

CHARLES A. BEHNEY III

IBLA 82-593

Decided April 16, 1982

Appeal from decision of New Mexico State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. NM MC 88722.

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 after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the statutory consequence must be borne by the claimant.

APPEARANCES: Charles A. Behney III, pro se; Gayle E. Manges, Esq., Field Solicitor, Santa Fe, New Mexico, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Charles A. Behney III appeals the New Mexico State Office, Bureau of Land Management (BLM), decision of February 22, 1982, which declared the unpatented New York Mine lode mining claim, NM MC 88722, abandoned and void because evidence of assessment work or notice of intention to hold, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 had not been filed with BLM on or before December 30, 1981.

Appellant alleges that the required proof of assessment work had been timely and properly filed by being mailed to BLM 2 days prior to the deadline.

The proof of labor was mailed December 29, 1981, and was received by BLM December 31, 1981.

[1] Section 314 of FLPMA, supra, and the implementing regulations, 43 CFR 3833.2-1 and 3833.4, require that evidence of assessment work for each assessment year be filed in the proper office of BLM prior to December 31 of each calendar year, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely and properly filed for recordation.

Despite appellant's contention that the document was properly and timely filed by being mailed 2 days prior to the deadline, the regulations define "file" to mean "being received and date stamped by the proper BLM office," 43 CFR 1821.2-2(f), 43 CFR 3833.1-2(a). Thus, even if the mailing were prevented by Postal Service error from reaching the BLM office timely, that fact would not excuse appellant's failure to comply with the cited regulations and statute. Prudential Mining & Exploration, Inc., 60 IBLA 363 (1981); Philip Cramer, 57 IBLA 386 (1981). The 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); Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirement of the statute unless the document is actually received by the proper BLM office on or before such date. Marcin G. Stuck, 60 IBLA 197 (1981). Filing is accomplished only when a document is delivered to and received by the proper BLM office. 43 CFR 1821.2-2(f).

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.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

