

VESTER MARLER

IBLA 81-673

Decided May 12, 1982

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring Navajo lode mining claim N MC-119974 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 BLM office before such date.

APPEARANCES: Vester Marler, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Vester Marler appeals from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated April 27, 1981, declaring the Navajo lode mining claim N MC-119974, abandoned and void for failure to file either evidence of assessment work or a notice of intention to hold the claim by

December 30, 1980, as required by 43 CFR 3833.2, issued pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). ^{1/}

Appellant's claim was located on September 2, 1967. On October 18, 1979, he properly filed his notice of location, amended notice of location dated October 1, 1975, and proof of labor for the assessment year ending September 1, 1979, with BLM for recordation. Appellant made no filing in 1980, however, copies of proof of labor for the assessment year ending September 1, 1980, were received by BLM on January 6 and 7, 1981.

On appeal appellant states that he does not recall the exact date when he mailed his proof of labor, but he does remember that the letter he sent with the document was dated December 26, 1980. Appellant says that when he had not received a reply from BLM, he drove to Reno and filed a copy of his proof of labor with BLM on January 7, 1981. Appellant explains that he was later than he had intended in mailing the proof of labor because he had been ill. Appellant states that he has expended a considerable amount of money on the mine which demonstrates his intent to retain and work the mine.

[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 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. Golden Nonesuch Mining Corp., 61 IBLA 120 (1982); Glenn D. Graham, 55 IBLA 39 (1981). Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

In absence of evidence that BLM did 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. Glenn D. Graham, supra. While we appreciate the fact that appellant has been ill and has expended a considerable amount of money on the claim, the Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. See 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).

^{1/} Co-owner Irwin W. Rogers received a copy of the decision on Apr. 28, 1981, but did not exercise his right to appeal.

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:

James L. Burski
Administrative Judge

Bruce R. Harris,
Administrative Judge

