

LLOYD J. OSBORN

IBLA 81-548

Decided May 6, 1982

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claims CA MC 3657 through CA MC 3660 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 Bureau of Land Management office before such date.

APPEARANCES: Lloyd J. Osborn, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Lloyd J. Osborn appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated April 1, 1981, declaring the Jay #1 through Jay #4 placer mining claims, CA MC 3657 through CA MC 3660, abandoned and void for failure to file either evidence of assessment work or notices of

intention to hold the claims by December 30, 1980, as required by 43 CFR 3833.2-1 and section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The claims were located on November 28, 1944, and recorded with BLM in 1977.

On appeal, appellant explains that he filed his proof of labor with the county and sent a copy to the BLM office. Appellant surmises that the copy was lost in the mail or by BLM. Appellant enclosed with his appeal a copy of the proof of labor filed with the county on August 12, 1980.

[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) (1976), 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. Robert S. Verri, 62 IBLA 291 (1982); Marvin G. Stuck, 60 IBLA 197 (1981). Filing is accomplished when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

In the absence of evidence that BLM did receive timely either evidence of annual assessment work or notice of intention to hold the claims, it properly declared the claims abandoned and void. Robert S. Verri, *supra*; Marvin G. Stuck, *supra*. 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, 102 S.Ct. 567 (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.

Gail M. Frazier
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

