

**Editor's note: Reconsideration denied by order dated Sept. 24, 1982**

A. L. STUTENROTH

IBLA 82-961

Decided September 1, 1982

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 69405 through A MC 69407, A MC 73140, and A MC 73141.

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

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 on or before Dec. 30 of each calendar year. The evidence of assessment work or the notice of intention to hold the claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976, or those in 43 CFR 3833.2-1.

APPEARANCES: A. L. Stutenroth, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

A. L. Stutenroth appeals the Arizona State Office, Bureau of Land Management (BLM), decision of May 18, 1982, which declared the unpatented Relocated Lone Eagle, The Big Banana, The Big Banana No. 1, New No. 2 San Juan and New No. 5 San Juan lode mining claims, A MC 69405 through A MC 69407, A MC 73140, and A MC 73141, abandoned and void because the proof

of labor for 1981 was not filed with BLM 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. The proof of labor was received by BLM at 12:39 p.m., December 31, 1981.

Appellant states he hand carried the proof of labor to BLM on December 31, expecting the office would be crowded with last day of the year filings. He was not aware that December 30 was the deadline date for filing of proofs of labor. Appellant asserts that he had no intention of abandoning his claims, and conversely, that he is actively working them for tungsten. In fact, his claims have been considered to be valid locations following a hearing held in March 1981 by Administrative Law Judge John R. Rampton, Jr.

[1] Section 314 of FLPMA and the implementing regulations, 43 CFR 3833.21 and 3833.4(a), require that evidence of assessment work be filed both in the office where the location notice is recorded and in the proper office of BLM on or before December 30 of each calendar year, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed. Filing is accomplished only when a document is delivered to and received by the proper BLM office.

The filing requirements of section 314 of FLPMA are mandatory, not discretionary. Failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Enterprise Mines, Inc., 58 IBLA 372 (1981); Fahey Group Mines, Inc., 58 IBLA 88 (1981). Congress imposed that consequence in enacting FLPMA, which requires the recordation with BLM to be prior to December 31 each year. The responsibility for complying with the recordation requirements rests with appellant. This Board has no authority to excuse failure to comply with the statutory requirements of recordation 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.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Gail M. Frazier  
Administrative Judge

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Bernard V. Parrette  
Administrative Judge  
Alternate Member

