

ORVILLE N. WILLIAMS
HELEN C. WILLIAMS

IBLA 82-1286

Decided December 21, 1982

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 43059 through CA MC 43063.

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: Orville N. Williams and Helen C. Williams, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Orville N. Williams and Helen C. Williams appeal the California State Office, Bureau of Land Management (BLM), decision of July 28, 1982, which declared the unpatented Jade Heaven, Bland's Peak, Sky Meadow and Chrome Butte lode mining claims, and the Upper Jade Valley placer mining claim, CA MC 43059 through CA MC 43063, 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 on December 31, 1981, at 7:30 a.m.

Appellants state the proof of labor was mailed December 5, 1981, in expectation that the Postal Service would surely deliver it to BLM before December 30. Appellants state that they had no intention of abandoning the claims, and have paid the 1982 Possessory Interest Taxes to Mendocino County, California, for these claims.

[1] Section 314 of FLPMA and the implementing regulations, 43 CFR 3833.2-1 and 3833.4(a), require that evidence of assessment work for each year 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.

Accepting the statement of appellants that the document was actually mailed on December 5, 1981, as claimed, 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, where the delay in delivery of the envelope containing the proof of labor to BLM is caused by the Postal Service, that fact would not excuse appellant's failure to comply with the cited regulations and FLPMA. Regina McMahon, 56 IBLA 372 (1981); Glenn D. Graham, 55 IBLA 39 (1981); James E. Yates, 42 IBLA 391 (1979). 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 loss or untimely delivery of his filing. Regina McMahon, *supra*; Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, 46 IBLA 74 (1980). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). 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. The responsibility for complying with the recordation requirements rests with appellants. 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).

Appellants 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 decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Anne Poindexter Lewis
Administrative Judge