

R. L. PATE, SR.

IBLA 82-637

Decided April 19, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, declaring unpatented lode mining claim abandoned and void. M MC 6184.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work of 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 because it was delayed in the mail, the statutory consequence must be borne by the claimant.

APPEARANCES: R. L. Pate, Sr., pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

R. L. Pate, Sr., appeals from the Montana State Office, Bureau of Land Management (BLM), decision dated February 22, 1982, which declared the unpatented Surprise lode mining claim, M MC 6184, abandoned and void because evidence of assessment work or a notice of intention to hold the claim, 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 his papers relative to this mining claim had been lost or stolen, and in his distress over their disappearances and his efforts to find or recover them, he overlooked sending his 1981 proof of

labor until too late. He thought he had until December 31 to file the proof with BLM. He transmitted the proof of labor from Great Falls, Montana, December 30, and it was received and date stamped by BLM December 31, 1981, at 8 a.m. He requests favorable consideration under the circumstances.

[1] Section 314 of FLPMA, and the implementing regulations, 43 CFR 3833.2-1(a), and 3833.4, require that evidence of assessment work for each year be filed in the proper BLM office on or before December 30 under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed for recordation.

Despite appellant's statement that the document was properly and timely mailed to be received by December 31, the statute clearly requires the filing to be accomplished prior to December 31. 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, the mailing on December 30 from Great Falls can not excuse appellant's failure to comply with the cited regulations. See Glenn D. Graham, 55 IBLA 39 (1981). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f). This Board has no authority to waive failure to comply with the statute. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (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.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

