1979 "Proof of Labor" with the appeal.

[1, 2] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (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 claim. Failure to file the required instruments is deemed conclusively to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

The subject claim was located in calendar year 1978. Thus, one or the other of the documents had to be filed prior to December 31, 1979, the year following the calendar year in which the claim was located. The statute requires that it be filed "in the office of the Bureau designated by the Secretary." 43 U.S.C. § 1744(a)(2) (1976). Filing in the county recording office will not satisfy the filing requirement of the statute. See e.g., Omco, Inc., 55 IBLA 77 (1981).

^{1/} An amended location notice generally relates back, where no adverse rights have intervened, to the date of the original location. R. Gail Tibbetts, 43 IBLA 210, 217 (1979).

When appellant failed to file timely either an affidavit of assessment work or notice of intention to hold, BLM properly held the claims to have been abandoned and declared them void. See Robert R. Eisenman, 50 IBLA 145 (1980), and cases cited therein. The Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

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:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge.

