

DON COOK

IBLA 82-97

Decided December 4, 1981

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring mining claims abandoned and void. I MC 39536 through I MC 39539.

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. Mining Claims: Assessment Work

The filing of evidence of annual assessment work in the county recorder's office is not in compliance with the recordation requirements of 43 CFR 3833.2-1.

3. Administrative Practice -- Delegation of Authority: Extent of -- Evidence: Presumptions -- Federal Employees and officers: Generally -- Officers and Employees -- Rules of Practice: Evidence

The presumption of regularity supports the acts of public officers and, in the absence of clear evidence to the contrary, they are presumed to have properly discharged their official duties.

APPEARANCES: Don Cook, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Don Cook appeals a decision of the Idaho State Office, Bureau of Land Management (BLM), dated September 30, 1981, which declared the unpatented Bonaparte #2, #3, #4, and #5 placer mining claims, I MC 39536 through I MC 39539, abandoned and void because evidence of assessment work or notice of intent to hold the claims had not been filed with BLM on or before December 30, 1980, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

Appellant asserts he has performed the annual assessment work on these claims for 20 years, and that the proof of his 1980 assessment work was recorded in the records of Boise County, Idaho, August 26, 1980. He admits that he cannot prove he gave a copy of the proof to BLM, as he does not have a receipt for the submission, but he is certain he did.

[1] The pertinent regulation, 43 CFR 3833.2-1(c), requires the owner of an unpatented mining claim located on Federal lands to file in the proper BLM office evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim, on or before December 30 of each calendar year. See 43 U.S.C. § 1744(a) (1976).

Failure to file any instrument required by FLPMA within the prescribed time period conclusively constitutes an abandonment of the claim. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). That is the consequence imposed by the Congress in enacting the statute.

[2] The fact that appellant filed in the county recorder's office does not excuse him from compliance because such filing does not meet the requirements of FLPMA. Joseph Ojurovich, 54 IBLA 100 (1981). Evidence of assessment work must be filed with BLM as well as with the county. This Board has no authority to excuse lack of compliance or to afford relief from the statutory consequences. Lyman Mining Co., 54 IBLA 165 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[3] Appellant contends that he did submit the affidavit of assessment work for 1980 to BLM in timely fashion. There is, however, no evidence to support this contention. Moreover, appellant had the burden of rebutting the presumption that BLM officials properly discharged their official duties in receiving and date stamping all affidavits of assessment work properly tendered them. See United States v. Chemical Foundation, 272 U.S. 1, 14, 15 (1926); A. G. Golden, 22 IBLA 261 (1975); Amoco Production Co., 16 IBLA 215 (1974).

When appellant failed to file timely either evidence of assessment work or a notice of intention to hold his claims, BLM properly held the claims to have been abandoned and void. Stephen G. Rudisill, 56 IBLA 158 (1981).

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.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

