

NED SCHAAF

IBLA 81-549

Decided February 8, 1982

Appeal from decision of California State Office, Bureau of Land Management, declaring mining claim abandoned and void. CA MC 42387.

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 the claim, or evidence of performance of annual assessment work on it, 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.

APPEARANCES: Ned Schaaf, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Ned Schaaf has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated March 20, 1981, declaring the O and C Quartz lode mining claim, CA MC 42387, abandoned and void for failure to file evidence of annual assessment work or a notice of intention to hold the claim on or before December 30, 1980, 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 claim was located in September 1966 and filed for recordation with BLM on September 18, 1979. Proof of labor for the

1979 assessment year was also filed with BLM on September 18, 1979. No proof of assessment work or notice of intention to hold the claim was received by BLM during calendar year 1980. On January 2, 1981, BLM received a "Proof of Labor Upon Mining Claim" for the 1980 assessment year, along with a cover letter dated December 30, 1980.

In his statement of reasons for appeal, appellant states: "Our filing of proof of labor was done at such a time as to reasonably expect timely reception by your office. In retrospect, it is obvious we were asking too much of our postal system, but this did not appear to be the case last December." Appellant also asserts that granting his appeal will promote use of the public lands and will not subvert the aims of the regulations for mining claim recordation.

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), specifies that the owner of an unpatented mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the claim with BLM. See 43 CFR 3833.2-1(a).

The filing requirements of section 314 of FLPMA are mandatory, not discretionary. Failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Fahey Group Mines, Inc., 58 IBLA 88 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements of FLPMA rests with appellant. This Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. Lynn Keith, *supra*; see Western Mining Council v. Watt, 643 F.2d 618, 628 (9th Cir. 1981).

In this case, appellant's evidence of annual assessment work was not received until January 2, 1981. The deadline for filing evidence of assessment work performed during the 1980 assessment year was December 30, 1980, *i.e.*, "prior to December 31." 43 U.S.C. § 1744(a) (1976). The fact that appellant appears to have mailed his proof of labor on December 30, 1980, does not change the result. 1/ Departmental regulations provide that filing is accomplished when a document

1/ Even assuming that the document was actually posted prior to Dec. 30, allowing sufficient time to be received by BLM on Dec. 30, the result is unchanged. Appellant cannot take advantage of any delay in delivery occasioned by the Postal Service. The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must bear the consequences of loss or untimely delivery of his filing. William J. Kroetch, 57 IBLA 29 (1981), and cases cited therein.

is delivered to and received by the proper office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f); see 43 CFR 3833.1-2(a). In the absence of evidence that appellant filed timely his evidence of annual assessment work or notice of intention to hold the claim, BLM properly declared the mining claim abandoned and void. Major G. Atkins, 60 IBLA 284 (1981); Elizabeth Francis, 60 IBLA 6 (1981).

Therefore, pursuant to the authority delegated on 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:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

