

D. F. COLSON

IBLA 82-156

Decided April 15, 1982

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC-54027 through N MC-54050; N MC-122209 through N MC-122226; N MC-121887.

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. Administrative Procedure: Administrative Review--Administrative Procedure: Decisions--Appeals--Rules of Practice: Appeals: Notice of Appeal

Where several BLM decisions declaring appellant's mining claims abandoned and void each stated "In reply refer to 3833 (N-952)," and appellant's notice of appeal specifically applied to BLM decisions bearing that reference number, the notice of appeal was effective, and BLM incorrectly and prematurely closed the file of one claim that BLM decided was not covered by the notice of appeal.

## 3. Estoppel--Laches--Mining Claims: Abandonment

Estoppel of the Government, especially where public lands are concerned, is a remedy applicable only to extraordinary circumstances. A sine qua non of estoppel of the Government is affirmative misconduct by an authorized agent or officer that results in a misrepresentation of fact upon which there is detrimental reliance. BLM's apparently innocent silence at the time mining claim documents were filed does not estop the Government from later declaring mining claims invalid for failure to file other required documents.

## 4. Administrative Procedure: Burden of Proof--Evidence: Burden of Proof--Evidence: Presumptions--Evidence: Sufficiency--Mining Claims: Abandonment

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

APPEARANCES: D. F. Colson, pro se.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

[1] By decisions of October 27, 1981, the Nevada State Office of the Bureau of Land Management (BLM) declared certain unpatented mining claims 1/

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1/ See Appendix for information about these claims.

abandoned and void for failure to file by December 30, 1979, <sup>2/</sup> either a notice of intention to hold the claims or proof of labor performed thereon. Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), requires the owner of an unpatented mining claim located before October 21, 1976, to file within the 3-year period following October 21, 1976, and also on or before December 30 of each calendar year thereafter, either evidence of assessment work performed on the claim or a notice of intention to hold it. That same section of FLPMA also requires the owner of an unpatented mining claim located after October 21, 1976, to make a similar filing with BLM on or before December 30 of each year following the calendar year in which the claim was located. Untimeliness of filing invokes a statutory conclusive presumption that the mining claim was abandoned (FLPMA section 314(c)) and "it shall be void" under 43 CFR 3833.4.

The record owner of the mining claims in 1979 was appellant's mother-in-law, Ida M. Litster, who had the assessment work done for that year and filed proof of labor with the appropriate county recording offices. Appellant insists he personally helped prepare copies of the official affidavits of labor that he asserts were mailed to BLM October 18, 1979. <sup>3/</sup> Mrs. Litster transferred ownership of the 24 placer claims and the 18 lode claims to appellant and his wife in 1980 and 1981, respectively. Appellant had several occasions to communicate with BLM about the claims, and he complains that there was never any intimation that his claims were in any way invalid. He states:

The BLM subsequently handled the transfer of ownership and treated me as if these claims were all valid, as I still believe them to be. I have heard that some cases like this have been cleared at local BLM offices. The reason I have not tried this is because when I called to ask why it was taking so long to check their files for my claims, Ms. Pam Ouellette told me to forget a favorable ruling by appealing to their office, and she said I would be receiving a negative ruling. I concluded that fair treatment would not be possible for me after that conversation with the local office. Therefore, I request this reviewing Board to overrule the local BLM office, because \* \* \* these claims were not abandoned. [Emphasis in original.]

[2] By letter of January 20, 1982, BLM informed appellant that it considered the file for the New Portal claim, N MC-121887, closed (no longer subject to appeal) because, as BLM asserted, appellant never filed a notice of appeal with respect to that claim. We agree with appellant's assertion that he had in fact filed a notice of appeal for that and the other claims involved. Each of the relevant BLM decisions of October 27, 1981, stated: "In reply refer to 3833 (N-952)," and appellant's notice of appeal specifically declared itself applicable to the BLM decisions bearing that reference

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<sup>2/</sup> The decision should have recited Oct. 22, 1979, instead of December 30, 1979, as the claims were located prior to October 21, 1976.

<sup>3/</sup> The return receipt card submitted by appellant shows receipt by BLM of the mailing on Oct. 18, 1979.

number. We recognize that BLM attaches that reference to many mining claim recordation decisions, and that it was not a designation of appellant's claims in particular or the decisions affecting them. But appellant did not know that. In filing the notice of appeal using that reference, he was merely following BLM's instruction to use it in replying to the decisions. He stated: "The decision your office has made to declare my mining claims abandoned and void is wrong. Therefore, this is my notice of appeal regarding that decision. In reply, I'm referring to 3833 (N-952)." Nothing suggests that any of the adverse BLM decisions was not appealed. BLM incorrectly and prematurely closed the file of the New Portal claim, and we will consider that claim with the others on appeal.

[3] Appellant intimates BLM should be estopped from declaring his claims abandoned and void because BLM never discussed or alleged the invalidity of his claims, despite several opportunities in which such allegations could have been made. Instead, he complains, BLM's silence on the matter caused him to continue performing labor and filing proof thereof in 1980 and 1981, which is all now in jeopardy because of the alleged failure to file in 1979. This Board has consistently noted that estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy applicable only to truly extraordinary circumstances. Harold E. Woods, 61 IBLA 359 (1982). A sine qua non of estoppel of the Government is affirmative misconduct by an authorized agent or officer that results in a misrepresentation of fact which it then detrimentally relied upon. United States v. Leo D. Jackson, 53 IBLA 289 (1981). Generally, even BLM's affirmative provision of erroneous information "cannot operate to vest any right not authorized by law." 43 CFR 1810.3; Harold E. Woods, supra. In this case, BLM's apparently innocent silence respecting the claims' later-alleged invalidity is no ground for estopping the Government. 43 CFR 3833.5(f). Nevertheless, that conclusion does not necessarily decide this case, for appellant has adduced other arguments and evidence that bear on whether he has met his burden of proof.

[4] There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Ronald R. Atkins, 61 IBLA 364 (1982); Bernard S. Storper, 60 IBLA 67 (1981). Therefore, we must, in the first instance, presume the correctness of BLM's representation that it did not receive appellant's proof of labor for the 1979 assessment year on or before December 30, 1979. In H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981), however, this Board noted:

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-finder's hands free from any rule. Legille v. Dann, supra at 5-6 \* \* \*.

\* \* \* 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, [55 IBLA 55 (1981)]; L. E. Garrison, *supra*.

58 IBLA at 155, 156, 88 I.D. at 875, 876 (1981). Thus, appellant will have met his burden of proof if he can show by a preponderance of the evidence the timeliness of his filing with BLM. Bruce L. Baker, *supra*.

The location notices for 18 of appellant's lode claims, N MC-122209 through N MC-122226, were "filed" with BLM on October 19, 1979. <sup>4/</sup> At that time, Mrs. Litster still owned those claims, and appellant helped her compile and mail the appropriate documents. He states, "Among the many papers that were sent by mail for the recordation of these claims were also copies of the affidavits for assessment work that [were] recorded with the local county recorder's offices (copies are enclosed for your examination). These three affidavits [<sup>5/</sup>] were mailed 10/18/79 \* \* \*." Attached to appellant's statement of reasons is a photocopy of a check dated October 18, 1979, from Mrs. Litster to BLM in the amount of \$90, covering the filing fee for the 18 claims. In addition, a photocopy of a return receipt card, addressed to BLM from Mrs. Litster, shows that BLM received the transmittal by certified mail on October 18, 1979. The return receipt card also now bears, presumably in Mrs. Litster's handwriting, the following notation concerning the intended contents of the transmittal: "[S]ent BLM lode claims and three proof of labors." BLM received the location certificates and check on October 18, 1979, and if the affidavits of labor were included, they too would have been timely filed. However, the notation added to the return receipt card evidences only what someone thought had been sent to BLM, not necessarily what BLM actually received. The notation falls far short of being affirmative proof that the indicated documents were actually mailed, especially as BLM denies having received the proofs of labor in question. Additionally, appellant offered no statement from Mrs. Litster, owner of the claims at that time, that she did, in fact, include the proofs of labor with the location notice. It is well within the realm of possibility that although she intended to include the proofs of labor, they were inadvertently omitted. We find that the proofs of labor were not received by BLM in the mailing it received on October 18, 1979, despite appellant's allegations to the contrary.

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<sup>4/</sup> BLM's date stamp on the documents shows them received at 10 a.m., Oct. 19, 1979. Pursuant to 43 CFR 3833.1-2(a), that is the date on which the documents were "filed." However, as discussed in the text below, the return receipt card shows that the location notices (and arguably other documents) were received and date stamped by BLM Oct. 18, 1979, at 10 a.m.

<sup>5/</sup> Appellant assertedly filed with BLM a copy of each of three "affidavits of labor performed" recorded in local recorder's offices. The first such document pertained to the New Portal claim, N MC-121887, recorded in Lander County on Aug. 16, 1979. The other two documents, both recorded in Nye County on Aug. 27, 1979, pertained respectively to the claims identified in the appendix by the serial numbers N MC-54027 through N MC-54050, and N MC-122209 through N MC-122226.

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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Bruce R. Harris  
Administrative Judge

## APPENDIX

<u>Date of Location</u>	<u>Date of Filing</u>	<u>Name of Claim</u>	<u>N MC Number</u>
June 30, 1971	Mar. 16, 1979	New April	N MC-54027
July 1, 1940	Mar. 16, 1979	Oregon Placer	N MC-54028
Apr. 2, 1936	Mar. 16, 1979	Oroville #5 through Oroville #6	N MC-54029 through N MC-54030
Apr. 2, 1936	Mar. 16, 1979	Oroville #9 through Oroville #10	N MC-54031 through N MC-54032
Apr. 2, 1936	Mar. 16, 1979	Oroville #16	N MC-54033
Apr. 2, 1936	Mar. 16, 1979	Oroville #18 through Oroville #19	N MC-54034 through N MC-54035
July 2, 1938	Mar. 16, 1979	Six-Two-Four	N MC-54036
July 3, 1938	Mar. 16, 1979	Crescent Placer	N MC-54037
July 2, 1938	Mar. 16, 1979	Marietta Placer	N MC-54038
July 17, 1939	Mar. 16, 1979	Willard Placer	N MC-54039
July 2, 1937	Mar. 16, 1979	Rogers Placer	N MC-54040
Apr. 3, 1936	Mar. 16, 1979	Telluride #1 through Telluride #2	N MC-54041 through N MC-54042
July 2, 1937	Mar. 16, 1979	Lucky Placer	N MC-54043
July 2, 1937	Mar. 16, 1979	Bailey Placer	N MC-54044
July 2, 1937	Mar. 16, 1979	The Four Deuces Placer	N MC-54045
June 2, 1934	Mar. 16, 1979	Eureka Placer	N MC-54046
July 30, 1934	Mar. 16, 1979	San Jaun Placer	N MC-54047
Feb. 2, 1936	Mar. 16, 1979	Paramount Placer #2	N MC-54048
July 18, 1939	Mar. 16, 1979	Tiffin Placer	N MC-54049
July 15, 1939	Mar. 16, 1979	Republic Placer	N MC-54050
May 23, 1968	Oct. 19, 1979	Grey	N MC-122209
May 23, 1968	Oct. 19, 1979	Blue	N MC-122210
June 2, 1968	Oct. 19, 1979	Windy	N MC-122211
June 2, 1968	Oct. 19, 1979	Windy #1 through Windy #4	N MC-122212 through 122215
Mar. 30, 1929	Oct. 19, 1979	Homestake #2 through Homestake #4	N MC-122216 through 122218
Apr. 1, 1929	Oct. 19, 1979	Homestake #5	N MC-122219
June 5, 1968	Oct. 19, 1979	Homestake Ext. #3 through Homestake Ext. #5	N MC-122220 through 122222
June 8, 1968	Oct. 19, 1979	Homestake Ext. #6	N MC-122223
Nov. 16, 1936	Oct. 19, 1979	Exception #1	N MC-122224
June 8, 1968	Oct. 19, 1979	Exception #2 through Exception #3	N MC-122225 through 122226
Dec. 11, 1962	Oct. 18, 1979	New Portal	N MC-121887

