

ALBERT FOUCHE  
JAMES ULBERG

IBLA 81-559

Decided October 6, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring lode mining claims abandoned and void. CA MC 58551 and CA MC 58552.

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.

APPEARANCES: Albert Fouche, pro se, and for appellant James Ulberg.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Albert Fouche and James Ulberg have appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated March 26, 1981, declaring the IN-KA-PAH #1 and #2 lode mining claims, CA MC 58551 and CA MC 58552, abandoned and void for failure to file timely evidence of annual assessment work or notices of intention to hold the claims 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.

Appellants' mining claims were located August 14, 1979, and filed for recordation with BLM on October 30, 1979. On January 19, 1981, BLM received "Proof of Annual Labor" for the two claims for the 1980 assessment year.

In the statement of reasons for appeal, appellant Fouche explains that the proof of labor was filed with the San Bernardino County Recorder and that it was returned unrecorded on December 9, 1980, because it was not notarized. The proof of labor was resubmitted to the county recording office; however, it was not recorded until December 22, 1980, and not returned to appellants until January 8, 1981. Appellant Fouche stated that "[i]t was always my full understanding that all documents must be recorded before they become legal and accepted by the Bureau of Land Management."

[1] 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 timely 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).

When appellants failed to file timely either evidence of annual assessment work or notices of intention to hold the claims, BLM properly held the claims to have been abandoned and declared them void. Robert R. Eisenman, 50 IBLA 145 (1980). Despite appellants' asserted good faith efforts to comply with the filing requirements, the Board is without 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). In addition, appellant Fouche was mistaken in his belief that the assessment work had to be recorded in the county before it would be accepted by BLM. The regulation, 43 CFR 3833.2-2(a), requires only that the evidence of assessment work be an exact legible reproduction or duplicate of the document "which was or will be filed" for record in the local jurisdiction. (Emphasis added.)

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

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Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Douglas E. Henriques  
Administrative Judge

