

TAKO MINING

IBLA 82-587

Decided April 9, 1982

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 46820 through A MC 46828.

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: 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 3833.2-1, in the proper office of the Bureau of Land Management within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Assessment Work

The mailing of evidence of annual assessment work after the due date does not constitute compliance with the requirements of the statute.

APPEARANCES: Samuel Riley, agent for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Samuel Riley, agent for Tako Mining, has appealed from the February 22, 1982, decision of the Arizona State Office, Bureau of Land Management (BLM), which declared the unpatented Tako Nos. 1 through 3, and Nos. 5 through 10 lode mining claims, A MC 46820 through A MC 46828, abandoned and void because no evidence of 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 3833.2-1.

Appellant's mining claims were located in 1964, 1968, and 1971. The notices of location were filed with BLM July 6, 1979. On January 2, 1981, BLM received the proof of labor for the 1980 calendar year.

Appellant concedes the proof of labor was not received by BLM by December 30, 1980, but he cannot explain the cause of the late filing. He asserts that he is operating the claims and is producing ore therefrom.

[1] Section 314, FLPMA, requires the owner of an unpatented mining claim located prior to October 21, 1976, to file with BLM, on or before December 30 of each calendar year after recordation of the claim with BLM, a notice of intent to hold the claim or proof of assessment work for the current assessment year. Failure to so file is statutorily considered abandonment of the claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4. See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

When appellant failed to file timely a notice of intent to hold or a proof of assessment work performed in 1980, BLM properly held the claims to have been abandoned and to be void. Robert E. Eisenman, 50 IBLA 145 (1980).

[2] The envelope containing the 1980 proof of labor bears a postmark of December 31, 1980. The mailing of a proof of labor or a notice of intention to hold after the due date does not constitute compliance with the requirements of the statute. 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 the filings. Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979); Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is only accomplished when a document is delivered to and received by the proper office of BLM. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

Where BLM did not 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. The Board has no authority to excuse lack of compliance with the statute or to afford any relief from the statutory consequences. Lynn Keith, *supra*.

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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Douglas E. Henriques  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Edward W. Stuebing  
Administrative Judge

