

RONALD R. ATKINS

IBLA 82-175

Decided February 16, 1982

Appeal of a decision of the Idaho State Office of the Bureau of Land Management declaring unpatented mining claims abandoned and void. I MC 37389 and I MC 37390.

Affirmed.

1. Administrative Procedure: Burden of Proof--Evidence: Burden of Proof--Evidence: Presumptions--Mining Claims: Assessment Work

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

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

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on Federal land prior to Oct. 21, 1976, must file with the proper office of BLM within 3 years after Oct. 21, 1976, a notice of intention to hold or evidence

of performance of annual assessment work on the claim, and a similar filing must be made before Dec. 31 of every year thereafter. Otherwise, the claim is conclusively deemed abandoned and void. There is no provision for waiver of this requirement.

APPEARANCES: Ronald R. Atkins, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Ronald R. Atkins appeals the November 5, 1981, decision of the Idaho State Office of the Bureau of Land Management (BLM) that declared unpatented Nannie K. No. 1 and Nannie K. Ledge mining claims, I MC 37389 and I MC 37390, abandoned and void because evidence of assessment work or notice of intention to hold the claims had not been filed with BLM for 1980 on or before December 30, 1980, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

[1] Appellant's assessment work for the subject claims was timely performed and recorded with Boise County, Idaho, in September 1980, and he asserts that a copy of the recorded instrument was sent to BLM, "but apparently the filing for 1980 was lost and [BLM] did not inform me of such until 1981." Appellant has presented copies of labor affidavits for his claims filed in Boise County from 1970 to 1981. But aside from his unsupported assertion that his 1980 filing with BLM must have been lost, there is no evidence that BLM ever received the 1980 proof of labor. In view of the established legal presumption that official acts of public officers are regular, *see, e.g., Legille v. Dann*, 544 F.2d 1 (D.C. Cir. 1976); *Bernard S. Storper*, 60 IBLA 67 (1981), we find appellant's evidence inadequate. He had the burden of showing he had actually filed with BLM for 1980, and since that burden was not carried, the presumptions of FLPMA remain operative.

[2] Section 314 of FLPMA, 43 U.S.C. § 1744 (1976), and implementing regulations, 43 CFR 3833.2-1(c) and 3833.4, require that a notice of intention to hold the claims or a copy of the affidavit of assessment work be filed annually in the proper BLM office within the specified time limits; if the proper documents are not timely filed, a conclusive presumption of the claims' abandonment attaches. A document submitted pursuant to section 314 of FLPMA is not considered filed until it is "received and date stamped by the proper BLM office." 43 CFR 3833.1-2(a). In declaring the claims abandoned and void, BLM was executing its duty under a statute enacted by Congress, and we are powerless to change the dictated result. *Lynn Keith*, 53 IBLA 192, 88 I.D. 369 (1981).

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 is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

