

ALICE R. KIRK

IBLA 83-640

Decided June 28, 1985

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void. M MC 47310 and M MC 47311.

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 (1982), the owner of an unpatented mining claim located on Federal lands 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 the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed, for whatever reason, the consequence must be borne by the claimant.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Claim -- Mining Claims: Abandonment

Pursuant to 43 CFR 3833.0-5(m), a proof of labor or notice of intention to hold will not be deemed as timely filed where it is mailed in an envelope bearing a clearly dated postmark affixed by the United States Postal Service prior to Dec. 31, within the period prescribed by law, but is not delivered to the proper BLM office by Jan. 19 immediately following.

APPEARANCES: Randall N. Kirk, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Alice R. Kirk has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated April 14, 1983, which declared the

Red Dot and the Morning Star placer mining claims abandoned and void for failure to timely file either evidence of assessment work or a notice of intention to hold the claims for the period September 1, 1981 - September 1, 1982, on or before December 30, 1982, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982).

BLM noted appellant had not complied with the governing regulation in 43 CFR 3833.2-1, stating:

It was necessary that a notice of intent or evidence of annual assessment work performed for the assessment year ending at noon, September 1, 1982, be postmarked on or before December 30, 1982, and be received in this office no later than January 19, 1983. The envelope the affidavit was sent in by Randall Kirk was post-marked December 22, 1982, however, was not received by this office until January 25, 1983. We are returning the affidavit because it was not timely filed and is, therefore, not acceptable. [Emphasis in original.]

Appellant objects to the decision, asserting the instrument was mailed a reasonable time before the December 30 deadline and the fact that it was received by BLM after the January 19 deadline was "clearly no fault of the owner." (Emphasis in original.)

[1] Section 314(a) of FLPMA requires that the owner of an unpatented mining claim located on Federal lands shall file with the proper office of BLM before December 31 of each year a copy of a notice of intention to hold the mining claim or an affidavit of assessment work performed thereon. 43 U.S.C. § 1744(a) (1982). The statute also provides that failure to file such instruments within the prescribed time period shall be deemed conclusively to constitute an abandonment of the mining claim. 43 U.S.C. § 1744(c). Because no affidavit of assessment work or notice of intention to hold was timely received for 1982, BLM properly deemed the claim to be abandoned and void. Mermaid Mining Co., 65 IBLA 172 (1982); Kivalina River Mining Association, 65 IBLA 164 (1982); Margaret E. Peterson, 55 IBLA 136 (1981). The responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim. This Board has no authority to excuse lack of compliance, or to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Those claims for which timely filings are not made are extinguished by operation of law; intent is irrelevant if the necessary filings are not made. United States v. Locke, 105 S. Ct. 1785, 1796 (1985).

[2] In this instance the regulations specifically permit the "timely filing" of an appropriate document mailed in an envelope bearing a clearly dated postmark affixed by the U.S. Postal Service prior to December 30. However, the envelope must be received by the proper BLM office by January 19. 43 CFR 3833.0-5(m) states in pertinent part:

"Filed or file" means being received and date stamped by the proper BLM office. For the purpose of complying with § 3833.2-1 of this title, "timely filed" means being filed within the time

period prescribed by law, or received by January 19th after the period prescribed by law in an envelope bearing a clearly dated postmark affixed by the United States Postal Service within the period prescribed by law.

Accordingly, since appellant admits that timely filing was not made, although it was not her fault, the statute and the regulation compel a finding of abandonment. As previously indicated, the Board has no authority to excuse lack of compliance or to extend the period for timely filing. Where appellant has chosen to rely on delivery by use of the mail, she must bear the consequences if that delivery does not follow within the time period allowed for filing. Paul E. Hammond, 87 IBLA 139 (1985).

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.

Will A. Irwin
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

