

Appeal from a decision of the Fairbanks, Alaska, Support Center, Bureau of Land Management, declaring mining claims abandoned and void. F 69747 through F 69754, and F 79282.

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: Recordation

Failure to file in the proper Bureau of Land Management office either evidence of assessment work performed or notice of intention to hold as required by 43 U.S.C. | 1744 (1982) and 43 CFR 3833.2 within the time period 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 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 or by evidence that the claimant timely recorded a copy with the local recording office.

APPEARANCES: Daniel D. Draper, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Daniel D. Draper appeals from a March 22, 1989, decision of the Fairbanks, Alaska, Support Center, Bureau of Land Management (BLM), declaring unpatented mining claims F 69747 through F 69754, and F 79282 abandoned

and void for failure to file evidence of assessment work performed or notice of intention to hold the claims during the filing period ending December 30, 1988.

Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1744 (1982), and Departmental regulation 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 following the year in which the claim is located. Such filing must be made within each calendar year, *i.e.*, on or after January 1 and on or before December 30. Ronald Willden, 97 IBLA 40 (1987); Robert C. LeFavre, 95 IBLA 26 (1986). 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. Because its records do not indicate that evidence of assessment work performed or notice of intention to hold was filed for the subject mining claims with BLM during 1988, 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 192, 88 I.D. 369 (1981).

On appeal, Draper has enclosed as evidence of timely filing "a copy of my recording from Book No. 593 Page 0457 Fairbanks Recording District Recorded October 17, 1988." Draper contends that he has fulfilled all responsibilities for recording and therefore BLM erred in its determination of abandonment.

The Fairbanks Recording District is a subdivision of the Alaska State Department of Natural Resources pursuant to Alaska Statute, section 44.37.025, and performs the same functions that are performed by the county recorder in other states. Being an agency of the state it is not a part of BLM. Documents filed with the Fairbanks Recording District are not filed with BLM. Samuel A. Wright, 86 IBLA 286 (1985). We do not believe that appellant was confused by the similarity between the Fairbanks Support Center of BLM and the Fairbanks Recording District as the record shows he managed to timely file with BLM copies of the affidavits of labor recorded with the Fairbanks Recording District in 1981 through 1987.

The affidavit of labor received with the appeal does not reflect that a copy was received by BLM during the filing period in question. Filing or recording the required documents with the local recording office alone does not constitute compliance with the requirement that they be filed with BLM. Fern L. Evans, 88 IBLA 45 (1985). A claimant challenging a determination of abandonment has the burden of presenting evidence of a timely filing with BLM.

[1] Congress mandated that failure to file the proper documents in the proper offices within the time periods prescribed in section 314 of FLPMA 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. 84 (1985). Responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim with or without the benefit of notice from the Department. As Congress did not provide for waiver of this requirement, the Department is without 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 at 196, 88 I.D. at 372. Accordingly, the Board may not consider special facts or provide relief in view of mitigating circumstances. Where an annual filing is not timely received, for whatever reason, the consequences must be borne by the claimant.

[2] BLM made its determination on the basis that its case file for the subject claim does not include a timely filing for the 1988 calendar year. 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 it with the local recording office. John R. Wellborn, 87 IBLA 20 (1985). Thus, appellant's affidavit of labor filed with the State of Alaska, Fairbanks Recording District, is insufficient to overcome the presumption of regularity. See Wilson v. Hodel, 758 F.2d 1369, 1374 (10th Cir. 1985).

The purpose of section 314 is not to ensure that assessment work is done on a mining claim but rather to ensure that there is a record of continuing activity on the claim so that the Federal Government will know which mining claims are being maintained on Federal lands and which have been abandoned. The fact that assessment work was done or that timely filings have been made in other years has no effect on the conclusive presumption of abandonment embodied in the statute. Since the statute is self-operative, a claim must be deemed abandoned when an annual filing is not timely received. See Ptarmigan Co., 91 IBLA 113 (1986). As appellant has not submitted evidence that an annual filing for the subject mining claims was received by BLM during the 1988 filing period, they are properly deemed to be abandoned and void.

In his statement of reasons for the appeal, Draper has requested a hearing on this matter. The Board has discretionary authority to order a hearing on factual issues. See 43 CFR 4.415. However, a hearing before an Administrative Law Judge is necessary only where there is a material issue of fact requiring resolution through the introduction of testimony and other evidence. In the absence of such an issue, no hearing is required. Alumina Development Corp. of Utah, 77 IBLA 366 (1983). Since appellant has neither asserted nor demonstrated that the required documents were filed with BLM, there is insufficient evidence to overcome the presumption that those documents were not received. Thus, there is no material issue of fact requiring resolution and a request for a hearing is therefore denied.

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.

Wm. Philip Horton
Chief Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge