

E. DEL AND ASSOCIATES

IBLA 82-847

Decided June 29, 1982

Appeal from decision of the Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 75448 through A MC 75469.

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: 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 3833.2-1 in the proper office of the Bureau of Land Management within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: Debora Leffler, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

E. Del and Associates 1/ appeals the May 21, 1982, decision of the Arizona State Office, Bureau of Land Management (BLM), which declared the Golden Ray group 2/ of unpatented lode mining claims, A MC 75448 through A MC 75469, abandoned and void because no evidence of assessment work or notice of intent to hold the claims for 1981 was filed with BLM prior to December 31, 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. The decision indicated that evidence of assessment work was received, but not until January 11, 1982.

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1/ E. Del and Associates are purchasing the claims from Irv Schoenberg under a contract purchase agreement dated June 10, 1981.

2/ The names of the claims are Gold Baby, Golden Keystone, Golden Jewel, Amended Sunshine, Saddle, Lucky Star, Golden Poppy, John and Jerry, Golden Sheen, Golden Sparkel, Yellow Chief, Golden Gem, Golden Glow, Golden Crown, Golden Sun, Golden Rod, Golden Cross, Golden Light, Golden Gate, Golden Star, Carol, and Keystone.

The mining claims were located between 1940 and 1964. Copies of the notices of location and evidence of assessment work were filed with BLM on October 15, 1979.

In the statement of reasons, appellant asserts it mailed a copy of the evidence of assessment work to the Yuma County Recorder, Yuma, Arizona, in August 1981. The copy was returned unrecorded because it was considered to be illegible. A substitute copy of the proof was sent to Yuma County August 27, 1981, but was not recorded until December 22, 1981. Upon receipt of the recorded instrument, appellant immediately transmitted a copy to BLM.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located prior to October 21, 1976, to file with BLM on or before December 30 of each calendar year after recordation, a notice of intent to hold the claim or evidence of assessment work. Failure to so file is statutorily considered abandonment of the claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a). Tako Mining, 63 IBLA 206 (1982); see Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

With respect to appellant's claim that it was impeded in complying with the requirements of FLPMA because of dilatory action by the Yuma County Recorder, we point out that 43 CFR 3833.2-2(a) requires only that the document filed with BLM be a copy of that which was or will be filed with the county. Appellant need not have waited to receive the recorded copy of the proof of labor, but could have sent a copy of the document to BLM simultaneously.

When BLM did not receive timely evidence of assessment work performed on the claims, the claims were properly declared abandoned and void in accordance with FLPMA and 43 CFR 3833.2. Carl W. St. Claire, 63 IBLA 125 (1982). This Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, *supra*.

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

