

Appeal from decision of the Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 25971 through I MC 25973.

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: Abandonment--Mining Claims: Assessment Work

Where mining claimants assert on appeal that evidence of assessment work required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1(a) was timely mailed to the Bureau of Land Management (BLM), but there exists no record of BLM's receipt of the documents, the Board must find that there was not a timely filing and that the claims are declared abandoned and void. Claimants who chose the manner of delivery must bear the consequences of nondelivery.

APPEARANCES: John Evanoff, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

John Evanoff appeals from the August 14, 1981, decision of the Idaho State Office, Bureau of Land Management (BLM), which declared the unpatented Dump #1 and Brown Bear Nos. 1 and 2 mining claims, I MC 25971 through I MC 25973, abandoned and void for failure to file evidence of assessment work or notice of intention to hold claim prior to December 31, 1980, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and regulation 43 CFR 3833.2-1. The Dump #1 claim was located on July 19, 1973. The Brown Bear claims were located on September 2, 1979. On October 4, 1979, appellant filed with BLM the requisite notices of location. He also filed at the same time evidence of annual assessment work for the Dump #1 claim.

In his statement of reasons appellant states:

The 1980 filing was made September 9, 1980 as per our record, a copy of which is enclosed. We would not have filed with the State of Idaho and not have sent you a copy. The obvious answer to the problem is that the filings were misplaced by the post office or were inadvertently misplaced in your office. Had we not filed our 1980 reports we certainly would not have filed the 1981 report.

[1] Section 314(a)(1) and (2) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a)(1) and (2) (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 mining claim. In addition, those statutory sections and 43 CFR 3833.2-1(a) require that the owner of an unpatented mining claim located on or before October 21, 1976, must file the required instrument with BLM on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of recording, whichever date is sooner. Failure to file the required instrument is conclusively deemed to constitute an abandonment of the mining claims under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). Appellant satisfied the requirement by filing evidence of assessment for the Dump #1 claim on October 4, 1979; however, one or the other of the documents also had to be filed prior to December 31, 1980, for the three claims in order to satisfy the requirements of the law.

When appellant failed to file timely either an affidavit of assessment work or a notice of intention to hold these claims, BLM properly held the claims to have been abandoned and declared them void. Robert R. Eisenman, 50 IBLA 145 (1980); Geomet Exploration, Inc., 47 IBLA 135 (1980); Northwest Mining & Mercantile, Inc., 46 IBLA 360

(1980); Willene Minnier, 45 IBLA 1 (1980); Juan Munoz, 39 IBLA 72 (1979); Donald H. Little, 37 IBLA 1 (1978). The procedures established pursuant to section 314 of FLPMA, *supra*, are mandatory and may not be waived. Lo Lo M. Cosby, 46 IBLA 363 (1980); Donald H. Little, *supra*.

[2] It is unfortunate that the documents may have been lost in the mail, but this circumstance will not excuse the late filing. This Board has repeatedly held that one who selects a means of delivering a document must bear the responsibility for any consequential delay or failure of delivery by that means. Mr. and Mrs. Jack White, 53 IBLA 267 (1981); Henry D. Friedman, 49 IBLA 97 (1980), and cases cited therein.

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

Bruce R. Harris
Administrative Judge

