

MR. AND MRS. JACK WHITE

IBLA 80-886

Decided March 23, 1981

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring Telloride Nos. 1, 2, and 3 mining claims (OR MC 26506, 26507, 26508) abandoned and void.

Affirmed.

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

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Abandonment -- Mining Claims: Assessment Work

Where mining claimants assert on appeal that evidence of assessment work required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1(a) was timely mailed to the Bureau of Land Management (BLM) but there exists no record of BLM's receipt of the documents, the Board must find that there was not a timely filing and that the claims are declared abandoned and void. Claimants, who chose the manner of mailing, must bear the consequences of nondelivery.

APPEARANCES: H. K. Dano, Esq., Moses Lake, Washington, for appellants.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Mr. and Mrs. Jack White appeal from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated July 23, 1980, declaring the Telloride Nos. 1, 2, and 3 mining claims (OR MC 26506, 26507, and 26508) located June 6, 1973, in Whatcom County, Washington, and recorded with BLM on October 18, 1979, abandoned and void for failure to file evidence of assessment work or notice of intention to hold the claims on or before October 22, 1979, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1(a). BLM stated that a search of thousands of filings now being processed did not reveal that an affidavit of assessment work or notice had been filed with its office by October 22, 1979.

In their statement of reasons, appellants contend that on or about October 15, 1979, they mailed to BLM the filing fees and information required by FLPMA; that this included "[a] correct Proof of Labor (work assessment) Affidavit indicating that he had spent \$810.00 during the year 1979 working on his three (3) individual claims"; that they received a receipt from BLM indicating that it had received these documents; that they received the processed check for the \$15 filing fee; that they did in fact file this document and that BLM either lost or inadvertently misplaced or misfiled said document; and that BLM is estopped to deny receipt thereof. Accompanying the statement of reasons is Jack White's affidavit in which he again states that a copy of the proof of labor affidavit, together with the other documents and the \$15 filing fee, was mailed to BLM on or before October 15, 1979.

In addition, appellants maintain that BLM's decision amounts to an unconstitutional taking of his property in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

[1] 43 CFR 3833.2-1(a) states:

The owner of an unpatented mining claim located on Federal land on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, which ever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. [Emphasis supplied.]

43 CFR 3833.4 provides:

(a) The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void.

Appellants recorded their notices of location with BLM on October 18, 1979. Therefore, October 22, 1979, was the appropriate date

for filing the affidavit of assessment work or the notice of intention to hold as required by law and regulation.

[2] Although appellants assert that the required evidence of assessment was mailed to BLM, the record does not show that BLM received the documents. ^{1/} The affidavit, receipt for money, and processed check are not sufficient to establish they mailed the required documents. Cf. L. E. Garrison, 52 IBLA 131 (1981). The receipt which appellants mention in their statement of reasons is a receipt for the \$15 filing fee only. Mere conjecture is insufficient to rebut the presumption that BLM officials have properly discharged their duties. Melvin E. Viles, 51 IBLA 32 (1980). Since there is not adequate proof that they were actually received we must find that there was not a timely filing.

Appellants, who chose the manner of mailing, must bear the consequences of nondelivery. Donald D. Vesely, 50 IBLA 277 (1980); Gary L. Barton, 47 IBLA 386 (1980); Carl Oberg, 46 IBLA 319 (1980). The above regulations are mandatory and since they were not complied with, BLM properly declared the claims abandoned and void. Donald D. Vesley, *supra*.

Appellants have not presented any evidence which would warrant application of estoppel. Appellants' constitutional arguments have been addressed by the Board and dismissed in similar cases. John J. Schnabel, 50 IBLA 201, 204-205 (1980); Dorothy Smith, 44 IBLA 25, 28-29 (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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

^{1/} We note that the letter accompanying appellants' filings on October 18, 1979, reads as follows: "Enclosed are descriptions of my three mining claims in Whatcom Co. Wash. If you need further information let me know." There is no mention of the affidavits of assessment work.

