

H. BOWEN, JR.

IBLA 82-791

Decided June 2, 1982

Appeal from decision of Utah State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. U MC 132743 through U MC 132859.

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

Where a mining claimant submits a copy of a notice of intent to hold a mining claim to the BLM district office in Moab, Utah, on Dec. 30, 1981, he has not complied with 43 CFR 3833.2-1. Even though the instrument was submitted to the district office within the statutory period for such filings, the notice of intent has not been filed in the "proper BLM office," which is the BLM Utah State office in Salt Lake City, as expressly provided in 43 CFR 1821.2-1(d), and 43 CFR 3833.0-5(g). Where the required instrument is not received and date stamped by the proper BLM office during the statutory time period, the mining claim is properly deemed to be abandoned.

APPEARANCES: John E. Keogh, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

H. Bowen, Jr., appeals the Utah State Office (USO), Bureau of Land Management (BLM), decision of April 7, 1982, which declared the unpatented Dub Nos. 1 through 52, Roar Nos. 1 through 52, and Bart Nos. 1 through 13 lode mining claims, U MC 132743 through U MC 132859, abandoned and void because no proof of labor or notice of intention to hold the claims was filed

with USO on or before December 30, 1981, 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 states that he had been prevented from leaving town in order to hand deliver his notice of intention to hold the claims to USO on December 30, so he took the instrument to the BLM district office in Moab, Utah, on December 30, 1981, where it was stamped and then transmitted to USO. The instrument was received and date stamped by USO January 4, 1982.

The record indicates that the claims were located in January 1974. Copies of the notices of location were timely filed with USO in October 1979. A proof of labor was filed timely October 22, 1979. A notice of intention to hold the claims was filed with USO December 30, 1980. There is no indication that the 1980 notice of intention to hold was filed for record in Grand County, Utah, during the 1980 calendar year.

[1] Section 314 of FLPMA requires that a copy of the notice of location for mining claims located prior to October 21, 1976, be filed with the proper office of BLM within 3 years after October 21, 1976. For claims located prior to October 21, 1976, evidence of assessment work or a notice of intention to hold the claims had to be filed in the proper office of BLM within 3 years after October 21, 1976, and on or before December 30 of each calendar year thereafter. Each instrument filed with BLM also had to be filed for record in the local recording office having jurisdiction, in this case, the recorder for Grand County, Utah.

The "proper office of BLM" is defined in 43 CFR 3833.0-5(g) as the BLM office which has jurisdiction over the area in which the claim is located, as specified in 43 CFR 1821.2-1(d). This latter section states that the USO in Salt Lake City is the office having jurisdiction over public lands in the State of Utah. Thus, under 43 CFR 3833.1-2(a), appellant was required to have the instrument relating to his intention to hold the claims recorded in Grand County, Utah, and a copy of the recorded instrument delivered to, received by, and time stamped by the USO on or before December 30, 1981.

Appellant submitted his notice of intention to hold the claims to the BLM district office in Moab, Utah, rather than to USO in Salt Lake City as required by the regulations. Accordingly, the instrument may not be regarded as having been "filed" with BLM until actually received and date stamped by USO. The instrument was received and date stamped January 4, 1982, after the time period specified in the statute had expired. It is irrelevant that the instrument was tendered to the Moab District Office, as that office is without authority to accept filing for recordation of mining claims under FLPMA. The need to conduct business at the office having appropriate jurisdiction has long been recognized. Mathews v. Zane, 7 Wheat 164. 5 U.S. 244 (1822). See also Donald Jardine, 58 IBLA 49 (1981); C. F. Linn, 45 IBLA 156 (1980); Gretchen Capital, Ltd., 37 IBLA 392 (1978).

The responsibility is on the mining claimant to file the required information timely in the proper office of BLM. This Board has no authority to excuse noncompliance with the statute or to afford any relief from the statutory consequences. 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

