

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring mining claims abandoned and void. I MC 15274 through I MC 15277.

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. 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

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the evidence is actually received by the proper BLM office before such date.

APPEARANCES: Ben Hester, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Ben Hester has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated January 16, 1981, declaring the B.P.E. and B.P.E. No. 2 through B.P.E. No. 4 mining claims, I MC 15274 through I MC 15277, abandoned and void for failure to file evidence of annual assessment work or notices of intention to hold the claims on or before December 30, 1980, 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 claims were located prior to October 21, 1976, and filed for recordation with BLM on July 18, 1979. The record indicates that on January 5, 1981, appellant filed what purports to be evidence of annual assessment work for the subject claims. The document is a letter, dated December 27, 1980, which states: "Dug out one old mine tunnel[;] Built about 300 ft. of road[;] Some trenching."

In his statement of reasons for appeal, appellant states that evidence of annual assessment work "was sent on 12-27-80, [but due to the slowness of the mails] you did not receive until 1-5-81." Appellant submits a copy of an "Affidavit of Assessment Work" filed with the county recording office on September 25, 1980, "for the year ending July 1, 1980."

[1] The owner of an unpatented mining claim, located prior to October 21, 1976, must file with the proper BLM office by October 22, 1979, and on or before December 30 of each calendar year thereafter, evidence of annual assessment work or a notice of intention to hold the claim. 43 U.S.C. § 1744(a) (1976); 43 CFR 3833.2-1(a). Failure to file the required instrument 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).

[2] The mailing of a notice of intention to hold or evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the letter is actually received by the proper BLM office before such date. The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979); Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). Moreover, accomplishment of a proper filing of evidence of assessment work with the county recorder's office does not relieve a claimant from the necessity of filing with BLM. Dave R. Newman, 57 IBLA 23 (1981).

In the absence of evidence that BLM did receive timely either evidence of annual assessment work or notices of intention to hold the claims, BLM properly declared the claims abandoned and void. 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); see Western Mining Council v. Watt, 643 F.2d 618, 628 (9th Cir. 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.

C. Randall Grant, Jr.

Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

