

RALPH A. PLUMB

IBLA 81-571

Decided October 6, 1981

Appeal from decision of the California State Office, Bureau of Land Management, which declared mining claim CA MC 39342 abandoned and void.

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: Abandonment--Mining Claims: Recordation

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management Office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

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 a notice of intention to hold a mining claim before the due date is not sufficient to comply with the requirements of the statute unless the notice is actually received by the proper BLM office before such date.

APPEARANCES: Ralph A. Plumb, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Ralph A. Plumb appeals from decision of the California State Office, Bureau of Land Management (BLM), dated March 24, 1981, declaring the Opher Placer No. 2 mining claim (CA MC 39342) abandoned and void because of his failure to comply with recording requirements under the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) and (c) (1976), and the regulations in 43 CFR Subpart 3833.

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), and the pertinent regulation, 43 CFR 3833.2-1(a), require that the owner of an unpatented mining claim located prior to October 21, 1976, shall, on or before October 22, 1979, file with BLM evidence of annual assessment work performed during the previous assessment year or, alternatively, file a notice of intention to hold the mining 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 record shows that evidence of assessment work for the period September 1, 1978, through September 1, 1979, was not received by BLM on or before October 22, 1979, as required by FLPMA, supra.

When appellant failed to file an affidavit of assessment work or a notice of his intention to hold the claim, BLM properly held the claim to have been abandoned and declared it void. Don Sagmoen, 50 IBLA 84 (1980); Victor DeLange, 48 IBLA 222 (1980); Juan Munoz, 39 IBLA 72 (1979); and Public Service Company of Oklahoma, 38 IBLA 193 (1978).

[2] In his statement of reasons appellant asserts that he did in fact mail the required evidence of assessment work but that the form went astray in the mail and did not reach the BLM office.

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. William J. Kroetch, 57 IBLA 29 (1981); 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).

This Board has no authority to excuse noncompliance. 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.

Edward W. Stuebing

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

