

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring mining claims abandoned and void. OR MC 94746 and OR MC 98252.

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: Abandonment--Mining Claims: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold

Under 43 U.S.C. § 1744 (1982), an owner of an unpatented mining claim located on or after Oct. 21, 1976, is required to file evidence of annual assessment work or a notice of intention to hold the claim with the proper BLM office on or before Dec. 30 of each year following the calendar year of location of the claim. Failure to file one of the instruments within the prescribed time period conclusively constitutes an abandonment of the claim.

APPEARANCES: James R. Tucker, Puyallup, Washington, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

James R. Tucker has appealed from the August 30, 1989, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the 3 Star Mine mining claim, OR MC 94746, and the J and M Lode mining claim, OR MC 98252, abandoned and void for failure to file evidence of assessment work performed or notice of intention to hold the claims during the calendar year ending December 30, 1988.

Tucker located the 3 Star claim in sec. 19, T. 21 N., R. 18 E., Willamette Meridian, within the Wenatchee National Forest, on August 22, 1987, and filed the notice of location for recordation with BLM on September 1, 1987. He located the J and M Lode claim in sec. 10, T. 10 N., R. 8 E., Willamette Meridian, within the Gifford Pinchot National Forest, on October 15, 1987, and filed the notice of location for recordation with

BLM on January 6, 1988. ^{1/} On April 14, 1988, Tucker filed an amendment of the J and M Lode claim with BLM explaining in a cover letter received the same date that the amendment was to correct the section in which the claim was located because older maps had shown "this claim to be in section 9 and the latest maps show sect. 10."

In his statement of reasons, Tucker asserts that because he filed a notice of location for the J and M Lode mining claim with BLM in January 1988 and amended the claim in April 1988, he believed that he was not required to file additional information for the claim until 1989. He further contends that in April 1988 he requested information regarding the filing of notices of intention to hold his claims and encloses a copy of a letter from BLM dated April 18, 1988, responding to an April 13, 1988, letter from him. BLM's letter refers to "J and M claims" and states that "[s]ince your claims were located during the 1988 assessment year, nothing is needed for filing in this office during 1988. However, you are required to file a proof of labor for 1989." (Emphasis in original.) He asserts that he intended to file notices of intent in 1988 for the 3 Star and J and M Lode claims until receipt of BLM's letter.

Appellant does not claim to have filed proof of labor or notices of intent for either of these claims on or before December 30, 1988.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), and 43 CFR 3833.2-2(c) require the owner of an unpatented mining claim located on public land on or after October 21, 1976, to file evidence of annual assessment work performed or a notice of intention to hold the mining claim with the proper BLM office on or before December 30 of the calendar year following the calendar year of location and each year thereafter. 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.

Appellant located both of the claims in issue in 1987. Accordingly, either a notice of intent or evidence of annual assessment work for each of the claims had to be filed with BLM on or before December 30, 1988. ^{2/} Because the record does not indicate that either of those documents was filed with BLM on or before that date for either of those claims, BLM properly deemed them both to be abandoned and void. See Richard C. Davis, 65 IBLA 1 (1982); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

^{1/} The location notice actually identifies this claim as the "J and M Lode and Placer" mining claim. In its decision, BLM refers to the claim as the "J and M Lode," as does Tucker in his statement of reasons, although both use the correct mining recordation number for the claim, OR MC 98252.

^{2/} The fact that appellant amended the location of the J and M Lode claim in April 1988 to conform the description of the claim to its actual location on the ground does not change the date of location of the claim.

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). The fact that assessment work may have been done or that timely filings may have been made in other years has no effect on the conclusive presumption of abandonment embodied in the statute.

The only question presented by appellant's statement of reasons is whether BLM is estopped to declare his claims abandoned and void because of the representation made by BLM in the letter dated April 18, 1988. It is not. The BLM letter cited by appellant has no relevance to the claims in issue. Appellant's April 13, 1988, letter to BLM concerned five claims: the J and M Lode and the J and M #2 through #5. Appellant identified those claims in his letter by their mining claim recordation numbers: OR MC 100912 through OR MC 100916, respectively. Review of the case file for mining claim OR MC 100912, the J and M Lode, reveals that it was located by appellant in sec. 13, T. 20 N., R. 18 E., Willamette Meridian, on February 28, 1988. Clearly, it is not the same J and M claim involved in this appeal. Therefore, when BLM responded in its April 18 letter, it was not referring to either of the claims at issue.

Therefore, 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.

Bruce R. Harris
Administrative Judge

I concur:

James L. Burski
Administrative Judge