

HERMAN PILTZ

IBLA 81-359

Decided January 6, 1982

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring mining claims OR MC 5337 and OR MC 5338 abandoned and void.

Affirmed.

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

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

2. Evidence: Presumptions--Evidence: Sufficiency--Mining Claims: Assessment Work

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, where appellant fails to present evidence to establish that proof of annual assessment work was filed with the Bureau of Land Management, then it is presumed that the officials properly discharged their duties.

## 3. Notice: Generally--Regulations: Generally--Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Mrs. Ruth M. Piltz, for appellant.

## OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Herman O. Piltz appeals from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated January 30, 1981, declaring the Lucky Dollor 2 (OR MC 5337) and the Lucky Dollor 2 (OR MC 5338) mining claims abandoned and void for failure to file timely evidence of annual assessment work or a notice of intention to hold the claims prior to October 22, 1979, as required by section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(a).

In his statement of reasons, appellant asserts that he sent the proof of assessment and kept a copy of what he sent. He says that if BLM does not have the documents, it is no fault of his. Appellant enclosed copies of the documents he allegedly filed with BLM with his statement of reasons.

[1] Section 314(a)(1) and (2) of FLPMA, 43 U.S.C. § 1774(a)(1) and (2) (1976), and the accompanying regulation, 43 CFR 3833.2-1(a), require that the owner of an unpatented mining claim located before October 21, 1976, shall, on or before October 22, 1979, and prior to December 31 of each subsequent year, file with BLM evidence of annual assessment work of a notice of intention to hold the mining claim. Failure to file the required documents is conclusively deemed to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

Both claims were located in 1969 and filed for recordation with BLM in March 1978. When appellant failed to file either an affidavit of assessment work or a notice of intent to hold the claims on or before October 22, 1979, BLM properly held the claims to have been abandoned and declared them void. 1/ Judy H. Genger, 59 IBLA 199 (1981); Stanley Bishop, 50 IBLA 371 (1980).

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1/ In addition to the notices of location filed with BLM, the file contains a copy of an assay report, a check to a Mr. Beecher for \$125, and a receipt from the Stationers, Inc., for \$1.58, all filed on Oct. 12, 1979. These documents do not constitute an affidavit of assessment work or notice of intention to hold the claims. See 43 U.S.C. § 1744(a)(1)(2).

Although appellant asserts that the required documents were mailed to BLM, the record does not show that BLM received the documents. There is a legal presumption of regularity which attends the official acts of public officers in the proper discharge of their official duties. Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); H. S. Rademacher, 58 IBLA 152, I.D. (1981). It is presumed that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing. H. S. Rademacher, supra. This presumption may be rebutted by probative evidence to the contrary, but the evidence in this case does not establish that proof of annual assessment work was filed for record with BLM on or before October 22, 1979. H. S. Rademacher, supra.

Accompanying his statement of reasons were copies of the documents appellant alleged he sent to BLM. We note that these documents are the notices of location for the claims 2/ rather than the evidence of annual assessment work or notices of intention to hold the claims. The fact that appellant may have been confused about the requirements of FLPMA is unfortunate, but it does not excuse him from compliance. All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. John W. Baccus, 59 IBLA 288 (1981). This Board cannot waive failure to comply with statutory requirements, nor afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

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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Gail M. Frazier  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Edward W. Stuebing  
Administrative Judge

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2/ We note further that the claims are described as having four boundaries which form a square, with each boundary measuring 5,280 feet in length. This is not in accord with 30 U.S.C. § 23 (1976), which describes the configuration and maximum dimensions of lode claims.

