

Appeal from a decision of the Utah State Office, Bureau of Land Management declaring the Palacios Nos. 1 through 9 unpatented lode mining claims null and void for failure to file notices in a timely manner. U MC 74975 through U MC 74983.

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: J. E. Stevens, Washington, Utah, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

J. E. Stevens has appealed from a December 8, 1983, decision of the Utah State Office, 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 Palacios Nos. 1 through 9 unpatented lode mining claims (U MC 74975 through 74983) on or before December 30, 1980 and 1982, 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 5, 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 an 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 subject to this appeal were located by appellant on June 15, 1967, and location notices were subsequently recorded with the Box Elder County Recorder, Box Elder County, Utah. The record further discloses that the notices of location were filed with BLM on

April 26, 1979, and the claims were assigned BLM serial Nos. U MC 74975 through U MC 74983.

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

Assessment Year <u>Ending</u>	Date of Receipt <u>by BLM</u>
Sept. 1, 1980	Oct. 19, 1979
Sept. 1, 1981	Sept. 29, 1981
Sept. 1, 1982	Sept. 29, 1981
Sept. 1, 1983	Sept. 30, 1983
Sept. 1, 1984	Sept. 30, 1983

The December 8, 1983, BLM decision states:

Our records show that you failed to file your proofs of labor within the calendar year of 1980 and 1982 as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. section 1744 (1976). Therefore the subject unpatented mining claims are declared abandoned and void.

Appellant notes in his statement of reasons that a proof of labor had been filed for each year since 1979. Referring to the date stamps on the notices filed with BLM, appellant states that the proof of labor for 1979 and 1980 had been filed on October 19, 1979, and the proofs of labor for 1981 and 1982 had been filed on September 29, 1981. Appellant explains that the claims are remote and difficult to get to. For this reason, and because more work can be performed for the money spent, appellant does 2 years worth of assessment work on the property by working in the field in August and September every other year. <sup>1/</sup> Appellant concludes that he has acted in good faith and has filed a proof of labor within the prescribed time limits.

[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

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<sup>1/</sup> Under 30 U.S.C. § 28 (1982), an owner of a mining claim can perform annual assessment work for a claim during an assessment year which commences on Sept. 1 and runs until Sept. 1 of the following year. Therefore, a claimant can perform 2 years worth of assessment work on a claim by making \$ 100 worth of improvements on Aug. 31 and an additional \$ 100 worth of work on the following day. In cases where costs are increased by moving men and equipment to and from the claims, more actual work can be performed on the claim at the same expense if conducted at the end of one assessment year and the beginning of the next.

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.) The opinion then discusses the problem posed by congressional reliance on the words "prior to December 31," rather than "on or before" December 31, which the Court itself admits would have been more logical. The Court concluded that the congressional intent of having the deadline as December 30 is clear and binding upon a claimant.

A similar problem exists because of the discrepancy between the assessment year and a calendar year. As noted in footnote 1 above, 30 U.S.C. § 28 (1982), provides that "[t]he period within which the work required to be done on all unpatented mineral claims \* \* \* shall commence at 12:00 meridian on the 1st day of September \* \* \*." Therefore, the assessment year runs from September 1 through September 1 of the following year. However, the "year" contemplated by 43 U.S.C. § 1744 (1982), commences on January 1, not September 1. <sup>2/</sup> Therefore, even though a claimant might do the assessment work for the assessment year ending August 31, 1986, and have documents available for filing prior to December 30, 1985, any FLPMA filing made prior to December 30, 1985, will be made in the 1985 filing period, not the 1986 filing period. The periods contemplated by the two statutes, unfortunately, are unrelated.

Prior to the Locke decision, the United States District Court for the District of Alaska reversed the Board's determination that the statute required a filing of a proof of labor or notice of intent to hold within each calendar year. See Oregon Portland Cement Co. v. U.S. Department of the Interior, 590 F. Supp. 52 (1984). In its decision, the Alaska District Court recognized that the statute was amenable to the interpretation rendered by this Board but held that "no reasonable administrative purpose is furthered by BLM's interpretation" and characterized the decision as "inherently unreasonable." Id. at 61. Although we recognize and admit that the Congress has passed legislation which leads to harsh results, it is not within our power

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<sup>2/</sup> While express reference is made to the calendar year in 30 U.S.C. § 1744(a) (1982), the statutory "year" for filing a notice or proof of labor under the Locke determination is 1 day short of being a year in length. Dec. 31 is later than the filing deadline and prior to the following calendar year.

to overlook congressionally mandated requirements. <sup>3/</sup> Like Locke, appellant has failed to file the documents annually prior to December 31. They have filed two documents in 1979, none in 1980, two in 1981, none in 1982 and two in 1983. Having failed to meet the congressional mandate that they file each year, appellant's claims were "extinguished" by operation of law, regardless of appellant's subjective intent to hold the claims. See Locke, *supra* at 4438.

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:

James L. Burski  
Administrative Judge

Gail M. Frazier  
Administrative Judge.

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<sup>3/</sup> In Locke, *supra* at 4438, the Supreme Court recognized that the congressional deadline imposed by 43 U.S.C. § 1744 (1982), was inherently arbitrary. The Supreme Court also noted that "filing deadlines, like statutes of limitations, necessarily operate harshly and arbitrarily with respect to individuals who fall just on the other side of them, but if the concept of a filing deadline is to have any content, the deadline must be enforced." Id. at 4438.

