

ELMER F. BREWSTER  
STEVE FOSTER

IBLA 82-527

Decided March 30, 1982

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring certain mining claims abandoned and void. N MC 120292 through N MC 120299.

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: Abandonment--Mining Claims: Recordation--Mistakes

One choosing the means of a document's delivery must accept responsibility for and bear the consequences of delay or nondelivery resulting from that method.

APPEARANCES: Elmer F. Brewster and Steve Foster, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

[1] By decision of February 17, 1982, the Bureau of Land Management's Nevada State Office (BLM) declared certain mining claims 1/ owned

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1/ Blue Vein or Vain #1, #2, and #3 (N MC 120292, N MC 120293, and N MC 120294) were located Feb. 1, 1951. Blue Vein or Vain #4 and #5 (N MC 120295 and N MC 120296) were located Feb. 28, 1975. Lead Box #1, #2, and #3 (N MC 120297, N MC 120298, and N MC 120299) were located Apr. 3, 1975.

by Elmer F. Brewster and Steve Foster abandoned and void. The claim owners appeal. BLM's decision was based upon the failure by the claim owners to file by December 30, 1981, for that calendar year, either a notice of intention to hold the mining claims or proof of labor performed thereon, as required by section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2. That failure produces the statutory conclusive presumption of the claims' abandonment and renders the claims void. 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The statute requires the recordation of those mining claim documents with BLM in each calendar year, *i.e.*, on or after January 1 and on or before December 30. James V. Joyce (On Reconsideration), 56 IBLA 327 (1981).

Appellants assert that they mailed the documents on December 26, 1981, and they forward supporting statements from two person who say they saw Brewster mail the documents on that date. Appellants concede that the documents "could have been late due to the holiday season." But they assert that the error must have been with BLM because the postmark on the documents was December 26, 1981, allowing plenty of time for their delivery. BLM date stamped the documents as received on January 4, 1982, and according to 43 CFR 1821.2-2 and 3833.1-2, that must be considered the date of filing.

[2] This Board has consistently held that a mining claimant has the responsibility of timely putting into BLM's hands the documents to be filed. James B. Pauley, 53 IBLA 1 (1981). Any failure of the United States postal system to transmit the filings to BLM by the filing deadline does not excuse appellants' noncompliance with FLPMA and the regulations. One choosing the means of a document's delivery must accept responsibility for and bear the consequences of delay or nondelivery resulting from that method. *Id.*

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 is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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C. Randall Grant, Jr.  
Administrative Judge

