

EDWIN STRIEGEL
MARIE A. O'BRIEN

IBLA 82-78

Decided December 4, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 57284 through CA MC 57286.

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: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Assessment Work -- Mining Claims: Assessment Work

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, i.e., on or after Jan. 1 and on or before Dec. 30.

APPEARANCES: Edwin Striegel and Marie A. O'Brien, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Edwin Striegel and Marie A. O'Brien appeal the October 7, 1981, decision of the California State Office, Bureau of Land Management (BLM), which declared the unpatented Halfway and Twin Firs placer mining claims, and the Giveaway #1 and #2 lode mining claim, CA MC 57284 through CA MC 57286, abandoned and void because no evidence of annual assessment work or notice of intention to hold the claims was filed with BLM on or before December 30, 1980, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

Appellants assert that assessment work was performed for the assessment year ending September 1, 1980, and submitted a copy of the proof of labor recorded September 24, 1980, in the records of Plumas County, California. Appellants also allege that a copy of the proof of labor had been mailed to BLM after receiving it from the county recorder in September 1980. They suggest a BLM clerical error or misfiling caused the present confusion.

[1] Section 314 of FLPMA requires the owner of unpatented mining claims located before October 21, 1976, to file in the proper office of BLM within 3 years after approval of the Act (i.e., on or before October 22, 1979), a copy of the official record of the location notice and evidence of assessment work performed on or for the benefit of the claims or a notice of intention to hold the claims. In addition, prior to December 31 of each year thereafter, the owner of the claims is required to file in the office where the location notice is recorded evidence of assessment work or a notice of intention to hold the claims, and to file a copy of the official record of the instrument filed, or which will be filed, in the county with the proper office of BLM. 43 U.S.C. § 1744(a) (1976).

The record shows that on October 22, 1979, appellants filed with BLM evidence of the existence of the subject mining claims, but no copy of any location notice except for the Halfway placer mining claim, and affidavits of assessment work for the assessment year ending September 1, 1979. There is no evidence in the record that any proof of labor or notice of intention to hold the claims was filed with BLM during calendar year 1980.

The Board has held that the statutory requirement of filing proof of labor or notice of intention to hold means that one or the other instrument must be filed for record in the appropriate county where the location notice is of record, and a copy must also be filed in the proper BLM office within each calendar year, i.e., on or after January 1 and on or before December 30. James V. Joyce (On Reconsideration), 56 IBLA 327, 331 (1981).

In this case, no proof of assessment work or notice of intention to hold was filed with BLM during calendar year 1980. Appellants' failure to comply with the statutory requirements thus conclusively constituted abandonment of the claims. 43 CFR 3833.4(a). Congress imposed that consequence in enacting the statute. 43 U.S.C. § 1744(c) (1976). The responsibility for complying with the recordation requirements of FLPMA rests with appellants.

The pertinent regulation, 43 CFR 3833.1-2, provides that "file" means "being received and date stamped by the proper BLM office." Thus, even if the instruments were mailed and delivery to BLM was prevented by Postal Service error, that fact would not excuse appellants' failure to comply with the cited statutory and regulatory requirements. Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979). This Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, *supra*; James E. Yates, *supra*. Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

Accordingly, 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

Anne Poindexter Lewis
Administrative Judge

