

CANYONLANDS URANIUM, INC.

IBLA 82-805

Decided June 23, 1982

Appeal from decision of Wyoming State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. W MC 175989 through W MC 176388.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claims -- 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 an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to December 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because of delay in mail delivery, the statutory consequence of abandonment must be borne by the claimant.

APPEARANCES: James L. Menlove, President, Canyonlands Uranium, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Canyonlands Uranium, Inc., appeals the Wyoming State Office, Bureau of Land Management (BLM), decision of April 27, 1982, which declared the unpatented Jim Nos. 1 through 400 lode mining claims, W MC 175989 through W MC 186388, abandoned and void because the affidavit of annual assessment work for 1981 was received January 4, 1982, and this did not satisfy the requirements of 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 it mailed affidavits of annual assessment work to the BLM State Offices in Utah, Colorado, and Wyoming at the same time. Only Wyoming states it did not receive the affidavit timely. Appellant argues that as the affidavit was received January 4, 1982, which is the first working day of the year, such receipt should be satisfactory.

[1] Section 314 of FLPMA requires that evidence of annual assessment work be filed both in the county where the location is recorded and in the proper office of BLM prior to December 31 of each calendar year, under the penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed both in the county and with BLM.

Despite appellant's statement that the affidavit was timely mailed, the regulations define "file" to mean "being received and date-stamped by the proper BLM office." 43 CFR 3833.1-2(a). Thus, even if the affidavit were mailed and an error by the Postal Service prevented it from being delivered to the BLM office timely, that fact does not excuse appellant's failure to comply with the statutory requirements. Edna L. Patterson, 64 IBLA 316 (1982); Regina McMahon, 56 IBLA 372 (1981); Glenn D. Graham, 55 IBLA 39 (1981). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of the filings. Regina McMahon, *supra*; Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). 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 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).

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

Bruce R. Harris  
Administrative Judge

