

DON TOW

IBLA 82-1242, IBLA 82-1253

Decided November 10, 1982

Appeal from decisions of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 57289 through CA MC 57292, CA MC 57280 through CA MC 57283.

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 a mining claim located on public land must file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each calendar year, both in the office where the location notice is recorded and in the proper office of the Bureau of Land Management. There is no provision for waiver of this requirement, and where evidence of assessment work is not timely filed because of loss or delay by the Postal Service, the consequences must be borne by the claimant.

APPEARANCES: Don Tow, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Don Town 1/ appeals the California State Office, Bureau of Land Management (BLM), decisions of July 21 and 23, 1982, which declared the unpatented Young Group Nos. 1 through 4 lode mining claims, CA MC 57289 through CA MC 57292, and Strawberry Nos. 1, 2, 21, and 22 lode mining claims, CA MC 57280 through CA MC 57283, abandoned and void because no proof of labor or notice of intention to hold the claims was filed with BLM prior to December 31, 1981, as required by section 314 of the Federal Land Policy and

1/ The record shows that the Young Group claims are held by Don Tow, Bob Peterson, and Max Cagle, and the Strawberry claims are held by Don Tow and Dale Vig.

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 January 4, 1982.

Appellant states only that he transmitted the 1981 proofs of labor to BLM after recording them in Fresno County, California, on December 30, thinking that that was satisfactory compliance with the requirements.

[1] Section 314 of FLPMA and the implementing regulations, 43 CFR 3833.2-1(a) and 3833.4(a), require that evidence of assessment work or a notice of intention to hold for each mining claim located on public land be filed both with the county recorder's office where the notice of location is of record, and in the proper office of BLM prior to December 31 of each calendar year, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely and properly filed in both places.

Despite appellant's statement that he had mailed the proof of labor to BLM on December 30, 1981, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even though the document was mailed and the Postal Service delayed it from reaching the BLM office timely or lost it in transit, that fact would not excuse appellant's failure to comply with the cited regulation. Inez Crews, 59 IBLA 257 (1981); Regina McMahon, 56 IBLA 372 (1981); Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of untimely delivery of his filing. Edward P. Murphy, 48 IBLA 211 (1981); Everett Yount, *supra*; James E. Yates, 42 IBLA 391 (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). The Board has no authority to excuse noncompliance with the statute or to afford any relief from the statutory consequences. Lynn Keith, 43 IBLA 192, 88 I.D. 369 (1981).

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Franklin D. Arness
Administrative Judge

Alternate Member

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