

LOUIS E. SHARP

IBLA 81-360

Decided October 28, 1981

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring placer mining claims abandoned and void. I MC 42598 through I MC 42604.

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: Louis E. Sharp, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Louis E. Sharp has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated February 12, 1981, declaring the Betty #1 through Betty #3 and the Diane #1 through Diane #4 placer mining claims, I MC 42598 through I MC 42604, abandoned and void for failure to file on or before December 30, 1980, 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.

Appellant's mining claims were located in 1973 and 1974 and filed for recordation with BLM on October 22, 1979. On October 22, 1979, appellant also filed proofs of labor with respect to the subject mining claims for work performed "during the year ending Aug. 8, 1979." Proofs of labor for work performed "during the year ending Aug. 20, 1980" were filed with BLM on February 20, 1981.

In his statement of reasons for appeal, appellant contends that on August 25, 1980, he filed his proofs of labor for the 1980 assessment year with the county recording office and mailed a copy to BLM. He argues that the copy must have been lost or waylaid in the mails "thru no fault of my own."

[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 performed during the preceding assessment year 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 document is actually received by the proper BLM office by 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 T. Best, 56 IBLA 234 (1981); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (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 with the county recording office does not relieve a claimant from 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. See M.D.C., Inc., 57 IBLA 35 (1981); Dave R. Newman, *supra*. 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:

Gail M. Frazier
Administrative Judge

Edward W. Stuebing
Administrative Judge

