

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. CA MC 49876.

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 before Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of assessment work on the claim by Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed, the consequences must be borne by the claimant.

APPEARANCES: Russell P. Journigan, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Russell P. Journigan appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated August 1, 1982, which declared the unpatented Eclipse lode mining claim, CA MC 49876, abandoned and void because evidence of annual assessment work for calendar year 1981 had not been 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 January 7, 1982.

Appellant alleges that after receiving a copy of the recorded proof of labor from the county recorder of Inyo County, California, January 2, 1982, he immediately transmitted the proof of labor to BLM. He argues that he

should not be penalized for slowness of the mails during the Christmas season. He had mailed the proof of labor to the county for recordation on December 10, 1981.

[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 for each year shall be filed in the proper office of BLM on or before December 30 of each calendar year, under a penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed.

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 if the delay in transmitting evidence of assessment work to BLM was caused by the local recording office, that fact would not excuse appellant's failure to comply with the cited regulations. Regina McMahon, 56 IBLA 372 (1981); Everett Yount, 46 IBLA 74 (1980). Filing is accomplished only when a document is delivered to and received by the proper BLM office. The filing requirement is imposed by statute, and the Board has no authority to waive it. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellant may wish to confer with BLM about the possibility of relocating this claim.

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:

Anne Poindexter Lewis
Administrative Judge

Will A. Irwin
Administrative Judge