

STANLEY SIMS

IBLA 82-656

Decided June 2, 1982

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring abandoned and void certain placer mining claims. N MC 74646 through N MC 74649.

Affirmed.

1. 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.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claims -- 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 a mining claim located on or before Oct. 21, 1976, must file a notice of intention to

hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

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

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Stanley Sims, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Stanley Sims appeals the March 3, 1982, decision of the Nevada State Office, Bureau of Land Management (BLM), declaring the Mustang #1 through #4 placer mining claims, N MC 74646 through N MC 74649, abandoned and void for failure to file evidence of assessment work with BLM prior to October 22, 1979, 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.

These claims were located in 1973 and 1974. Copies of notices of location were filed with BLM on July 13, 1979.

Appellant asserts that he sent the proofs of labor for these claims to BLM in 1979. The record, however, does not indicate that these proofs of labor were received by BLM in 1979.

Appellant asserts he sent the 1979 proof of labor to BLM at the same time he sent a notice of intention to hold the Mustang Millsite claim, N MC 74645. Appellant states he was unaware that he should have received a receipt for the proof of labor and the notice of intent to hold, so he did not worry about the status of his mining claims. He questions the delay by

BLM in notifying him of the deficiency and placing his claims in jeopardy, especially as he has, in fact, done the required assessment work each and every year since he located the claims in 1973. He asserts he filed, with BLM, a proof of labor in 1980 and in 1981 for these claims, and that BLM accepted the filings without question as to the validity of the claims.

The case record reflects the proof of labor for 1980 was filed November 5, 1980, and for 1981, November 2, 1981. The record, however, does not show any proof of labor for 1979, and BLM has asserted it can find no record of receipt of the 1979 proof of labor.

[1] There are various presumptions which come into play when an appellant alleges timely transmittal of an instrument but BLM has no record of its receipt. On one hand, there is a presumption of regularity which supports the official acts of public officers in the proper discharge of their duties. See e.g., Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Bernard S. Storper, 60 IBLA 67 (1981); Phillips Petroleum Co., 38 IBLA 344 (1979). On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. See e.g., Donald E. Jordan, 35 IBLA 290 (1978). When these two presumptions have come into conflict, the Board has generally accorded greater weight to the former. See David F. Owen, 31 IBLA 24 (1977). We believe that public policy considerations dictate that greater weight be given to the presumption of regularity over that accorded the presumption that mail, duly addressed, stamped and deposited, is delivered.

Thus, where BLM states it did not receive the instrument, the burden is on the appellant to show that the instrument was, in fact, received timely by BLM. See H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981).

Appellant's unsupported statement that he did transmit the 1979 proof of labor and notice of intent to hold to BLM does not overcome the presumption of regularity. It is the receipt of the instrument which is critical. See 43 CFR 1821.2-2(f).

[2] Section 314 of FLPMA requires the owner of unpatented mining claims located prior to October 21, 1976, in addition to filing with BLM a copy of the official record of the notice of location, to file with BLM evidence of the assessment work performed on the claim or a notice of intention to hold the claim within 3 years after the date of the Act, i.e., on or before October 22, 1979, and before December 31 of each calendar year thereafter. The statute also provides that failure to file such instruments within the time periods prescribed shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. 43 CFR 3833.1-2, 3833.2-1, and 3833.4.

[3] Failure to comply with these requirements is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Lawrence Paul, 63 IBLA 275 (1982); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for

complying with the recordation requirements of FLPMA rests with appellant, and this Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. As the Board stated in Lynn Keith, supra.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72.

Therefore, BLM properly declared appellant's mining claims abandoned and void because evidence of assessment work was not filed with BLM prior to October 22, 1979, pursuant to FLPMA, supra, and 43 CFR 3833.2-1.

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

Gail M. Frazier  
Administrative Judge

