

MILFORD R. PRIBBLE

IBLA 83-478

Decided August 19, 1983

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 57213 and CA MC 57244.

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 or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

APPEARANCES: Edward A. Kent, Jr., Esq., Palo Alto, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Milford R. Pribble appeals the California State Office, Bureau of Land Management (BLM), decision of February 10, 1983, which declared the unpatented Riverside Bonanza and the Holy Terror placer mining claims, CA MC 57213 and CA MC 57244, 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 Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The appeal relates only to the Riverside Bonanza placer mining claim, CA MC 57213.

Appellant states that he has sent his proofs of labor to BLM prior to December 30 each year after recording the proof in Siskiyou County, California. He thinks the 1981 proof was mailed either December 28 or 29, 1981, from San Jose, California. Upon receiving the BLM decision, he relocated the Riverside Bonanza placer mining claim, and it is now recorded with BLM under CA MC 122280.

BLM has reported it has no record of receipt of the 1981 proof of labor for these claims.

[1] Under section 314(a) of FLPMA, the owner of a mining claim located on or before October 21, 1976, must file notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim in the proper office of BLM on or before October 22, 1979, and on or before December 30 of every calendar year thereafter. This requirement is mandatory, not discretionary, and failure to comply is conclusively deemed to constitute abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1981).

Although appellant suggests that the documents were actually mailed to BLM, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.0-5(m), 47 FR 56305 (Dec. 15, 1982); 43 CFR 3833.1-2(a). Thus, even if there was loss of the envelopes containing evidence of work by the Postal Service, 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. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). The responsibility for complying with the recordation requirements rested with appellant. The filing requirement is imposed by statute, and this Board has no authority to waive it. Lynn Keith, supra.

Counsel for appellant has asked for a factual determination that rights of appellant in the mining claim have not been lost or altered by the relocation. Such a determination is outside the scope of this appeal. If a question arises between rival claimants, resolution of the conflict is a matter for the State courts, not the Department of the Interior.

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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C. Randall Grant, Jr.  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

