

Editor's note: Reconsideration denied by Order dated July 8, 1988

WILLIS B. GROSSARDT

IBLA 86-1529

Decided May 10, 1988

Appeal from a decision of the California State Office, Bureau of Land Management, declaring abandoned and void mining claim CA MC 32149.

Affirmed.

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

BLM's allegedly inconsistent conduct in acknowledging receipt of affidavits of assessment work does not provide the corroboration necessary to overcome the presumption that an administrative official has properly discharged his duties and not lost or misplaced legally significant documents submitted for filing.

APPEARANCES: Willis B. Grossardt, Ridgecrest, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Willis B. Grossardt has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated July 21, 1986, declaring the Grapevine Canyon Sand Claim (CA MC 32149) abandoned and void by operation of law. BLM took the action because it found that no affidavit of assessment work or notice of intention to hold this claim had been received in its office for the 1982 assessment year. In support of its decision, BLM cited section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1744 (1982), and explained that a failure to file one of these two documents on or before December 30 of each year is deemed to be an abandonment of the mining claim.

In his statement of reasons on appeal, Grossardt states:

1. Since it has been required that BLM be informed, by receipt, of a copy of the Notice of Annual Assessment Work, we have tried to be diligent in sending ORIGINAL (signed) copies to the respective BLM office and the County Recorder.

2. The County Recorder confirms our notice by mailing back a "Certified copy" of our filing AFTER inserting thereon the filing information. * * *

3. BLM has and has not informed us of their receipt of the Assessment notices. There hasn't seemed to be a definite system established for doing so. [Enclosed is a] photocopy of our 8-28-85 Notice of Assessment work showing receipt by BLM 11-22-85. The same filing for the County Recorder was Aug. 30, 85. * * *

4. We are almost certain in our own minds that we DID file Notice of Assessments for years 81 and 82, although possibly in their proper time frame [sic], as we make sufficient copies and sign them for BOTH BLM and the County Recorder. * * *

As there was a lot of sickness and a death in the immediate family during the 1981-82 period we could have failed to file, but we don't think so. [Emphasis in original.]

Section 314 of FLPMA and the regulation at 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. 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.

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 and filing requirements of FLPMA rests with the owner of the unpatented mining claim. Congress mandated that failure to file the proper documents within the time periods prescribed in section 314 of FLPMA will, in and of itself, cause the claim to be lost. Thus, those claims for which timely filings are not made are extinguished by operation of law regardless of the claimant's intent to hold the claim. United States v. Locke, 471 U.S. 84 (1985). 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, 53 IBLA 192, 88 I.D. 369 (1981).

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 evidence of assessment work with the county or other local recording office. John R. Wellborn, 87 IBLA 20 (1985).

[1] In the present case, Grossardt states that BLM "has and has not informed" him of its receipt of past assessment notices. (Emphasis in original.) No evidence of BLM's receipt of the assessment notice for 1982 is offered by Grossardt on appeal, whether by means of a returned copy or by a return receipt card. BLM's past inconsistent conduct in acknowledging receipt of assessment notices permits two contradictory inferences to be drawn: one, that appellant filed a timely notice in 1982 and two, that appellant failed to file. The equivocal nature of these facts does not provide the necessary corroboration that would cause us to conclude that appellant has overcome the presumption of regularity that attends the official acts of public officers. As such, we hold that BLM properly declared the Grapevine Canyon Sand Claim 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 of the California State Office is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge