

JOHN ANDREW BATOK

IBLA 82-1078

Decided September 28, 1982

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claim abandoned and void. CA MC 78793.

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 located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in both the county recorder's office and the proper Bureau of Land Management office. Failure to file the required instruments in both places within the prescribed time period is conclusively deemed to constitute an abandonment of the claim.

APPEARANCES: John Andrew Batok, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

John Andrew Batok appeals from the decision of the California State Office, Bureau of Land Management (BLM), dated July 2, 1982, which declared the Queen's Knight Placer mining claim, CA MC 78793, abandoned and void because no proof of labor or notice of intention to hold the mining claim was filed with BLM prior to December 31, 1981, as required by 43 CFR 3833.2-1.

The claim was located on November 26, 1980, recorded with the county on December 3, 1980, and recorded with BLM on December 29, 1980. The record indicates that a proof of labor for the claim was filed with the county recorder on July 9, 1981. No proof of labor was filed with BLM until June 25, 1982. On July 16, 1982, along with his notice of appeal, appellant filed with BLM a copy of the proof of labor filed with the county in 1981.

On appeal, appellant maintains that he correctly and timely filed his proof of labor.

[1] Section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and the implementing regulations in 43 CFR 3833.2-1 and 3833.4(a) require that evidence of assessment work for each year be filed both in the office of the county recorder where the notice of location is filed and in the proper BLM office 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. This Board has no authority to waive noncompliance with the statutory requirements. Lynn Keith, 53 IBLA 192, 88 I.D. 396 (1981). Thus, appellant should have filed the required document with BLM prior to December 31, 1981. BLM properly declared appellant's mining claim abandoned and void, when no affidavit of assessment work or notice of intention to hold was filed with BLM prior to that date.

Appellant should confer with BLM about the possibility of relocating this claim.

Accordingly, 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:

Anne Poindexter Lewis
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

