

ROGER KUHN

IBLA 79-424

Decided September 28, 1979

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring Bright and Sassy #2 and #3, Misty #4 through #6, Nessie #6 through #8, Nessie #10 and #11, and Luana #1 lode mining claims abandoned and void. IMC-2920 through IMC-2930.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

Under 43 CFR 3833.2-1 the owner of unpatented mining claims located after Oct. 21, 1976, and recorded with the Bureau of Land Management in Nov. 1977, must have filed affidavits of assessment work or notices of intention to hold the mining claims prior to Dec. 31, 1978, to prevent the claims from being conclusively deemed to have been abandoned under 43 CFR 3833.4(a).

2. Administrative Procedure: Adjudication -- Appeals -- Evidence: Sufficiency -- Mining Claims: Abandonment

Where, on appeal, a mining claimant alleges that he timely mailed the affidavits of assessment work to the proper BLM office, but there is no evidence to indicate they were ever received, the claimant must bear the consequences of the loss and his inability to prove his allegation that they may have been received by the Bureau.

APPEARANCES: Roger Kuhn, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Roger Kuhn has appealed from a decision of the Idaho State Office of the Bureau of Land Management dated May 15, 1979, which declared

the Bright and Sassy #2 and #3, Misty #4 through #6, Nessie #6 through #8, Nessie #10 and #11, and Luana #1 unpatented lode mining claims abandoned and void as a result of untimely filing of the requisite affidavits of assessment work or, in the absence thereof, notice of intention to hold. The 10 claims were all located in August 1977, and recorded on November 10, 1977, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). In order to retain these mining claims, appellant should have submitted, and caused to be received in the proper BLM office, the requisite affidavits of assessment work or the notices of intention to hold no later than December 31, 1978, pursuant to 43 U.S.C. § 1744(a)(1) (1976) and 43 CFR 3833.2-1(b)(1).

[1] The applicable statute, 43 U.S.C. § 1744(a)(1) (1976), specifically states:

The owner of an unpatented lode or placer mining claim located after October 21, 1976, shall prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) \* \* \* of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim or an affidavit of assessment work performed thereon, \* \* \*.

As a result of appellant's failure to submit these documents in a timely fashion, BLM properly declared his mining claims void and abandoned pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a). Ernest K. Lehman and Associates, 43 IBLA 1 (1979); Juan Munoz, 39 IBLA 72 (1979); Paul S. Cupey, 35 IBLA 112 (1979).

Section 1744(c) states, "The failure to file such instruments as are required by subsections (a) and (b) of this section shall be deemed \* \* \* conclusively to constitute an abandonment of the mining claim \* \* \* by the owner; \* \* \*."

[2] Appellant has submitted copies of "proof of labor" for each claim, which he allegedly mailed to BLM prior to December 24, 1978. BLM however, has no record of having ever received these documents. There is no evidence in the record, such as a certified mail receipt, to support appellant's allegation of timely mailing. Without proof, appellant's assumption that they were timely received and then lost by BLM is mere conjecture which we cannot accept. Vern H. Bolinder, 30 IBLA 26 (1977). Since appellant chose a method of mailing which was potentially unreliable and offers no proof of delivery, he must bear the consequences of such a choice. Mobil Oil Corp., 35 IBLA 265 (1978); Donald E. Jordan (Supp.), 41 IBLA 60 (1979). Filing is accomplished only when a document is delivered to and received by the

proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2(f); Amanda Mining and Manufacturing Association, 42 IBLA 144 (1979).

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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Edward W. Stuebing  
Administrative Judge

I concur:

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James L. Burski  
Administrative Judge.

ADMINISTRATIVE JUDGE GOSS DISSENTING:

The proof of labor which appellant states he mailed prior to December 24, 1978, does not make reference to the serial numbers which BLM assigned to the claims. In his notice of appeal, Kuhn asks that BLM search its files. The notice was transmitted to the Board, and there is no indication in the record whether BLM complied with appellant's request. I would remand for a search by BLM of any unfiled or other material as may be appropriate. It is not believed that an inordinately expensive search is justified, however, for even if we assume the proof was mailed and received, the error was that of appellant in not making reference to the serial numbers through which the claim files are most readily located.

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Joseph W. Goss  
Administrative Judge

