WILBUR H. STARK

IBLA 87-413 Decided July 7, 1987

Appeal from a decision of the California State Office, Bureau of Land Management, declaring placer claims CA MC 52386 and CA MC 52387 abandoned and void for failure to file timely affidavits of assessment work.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

   Sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), and 43 CFR 3833.2-1, require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to Dec. 31 of each year. Failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the mining claim.

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: Tunnel Sites

   Under 43 CFR 3833.4(b), the failure of a holder of a mill or tunnel site claim to timely file an annual notice of intention to hold the claim is a curable defect. However, this regulation applies only to those documents not specifically required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982). The holder of an unpatented placer or lode mining claim cannot rely on this regulation to cure his failure to timely file a notice of intention to hold the mining claim, because the requirement to file annual documents for a lode or placer mining claim is a statutory requirement of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982).

APPEARANCES: Wilbur H. Stark, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Wilbur H. Stark appeals from a February 25, 1987, decision of the California State Office, Bureau of Land Management (BLM), declaring unpatented placer claims CA MC 52386 and CA MC 52387 abandoned and void for failure to file evidence of assessment work performed or notice of intention to hold the claims with BLM on or before December 30, 1985, and 1986. Subsequent to the decision, BLM found the annual filing for these claims submitted in 1985. As the assigned serial numbers were not included on the filing, they were confused with other millsite claims of the same name held by Stark. However, a follow-up review of the record by BLM did not produce a filing received in 1986.

Stark asserts that a copy of a proof of labor for these claims was timely submitted to BLM for each year in question. He argues that although BLM claims not to have the 1986 filing, the proof of labor recorded with the county in 1986 is public evidence of the intent to hold these claims and the act of mailing a copy to BLM shows the desire to follow BLM rules. Appellant contends that Departmental regulation 43 CFR 3833.4(b) requires BLM to allow a claimant who has filed late a period of 30 days in which to submit information. He notes that the information requested by BLM was filed within 5 days after notice of the decision. Stark asserts that it is not the intent of the regulation to allow forfeiture of claims that "had been honorably worked for many years."

[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 located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to December 31 of each year. FLPMA and its implementing regulations provide that failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4.

[2] The regulation cited by Stark, 43 CFR 3833.4(b), reads in part: "The failure to file the information required in §§ 3833.1-2(b), 3833.2-1(c), 3833.2-2(a) and (b) or 3833.2-3(b) and (c) shall not be deemed conclusively to constitute an abandonment of the claim or site, but such information shall be filed within 30 days of receipt of a decision from the authorized officer calling for such information." Careful study of this provision and the noted regulations does not support Stark's construction that the untimely filing of the document in question will not result in the automatic extinguishment of his mining claims. The regulation relied on by appellant involves filing of documents other than those specified in 43 U.S.C. § 1744 (1982), such as defective or untimely notice of intention to hold a mill or tunnel site claim. Section 314 of FLPMA distinguishes between placer claims and tunnel

or millsite claims. Under section 314 and 43 CFR 3833.4(b), the failure of a holder of a mill or tunnel site claim to timely file an annual notice of intention to hold the site is a curable defect. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); James J. Kohring, 89 IBLA 345 (1985); Feldslite Corporation of America, 56 IBLA 78, 88 I.D. 643 (1981). However, the opportunity to cure the failure to timely file affidavits of assessment work or notices of intention to hold is not afforded to holders of unpatented lode or placer claims. The Supreme Court recently ruled in United States v. Locke, 471 U.S. 84 (1985), that filing the annual documents for a lode or placer mining claim after the statutory deadline, even one day late, will result in conclusive determination of abandonment of the claim. 471 U.S. at 97-102.

When it enacted FLPMA, Congress mandated that failure to file the proper documents within the time periods prescribed in section 314 will, in and of itself, cause the claim to be lost. Thus, a claim for which timely filings are not made is extinguished by operation of law regardless of the claimant's intent to hold the claim. See United States v. Locke, 471 U.S. at 100. Moreover, 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 45-46 (1985). Responsibility for complying with the recordation or filing requirements of FLPMA rests with the owner of the unpatented mining claim. The Department has no authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from the statutory consequences. See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). As the record does not indicate that evidence of assessment work performed or notice of intention to hold the claims at issue was filed with BLM on or before December 30, 1986, BLM properly deemed the claims to be abandoned and void. Charlene Schilling, 87 IBLA 52 (1985); J. Neil Smith, 77 IBLA 239 (1983); Lynn Keith, 53 IBLA at 196, 88 I.D. at 372.

Appellant contends that the original submission was filed in a timely fashion. 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 that the claimant timely filed a proof of labor with the county or other local recording office. John R. Wellborn, 87 IBLA 20 (1985). The evidence appellant has submitted, the proof of labor recorded by the county, and the unsupported statement that a copy was sent to BLM, is insufficient to overcome the presumption of regularity. See Wilson v. Hodel, 758 F.2d 1369, 1374 (10th Cir. 1985). Moreover, if the tendered proof of labor was lost or delayed in the mail, appellant must bear the consequences because appellant chose to rely on the Postal Service as his means of delivery. See Alice R. Kirk, 88 IBLA 4, 6 (1985); Paul E. Hammond, 87 IBLA 139 (1985). As appellant has not submitted evidence that the required filing was received by BLM within the period allowed for filing, these mining claims are properly deemed to be abandoned and void.

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:

Wm. Philip Horton
Chief Administrative Judge

Will A. Irwin
Administrative Judge