

MANUEL R. HERNANDEZ

IBLA 82-887

Decided July 12, 1982

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 37988 through A MC 37997.

Affirmed.

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

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, timely received by BLM.

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 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 or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an 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: J. R. Evans, Esq., Willcox, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Manuel R. Hernandez appeals the May 5, 1982, decision of the Arizona State Office, Bureau of Land Management (BLM), declaring the unpatented Saint Frances Nos. 1 through 10 lode mining claims, A MC 37988 through A MC 37997, 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 1969. Copies of the notices of location were filed with BLM March 30, 1979.

Appellant asserts that he sent proof of labor for these claims to BLM in 1979, after recording the proof in Cochise County, Arizona, October 3, 1979. He states the claims are currently being worked.

The record, however, does not indicate that any proof of labor was received by BLM by October 22, 1979, relative to these claims. The record does show that a proof of labor for 1980 was filed August 27, 1980; for 1981, August 31, 1981; and for 1982, May 21, 1982. The only proof of labor for 1979 was received June 3, 1982, with the appeal.

[1] Various presumptions 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, timely received 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 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 the 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.

[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 M (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 statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981). 53 IBLA at 196, 88 I.D. at 371-72.

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

Appellant may wish to consult with BLM about the possibility of relocating these claims.

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

