

Appeal from a decision of the Alaska State Office, Bureau of Land Management declaring the Koviashuvik No. 1 and Koviashuvik No. 2 unpatented placer mining claims null and void for failure to file notices in a timely manner. F 70627 and F 70628.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work
--Mining Claims: Assessment Work

Under the provisions of 43 U.S.C. § 1744 (1982), an owner of an unpatented mining claim must file evidence of annual assessment work or notice of intention to hold prior to Dec. 31 of each year. Such filings must be made within each calendar year, i.e., on or after Jan. 1 and on or before Dec. 30. Failure to file within the calendar year properly results in the claim being extinguished, and therefore abandoned and void.

APPEARANCES: Samuel A. Wright, Young, Arizona, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Samuel A. Wright has appealed from a January 19, 1984, decision of the Anchorage District Office, Alaska, Bureau of Land Management (BLM), noting a failure to file notice of intention to hold or evidence of performance of annual assessment work on the Koviashuvik No. 1 and Koviashuvik No. 2 unpatented placer mining claims (F 70627 and F 70628) during the calendar year 1981, and declaring the claims to be abandoned and void. Appellant filed a notice of appeal and statement of reasons in a timely manner. On May 8, 1984, notice was given that this Board was suspending consideration of the appeal pending consideration of United States v. Locke, No. 83-1394, by the United States Supreme Court. On April 1, 1985, the Supreme Court rendered its opinion (United States v. Locke, 53 U.S.L.W. 4433 (U.S. Apr. 2, 1985)), and the case once again became ripe for consideration.

The record discloses that the claims which are the subject of this appeal were located by appellant on March 20, 1969, and location notices were subsequently recorded with the state recording district. The record further discloses that the notices of location were filed with BLM in April 1979, and the claims were assigned BLM serial Nos. F 70627 and F 70628.

The record contains the following proofs of labor, each indicating work having been performed on both claims:

<u>Ending</u>	<u>Assessment Year</u> <u>by BLM</u>	<u>Date of Receipt</u>
Sept. 1, 1979		Oct. 4, 1979
Sept. 1, 1980		Oct. 21, 1980
Sept. 1, 1982		Sept. 28, 1982
Sept. 1, 1983		Sept. 16, 1983

The January 19, 1984, BLM decision states:

Section 314(a) of FLPMA [43 U.S.C. § 1744(a) (1982)] requires the owner of an unpatented mining claim located prior to October 21, 1976, to file evidence of annual labor or notice of intention to hold with BLM by October 22, 1979, and by December 30 of each calendar year thereafter.

The penalty for failure to make timely annual filings with BLM is addressed in Sec. 314(c) of FLPMA [43 U.S.C. § 1744(c) (1982)]:

The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site by the owner . . .

Because the 1981 affidavit of assessment work or notice of intention to hold was not filed within the calendar year 1981, the placer mining claims are deemed abandoned and declared void.

Appellant made the following argument in his statement of reasons:

Enclosed please find xerox copies of affidavits of assessment work on claims recorded in the Fairbanks Recording District and copy of original cover letter, dated 9-13-1979 under Sec. 314 of the Federal Land Policy and Management Act of 1976.

The affidavit for 1981 assessment work which you questions [sic] was filed with the Fairbanks BLM Office (see enclosed xeroxed affidavit recorded in Fairbanks Recording District, Book 189, page 0065).

In examining my records I find no acknowledgement of this from your Fairbanks office but assumed it was duly registered, as I also have no record of acknowledgement of my letter (your report received Oct. 4, 1979) filing of claim location notices which you refer to in your letter of 1-19-84. This was obviously filed in accordance with Sec. 314 FLPMA (1976).

Since I have assiduously fulfilled requirements with affidavits recorded for these claims each year for the past fourteen years, there is no reason for my skipping your claim of

failure to file in 1981. My only conclusion is there must have been some error of communication with the Fairbanks BLM office.

[1] The text of 43 U.S.C. § 1744 (1982) provides in relevant part:

§ 1744. Recordation of mining claims

(a) Filing requirements

The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) 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 (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on [sic] the detailed report provided by section 28-1 of Title 30, relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

(b) Additional filing requirements

The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to October 21, 1976 shall within the three-year period following October 21, 1976, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. * * *

(c) Failure to file as constituting abandonment; defective or untimely filing

The failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site.

As previously noted, this matter was suspended pending the Supreme Court determination in United States v. Locke, supra. In Locke the Supreme Court examined 43 U.S.C. § 1744 (1982), to determine if the filing of a proof of labor 1 day after the deadline set forth in the statute could be considered as timely, so as to avoid a finding that the claim was null and void. The Supreme Court found that it could not, noting that Congress intended to extinguish those claims for which timely filings were not made, and that the failure to file on time, in and of itself, causes the claim to be lost. Locke, supra at 4438.

As with Locke, we are called upon to interpret 43 U.S.C. § 1744 (1982) to determine what is considered to be timely filing. Key to this determination is the language of 43 U.S.C. § 1744(a), which states that the "owner * * * shall * * * prior to December 31 of each year * * * file the instruments required by paragraphs (1) and (2) * * *." (Emphasis added.) The Supreme Court stated at page 4435 of the Locke decision that section 1744 "requires documents to be filed annually 'prior to December 31.'" (Emphasis added.)

In his statement of reasons for appeal, Wright states that he "has assiduously fulfilled requirements with affidavits recorded for these claims for the past fourteen years," indicating that he never had any intent to abandon the claim in question. Referring to the proof of labor filed with the notice of appeal, Wright states that the document had been recorded with the Fairbanks Recording District in 1981. He concludes "that there must have been some error of communication with your Fairbanks BLM office." A careful review of the documents filed by appellant with his statement of reasons discloses that while affidavits of assessment work for 1979, 1980, 1982 and 1983 have date stamps indicating receipt by the BLM office, the 1981 copy does not.

The Supreme Court made it clear that failure to file leads automatically to the extinguishment and loss of a mining claim. The question then is one of whether appellant has, in fact, filed the necessary document in 1981. Applicable regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2(f), 43 CFR 3833.1-2(a). Appellant has not submitted evidence that the documents required by 43 U.S.C. § 1744 (1982), had been filed in 1981.

From reading appellant's statement of reasons we believe that appellant may have been confused by the similarity between the Fairbanks office of BLM and the Fairbanks Recording District. The Fairbanks Recording District is a subdivision of the Alaska State Department of Natural Resources pursuant to Alaska Statute, section 44.37.025, and performs the same functions that are performed by the county recorder in other states. Being an agency of the state it is not a part of BLM. Documents filed with the Fairbanks Recording District are not filed with BLM. A separate filing is required under 43 U.S.C. § 1744(a) (1982). While evidence submitted by appellant clearly demonstrates that the proper documents were filed with the State of Alaska, there is no similar evidence that they were filed with BLM. We must, therefore, affirm the BLM decision.

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.

R. W. Mullen
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Gail M. Frazier
Administrative Judge.

