

Appeal from decision of California State Office, Bureau of Land Management, declaring Obispo Lode mining claim CA MC 36689 abandoned and void.

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: Robert S. Verri, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Robert S. Verri appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated March 24, 1981, declaring the Obispo Lode mining claim abandoned and void for failure to file evidence of assessment work or notice of intention to hold the claim as required by 43 CFR 3833.2-1,

issued pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). BLM stated that the evidence of assessment work notice was due in the BLM office on or before December 30, 1980. BLM added that no notice of location had been filed.

On appeal appellant states that he does not wish to abandon his mining claim. Appellant alleges that he mailed his proof of labor for the assessment year ending September 1, 1980, in mid-November 1980 to the California State Office, and enclosed a copy of this document with his appeal.

On September 17, 1979, appellant filed a letter with BLM in which he described the boundaries of his claim, and stated that the claim was originally located on August 14, 1928, and recorded on August 27, 1928.

[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 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), 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 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. 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).

In absence of evidence that BLM did receive timely either evidence of annual assessment work or a notice of intention to hold the claim, BLM properly declared the claim abandoned and void. Marvin G. Stuck, 60 IBLA 197 (1981); M.D.C., Inc., 57 IBLA 35 (1981). 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), cert. denied, 50 U.S.L.W. 3369 (Nov. 10, 1981).

The deadline for filing appellant's notice of location was October 22, 1979. 43 CFR 3833.1-2(a). There is no evidence in the record that appellant has ever filed a copy of the original notice of location with respect to the mining claim. Failure to file timely a notice of location must result in a mining claim being declared abandoned and void. 43 U.S.C. § 1744(b) and (c) (1976); 43 CFR 3833.1-2, and 3833.4(a); Robert G. Milton, 60 IBLA 104 (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.

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Gail M. Frazier  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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James L. Burski  
Administrative Judge

