

CHARLES H. HAGERTY

IBLA 84-260 Decided May 21, 1985

Appeal from a decision of the Arizona State Office, Bureau of Land Management declaring certain claims owned by appellant to be abandoned and void. A MC 070510 through A MC 070512, A MC 070514 through A MC 070522, A MC 070550, A MC 070551, A MC 070554, A MC 070555, A MC 070560, A MC 070563, and A MC 070571 through A MC 070577.

Affirmed.

1. 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

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: Charles H. Hagerty, Amado, Arizona, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Charles H. Hagerty has appealed from three decisions of the Arizona State Office, Bureau of Land Management (BLM), stating that BLM records did not show receipt of an affidavit of annual assessment work performed or a notice of intent to hold, as required by 43 CFR 3833.2. 1/ The decisions further stated that, if evidence of filing was not received within 30 days from the date of receipt of the decision, the listed claims would be considered to be abandoned and void by operation of law.

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1/ The claim names, corresponding mining claim recordation (MCR) numbers, and years for which no filings were made are listed in Appendix A to this decision.

A letter from appellant dated November 8, 1983, and received by BLM on November 9, 1983, notes that as of that date he did not have evidence of filing of the required documents, but that at the time notices were to have been filed, the claims were under lease to a third party which appellant claimed was responsible for filing the documents with BLM. Appellant requested an additional 60 days to obtain the documents.

By letter dated November 14, 1983, BLM advised appellant that BLM did not have authority to grant an extension of the time for appeal, and that an appeal had to be taken on or before November 16, 1983. 2/ The letter further stated, however, that BLM would allow an additional 60 days, or until January 17, 1984, for appellant to submit evidence that the required documents had been filed with BLM during the calendar year 1982.

On January 16, 1984, appellant submitted a letter to BLM. In this letter appellant states that the lessee "acknowledges his failure to have filed Affidavits of Annual Labor with the Bureau of Land Management." Appellant also notes the claims were relocated on his behalf by an assignee of the lessee. Appellant then requests that the claims not be removed from the record, or if the claims are removed, the case be forwarded to this Board for review. The case file indicates that the claims were, in fact, relocated, and the location notices were filed with BLM. The relocated claims were assigned serial numbers A MC 203721 through A MC 203749. 3/

BLM forwarded appellant's appeal to this Board and it was received on January 24, 1984. On May 8, 1984, the Board suspended consideration of this case pending a determination by the United States Supreme Court in United States v. Locke, No. 83-1394. On April 1, 1985, the Supreme Court rendered a decision in which the mining claim recordation statute, 43 U.S.C. § 1744 (1982), was found to be constitutional. United States v. Locke, 105 S. Ct. 1785 (Apr. 1, 1985). This case was then assigned to a panel for consideration.

[1] The law applicable to this case can be found at 43 U.S.C. § 1744 (1982), which provides in pertinent 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. \* \* \*

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2/ We will consider appellant's Nov. 8, 1983, letter as a notice of appeal.

3/ The BLM decision and this opinion do not affect the validity of these relocated mining claims.

(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, or a detailed report provided by section 28-1 of Title 30, relating thereto.

\* \* \* \* \*

(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; \* \* \*. [Emphasis added.]

As previously noted, this matter was suspended pending Supreme Court determination in United States v. Locke, supra. In Locke the Supreme Court found it to be the intent of Congress to extinguish those claims for which timely filings were not made. The Supreme Court further found that failure to file on time, in and of itself, causes the claims to be lost. Locke, supra at 1795-96. Appellant's failure to file a notice of intent to hold, an affidavit of assessment work performed, or a detailed report related thereto, as required by 43 U.S.C. § 1744(a)(2) (1982), caused appellant's claims to be abandoned and void. The BLM decision is affirmed.

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:

C. Randall Grant, Jr.  
Administrative Judge

Bruce R. Harris  
Administrative Judge.

## APPENDIX A

Decision dated October 11, 1983

<u>for year</u>	No filing	<u>Claim Name</u>	<u>MCR No.</u>
Ruff and Ready No. 1		A MC 70571	1982

Decision dated October 14, 1983

<u>for year</u>	No filing	<u>Claim Name</u>	<u>MCR No.</u>
C & J Silver Shadow		A MC 70514	1980 and 1982
Ruby #3		A MC 70550	1980 and 1982

Decision dated October 14, 1983

<u>for year</u>	No filing	<u>Claim Name</u>	<u>MCR No.</u>
Chivas		A MC 70510	1982
Chicks Ruby Fraction # 1 & 2		A MC 70511 and 12	1982
Kino Bingo #1 through 3		A MC 70515 through 17	1982
Triple H #1 through #4		A MC 70518 through 21	1982
Triple H #7		A MC 70522	1982
Gun Site		A MC 70551	1982
Gun Site #1		A MC 70554	1982
Alaska #1		A MC 70555	1982
Lonesome		A MC 70560	1982
Buena Vista		A MC 70563	1982
Jack Pot 1 through 4		A MC 70572 through 75	1982
Ruby #4 and #5		A MC 70576 and 77	1982

