

HOWARD GATES

IBLA 84-164

Decided June 21, 1985

Appeal from decision of the Arizona State Office, Bureau of Land Management, declaring mining claims abandoned and void. A MC 80792 through A MC 80796.

Affirmed.

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

Failure to file instruments required by 43 U.S.C. § 1744 (1982) and 43 CFR 3833.2 in the proper BLM office within the time prescribed results in a conclusive presumption of abandonment of the mining claim.

2. Evidence: Presumptions -- Evidence: Sufficiency -- Rules of Practice: Evidence

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally sufficient documents filed with them is rebuttable by probative evidence to the contrary. The presumption is not overcome by a statement, without corroborating evidence, that a document was mailed.

APPEARANCES: Howard Gates, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Howard Gates appeals from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated October 24, 1983, 1/ which gave notice BLM

1/ By order dated May 8, 1984, this appeal was suspended pending consideration of United States v. Locke, No. 83-1394, by the United States Supreme Court. On Apr. 1, 1985, a decision was rendered, United States v. Locke, 105 S. Ct. 1785 (1985).

records did not contain documentary evidence of intention to retain the Red Rock #1 through #5 mining claims, A MC 80792 through A MC 80796, for the years 1981 and 1982. The decision further stated that in the absence of proof to the contrary filed within 30 days, the claims would be removed from the records as abandoned and void by operation of law. Rather than submit proof to BLM, claimants chose to appeal to this Board.

The record indicates the subject claims were located on May 17, 1968, and copies of the notices of location were filed with BLM on October 18, 1979. Timely filed proofs of labor performed for the disputed claims appear in the record for 1979, 1980, and 1983. 2/

[1] Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982), requires the owner of an unpatented mining claim located prior to October 21, 1976, to file with BLM, on or before December 30 of each year, an affidavit of assessment work performed or a notice of intent to hold the claim. See also 43 CFR 3833.2-1. Failure to file results in a conclusive presumption of abandonment by the owner. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4. Responsibility for compliance with this recordation requirement rests with the owner of the unpatented mining claim. Those claims for which timely filings are not made are automatically extinguished by operation of law; intent is irrelevant if the necessary filings are not made. United States v. Locke, 105 S. Ct. 1785, 1796 (1985); James Boatman, 87 IBLA 31 (1985). The Department has no authority to waive or excuse noncompliance with the statute. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] Appellant asserts he is "certain that [copies of the affidavits of assessment work] were sent from Oregon, both in 1981 and 1982, as he has performed the assessment work every year, then forwarded the original copies to [BLM]" (Statement of Reasons at 1). As was stated in James Boatman, supra at 33:

When an appellant maintains that a document was sent to BLM, but BLM has no record of it, the presumption of regularity works against a finding that BLM received the document and subsequently lost it through mishandling. Glenn W. Gallagher, 66 IBLA 49, 51 (1982). Although the Board has held that the presumption of regularity may be rebutted, e.g., Bruce L. Baker, 55 IBLA 55 (1981); L. E. Garrison, 52 IBLA 131 (1981), the presumption is not overcome by a statement that a missing document was mailed to BLM. Glenn W. Gallagher, supra at 52, and cases cited therein.

See also Wilson v. Hodel, 758 F.2d 1369 (10th Cir. 1985). Appellant has submitted no evidence to support his appeal. Accordingly, we must presume copies of the 1981 and 1982 affidavits of assessment for the subject claims were not received by BLM.

2/ The 1983 affidavit was received by BLM on Oct. 3, 1983.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

