

ROBERT L. RACE ET AL.

IBLA 82-349

Decided March 25, 1982

Appeal from a decision of the Idaho State Office of the Bureau of Land Management declaring abandoned and void certain mining claims. I MC 37131 through I MC 37133.

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

There is a rebuttable presumption that BLM acts regularly with respect to allegedly filed mining claim documents. That presumption can be overcome only by a showing of substantial evidence tending to disprove the regularity of BLM's action in the particular instance in question; upon such a showing, the

Board decides the case without further reference to the presumption, and by preponderance of the evidence. Mailing a document is not evidence that BLM ever received it, and does not satisfy the recording requirement nor rebut the presumption of regularity.

3. 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--Statutory Construction: Generally

In Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), it was held that "supplemental" mining claim information required only by the regulations, not FLPMA, is subject to cure. But failure to file a proof of labor timely or properly is not curable after the recordation deadline, because such filing is not "supplemental," being required by FLPMA itself.

APPEARANCES: Manderson L. Miles, Esq., Lewiston, Idaho, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of November 30, 1981, the Idaho State Office of the Bureau of Land Management (BLM) declared the Fritog No. 1, Fritog No. 2, and Fritog No. 3 mining claims, I MC 37133, I MC 37131, and I MC 37132 abandoned and void because of the failure of the claim owners, Robert L. Race, Katherine W. Race, Charles Moser, and Amelia Moser, to file timely for the 1980 calendar year either notice of intention to hold the claims or evidence of assessment work performed thereon, in violation of 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. The owners appeal.

Appellants filed their proof of labor with Idaho County, Idaho, on August 20, 1980. They assert that a copy of that document was mailed to BLM on August 25, 1980, by first-class mail from Lewiston, Idaho. They intimate that they mailed the document so early in the year that BLM must have timely received it. They also allege that BLM had constructive notice of appellants' continuing interest in the mining claim, based on the timeliness and correctness of their filings in other years, and that intention to abandon is a requisite element of abandonment, the burden of proof of which is on the Government. Finally,

[a]ppellants submit that 43 U.S.C. § 1744(c) mandates a flexible filing approach * *

*. This section assumes that even

defective filings, as is the [present] situation * * * put [BLM] on notice of a claim. In this case the defect should be treated as a curable defect and the appellants allowed to bring the 1980 filing into compliance. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981).

[1] Appellants' claims were located in 1954 and 1962. FLPMA's provision for recordation of mining claims requires, among other things, that the owner of an unpatented mining claim located prior to October 21, 1976, file with BLM, within the 3-year period following that date, and prior to December 31 of each year thereafter, either a notice of intention to hold the mining claim, an affidavit of assessment work performed thereon, or a detailed report provided by section 28-1 of Title 30, relating thereto. 43 U.S.C. § 1744(a) (1976). Under FLPMA section 314(c), 43 U.S.C. § 1744(c) (1976), failure to so file produces a conclusive presumption that the affected mining claim has been abandoned, and the relevant regulation, 43 CFR 3833.4(a), states that the mining claim "shall be void."

[2] Despite appellants' contention that a copy of the proof of labor was timely mailed to BLM, the BLM case file contains no such document, indicating that BLM never received it. There is a rebuttable presumption of regularity that attends the official acts of public officers. Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Ronald R. Atkins, 61 IBLA 364 (1982). 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, 55 IBLA 266, 270 (1981). That presumption can be overcome only by a showing of substantial evidence tending to disprove the regularity of BLM's action in this case. H. S. Rademacher, 58 IBLA 152 (1981). If such a showing is made, this Board examines the facts and applicable law without further reference to the presumption of regularity, and the case is decided by preponderance of the evidence. Id.

Appellants' chief factual assertions in support of the allegation that BLM timely received the 1980 proof of labor are that it was timely mailed, and that, since 1976, proof of labor has been filed with BLM "in essentially the same manner each year, including but not limited to 1980." However, this Board has consistently held that the mailing of a document is not evidence that BLM ever received it, and therefore does not itself satisfy the recordation requirement. William J. Kroetch, 57 IBLA 29 (1981). An allegation that a proof of labor was mailed to BLM without substantial corroborating evidence of filing is insufficient to overcome the inference of nonfiling drawn from the absence of the document from the case file. H. S. Rademacher, supra. Similarly, appellants' past performance with respect to filing labor affidavits creates no presumption that it was filed for 1980. Appellants' history of filing did not give BLM constructive notice that the claims were still valid, since FLPMA specifically places on the claimant the burden of showing that the claim was not abandoned, through compliance with the requirements of that Act; and noncompliance yields the conclusive presumption of abandonment. Loy Yokum, 62 IBLA 27 (1982); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[3] The failure to file timely proofs of labor is not a defect that may be cured. The failure to file with BLM certain "supplemental" information, required only by the regulations, was held in Topaz Beryllium Co. v. United States, *supra*, to be curable; but the unfiled documents in this case were required by section 314 of FLPMA itself, and were therefore not "supplemental," and the defect was not curable after the deadline. Since the appellants have not adduced evidence sufficient to overcome the presumption that BLM acted regularly with respect to their labor affidavits, or that BLM ever received the mailing, we necessarily find that appellants have failed to meet their burden on appeal.

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.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

