

RUTH IRENE HACKATHORN

IBLA 86-608

Decided October 30, 1986

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring mining claims, millsite, and tunnel site abandoned and void. C MC 142060 et al.

Affirmed in part, vacated in part, and remanded.

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: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each year. Failure to file one of the two instruments within the prescribed period conclusively constitutes an abandonment of the claim. Filing or recording the required document with the county or local recording district does not constitute compliance with the requirement that it be filed with BLM, and an uncorroborated statement that BLM timely received the required document does not overcome the presumption that administrative officials are presumed to have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing.

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

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), the failure of a holder of a mill or tunnel site claim to file an annual notice of intention to hold the site claim is a curable defect. Where BLM fails to notify a mill or tunnel site claimant of a defective filing and to

request curative data prior to subsequent filing of annual notices, BLM has effectively waived the defective filing and may not declare the site abandoned and void because of the absence of that document from the file.

APPEARANCES: Beth Hackathorn Gallegos, for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Ruth Irene Hackathorn appeals from a February 11, 1986, decision of the Colorado State Office, Bureau of Land Management (BLM), declaring 25 lode mining claims (C MC 142060 through C MC 142079, C MC 142081, C MC 142083 through C MC 142086), four placer mining claims (C MC 142087 through 142090), a millsite (C MC 142082), and a tunnel site (C MC 142080) abandoned and void for failure to file evidence of assessment work or notice of intention to hold the claims and sites with BLM on or before December 30, 1981.

In her statement of reasons, Hackathorn states these mining claims and sites were leased to a third party during 1981 and she understood that all necessary filings for them were done by the lessee. Appellant asserts that all filings with BLM were done in a timely manner both before and after 1981 and argues that BLM could have lost or misfiled the documents for 1981. With her appeal, Hackathorn has submitted a copy of an affidavit of labor performed for these claims and sites which shows that it was recorded in Chaffee County, Colorado, on August 31, 1981. However, there is no evidence which indicates that a copy was timely received by BLM.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), and 43 CFR 3833.2-1 require the owner of an unpatented mining claim or mill or tunnel site located on public land to file evidence of assessment work performed or a notice of intention to hold the claim or site with the proper BLM office prior to December 31 of each year. Failure to file one of the two instruments for a mining claim within the prescribed time period conclusively constitutes an abandonment of the claim. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4. Because a copy of evidence of assessment work performed or notice of intention to hold was not filed for the 29 mining claims at issue with BLM on or before December 30, 1981, BLM properly deemed them to be abandoned and void. Charlene Schilling, 87 IBLA 52 (1985); J. Neil Smith, 77 IBLA 239 (1983); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Filing or recording the required documents with the county or local recording district does not constitute compliance with the requirement that they be filed with BLM. Fern L. Evans, 88 IBLA 45 (1985). The responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim. This Board has no authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, supra at 196, 88 I.D. at 372. Those mining claims for which timely filings are not made are extinguished by operation of law; intent is irrelevant if the necessary filings are not made. United States v. Locke, 105 S. Ct. 1785 (1985).

Administrative officials are presumed to have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing. H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). This presumption of regularity is not overcome by an uncorroborated statement that the document was submitted to BLM or by evidence the claimant timely filed the proof of labor with the county or other local recording office. John R. Wellborn, 87 IBLA 20 (1985). See Wilson v. Hodel, 758 F.2d 1369, 1374 (10th Cir. 1985). As appellant has not submitted evidence to show that the required filings were received by BLM, the mining claims are properly deemed to be abandoned. The fact that subsequent timely filings have been made in later years has no effect on the conclusive presumption of abandonment embodied in the statute.

[2] In its decision, BLM did not differentiate among the mining claims, the millsite, and the tunnel site involved. Under section 314 of FLPMA, the failure of a holder of a mill or tunnel site claim to file an annual notice of intention to hold the site claim is a curable defect. See James J. Kohring, 89 IBLA 345 (1985). Where BLM fails to notify a mill or tunnel site claimant of a defective filing and request curative data prior to the subsequent filing of annual notices, BLM has effectively waived the defective filing and may not declare the site abandoned and void because of the absence of that document from the file. James J. Kohring, *supra* at 348. The record shows that from 1982 through 1985, annual filings received for the mining group in question included these two sites, and that prior to such filings, BLM did not notify appellant of her failure to file a notice for 1981.

By memorandum of March 17, 1986, transmitting the case files to the Board, BLM stated that millsite C MC 142082 and tunnel site C MC 142080 "were included in our decision in error" and offered "to issue a decision to vacate our decision of February 11, 1986, as to these claims." We conclude BLM's February 11, 1986, decision declaring millsite C MC 142082 and tunnel site C MC 142080 abandoned and void should be vacated and remanded to BLM for action consistent with Kohring and the guidance cited therein.

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 in part, vacated in part, and remanded.

John H. Kelly
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Anita Vogt
Administrative Judge
Alternate Member

