

H. S. RADEMACHER

IBLA 80-943

Decided September 25, 1981

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring mining claims abandoned and void. (OR MC 28368 through OR MC 28387).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Evidence: Presumptions--Evidence: Sufficiency--Mining Claims: Assessment Work

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that

evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

APPEARANCES: H. S. Rademacher, President, Kettle River Consolidated Mines, Inc.

OPINION BY ADMINISTRATIVE JUDGE GRANT

H. S. Rademacher, President, Kettle River Consolidated Mines, Inc., appeals from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated August 18, 1980, declaring mining claims OR MC 28368 through 28387, as listed in the appendix, located prior to October 21, 1976, in Stevens County, Washington, and recorded with BLM on October 17, 1979, abandoned and void for failure to file evidence of assessment work or notice of intention to hold the claims on or before October 22, 1979, as required by statute. Federal Land Policy and Management Act of 1976 (FLPMA), section 314, 43 U.S.C. § 1744 (1976); 43 CFR 3833.2-1(a). The BLM decision stated that although the instruments and fees required for recordation (of notices of location) of appellant's claims had been received at the BLM office prior to October 22, 1979, the filings were not accompanied by an affidavit of assessment work or notice of intention to hold the claims. BLM further noted that a search of thousands of filings did not reveal that an affidavit or notice had been separately filed with the BLM office by October 22, 1979.

In his statement of reasons, appellant alleges that he enclosed the required notices of location and fees, along with two recorded proofs of labor covering the 20 claims, in a large envelope and sent it by certified mail to the proper BLM office on October 15, 1979. Appellant asserts that it is BLM's responsibility to produce these recordings. Appellant tendered with his notice of appeal copies of proof of labor recorded with the county recorder's office on August 13, 1979.

In response to appellant's assertion that the required evidence of assessment work had been filed with BLM together with the notice of location of the subject claims, this Board on May 1, 1981, requested BLM to recheck and verify whether or not any proof of labor with respect to the subject claims had been filed but inadvertently omitted from the case files. The BLM reply indicated that the mining claim records were again checked and no evidence of assessment work filed with BLM during 1979 was found.

[1] Under section 314 of FLPMA, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before October 21, 1976, must file notice of intention to hold the claim, or evidence of the performance of annual assessment work on the claim, in the proper BLM office on or before October 22, 1979, and prior to December 31 of each year thereafter. This requirement is mandatory, not discretionary, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner, and renders the claim void. Lynn Keith, 53 IBLA 192, 196, 88 I.D. 369, 371 (1981).

[2] Although appellant asserts that the required evidence of assessment work was mailed to BLM with the notices of location, the record does not show that BLM received the documents. There is a legal presumption of regularity which attends the official acts of public officers in the proper discharge of their official duties. Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Lawrence E. Dye, 57 IBLA 360, 363 (1981); John Walter Starks, 55 IBLA 266, 270 (1981); Bruce L. Baker, 55 IBLA 55, 57 (1981); L. E. Garrison, 52 IBLA 131, 133 (1981). It is presumed that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing. John Walter Starks, supra at 270. This Board has recognized that this presumption may be rebutted by probative evidence to the contrary. Bruce L. Baker, supra at 57; L. E. Garrison, supra at 133.

The effect of a rebuttable presumption of law is to invoke a rule of law compelling the trier of fact to reach a conclusion in the absence of evidence to the contrary, but the presumption disappears if evidence to the contrary is submitted and the case is then in the fact-finders hands free from any rule. Legille v. Dann, supra at 5-6 (citing 9 J. Wigmore, Evidence § 2491, at 289 (3d ed. 1940)). The evidence submitted by appellant in the form of an affidavit that the proofs of labor for the claims were transmitted in the same envelope with the notices of location precludes resolution of the case solely on the basis of the presumption that the documents would have been placed in the file if actually tendered. However, this does not preclude consideration of evidence that the documents were not found in the files and that BLM

follows regular procedures to insure that submitted materials are not mishandled. See Legille v. Dann, supra at 8-9.

The issue of what kind of evidence is sufficient to establish the filing of a document despite the absence from the appropriate file of such a document is one which has troubled this Board previously. See David F. Owen, 31 IBLA 24 (1977) (with dissenting opinion). This Board has found the inference of nonfiling drawn from the absence of the document from the case file to be effectively rebutted by a preponderance of the evidence in those cases where appellant's assertion that the document was timely filed is supported by substantial corroborating evidence. Bruce L. Baker, supra; L. E. Garrison, supra. In Bruce L. Baker, supra, the assertion that the document in issue was actually filed was supported by an affidavit setting forth in detailed chronological sequence the events surrounding the filing which affidavit in turn was corroborated by the dates of notarial seals and filing with the county recorder's office. In the L. E. Garrison case, supra, claimant's assertion that the document in issue had been filed with BLM was corroborated by an affidavit of a subsequent telephone conversation with a BLM employee who opened the mailing and acknowledged timely receipt of the required document. The phone conversation was in turn documented by a long-distance telephone bill reflecting the call. On the other hand, the Board has held that uncorroborated statements, even where placed in affidavit form, to the effect that a document was filed are not sufficient to overcome the inference of nonfiling drawn from the absence of the document from the file and the practice of BLM officials to handle properly filings of legally operative documents.

See Lawrence E. Dye, *supra* at 364; John Walter Starks, *supra*; Metro Energy, Inc., 52 IBLA 369, 371 (1981); Charles J. Babington, 36 IBLA 107 (1978).

In the case before us, the cover letter submitted by appellant with the notices of location filed with BLM on October 17, 1979, makes no mention of the proof of labor and refers only to the service fee enclosed for recording the notices of location for 20 claims. Although there is little doubt that assessment work was performed for the subject claims and that proof of labor was filed with the county recorder's office, the evidence in this case does not establish that the proof of labor was filed for record with BLM on or before October 22, 1979.

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.

C. Randall Grant, Jr.

Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Bruce R. Harris
Administrative Judge

APPENDIX

<u>NAME OF CLAIM</u>	<u>DATE OF LOCATION</u>	<u>BLM SERIAL NUMBER</u>
Guam	November 22, 1946	OR MC 28368
Eckert #1	April 9, 1951	OR MC 28369
Eckert #2	May 18, 1951	OR MC 28370
Tuck	July 1, 1931	OR MC 28371
White Star	March 7, 1934	OR MC 28372
Prince Albert	July 1, 1927	OR MC 28373
Nip	July 1, 1931	OR MC 28374
Monday Morning	March 12, 1934	OR MC 28375
Side Show	September 9, 1933	OR MC 28376
Boudry	April 12, 1937	OR MC 28377
Minneapolis	June 27, 1916	OR MC 28378
Bisbee Fraction	April 9, 1918	OR MC 28379
Bisbee	May 5, 1915	OR MC 28380
St Paul	June 27, 1916	OR MC 28381
Green Frog	January 1, 1919	OR MC 28382
First Chance	June 30, 1937	OR MC 28383
Golden Pheasant	April 7, 1934	OR MC 28384
Roundup	January 1, 1918	OR MC 28385
Green Frog Fraction	August 1, 1915	OR MC 28386
Highland Copper	September 24, 1945	OR MC 28387

