

HELENA SILVER MINES, INC.

IBLA 82-891

Decided July 13, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 36278 through I MC 36308 and I MC 36320 through I MC 36329.

Affirmed.

1. 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 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.

2. 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 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.

3. Evidence: Presumptions -- Evidence: Sufficiency

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their duties.

APPEARANCES: Peter W. Laczay, President, Helena Silver Mines, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Helena Silver Mines, Inc., appeals the May 5, 1982, decision of the Idaho State Office, Bureau of Land Management (BLM), which declared the unpatented mining claims, n1 I MC 36278 through I MC 36308 and I MC 36320 through I MC 36329, abandoned and void because no proof of labor or notice of intention to hold the claims was received by BLM during 1980 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.

The claims were located prior to October 21, 1976. Copies of the notices of location and evidence of assessment work were recorded with BLM October 19, 1979. All claims of appellant submitted to BLM on that date are included in a single case folder, I MC 36278 through I MC 36329. There is no recorded evidence in the folder of a proof of labor or a notice of intention to hold, for 1980, for the claims, although a proof of labor for 1981 was received by BLM October 7, 1981. Within the series, I MC 36328 through I MC 36329, there is a group of R claims, R #1 through #10 and #12, I MC 36309 through I MC 36319, for which a proof of labor recorded in Idaho County, Idaho, was received October 30, 1980. A copy of a proof of labor for 1980, as recorded in Shoshone County, Idaho, September 23, 1980, listing the claims I MC 36278 through I MC 36308 and I MC 36320 through I MC 36329, was submitted with the appeal.

Appellant states the proof of labor for the latter claims was submitted to BLM at the same time as the proof of labor for the R group of claims. Inasmuch as BLM issued a receipt October 31, 1980, for I MC 36309 through I MC 36319, but identified the claim involved as "Eli No. 190," appellant contends BLM must have had the missing proof of labor because Eli No. 190 is actually I MC 36278.

1/ The claims involved are Eli Nos. 17, 18, 19, 36, 37, 38, 39, 42, 44, 53, 54, 65, 85, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 170, 171, 186, 187, 188, 190; Bullion; Anita Nos. 116, 117, 118, 119, 120, 130, 131, 132, 133, 134.

BLM states that after a thorough search of all mining claim files in the names of Peter Laczay, Summit Silver, Silver Crescent, Silver Scott Mines, Idora Silver Mines, Thunder Mountain, Tibor Klobusicky, Helena Silver Mines, and Midnite Mines, it could find no evidence of a 1980 proof of labor for I MC 36278 through I MC 36308 and I MC 36320 through I MC 36329.

[1] It is well established that failure of the owner of an unpatented mining claim to submit evidence of assessment work or a notice of intention to hold the claim, both to the county where the location notice of the claim is recorded, and to the proper office of BLM, prior to December 31 each year shall be deemed conclusively to constitute an abandonment of the claim. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a).

[2] As the Board stated in Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981):

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 statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

* * * Appellant also argues that the intention not to abandon these claims was apparent.
 * * * At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered.

53 IBLA at 196-97, 88 I.D. at 371-72.

[3] A legal presumption of regularity attends the official acts of public officers, and in the absence of clear evidence to the contrary, courts presume they have properly discharged their official duties. United States v. Chemical Foundation, 272 U.S. 1, 14-15 (1926); Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Kephart v. Richardson, 505 F.2d 1085 (3rd Cir. 1974); Bernard S. Storper, 60 IBLA 67 (1981); Lawrence E. Dye, 57 IBLA 360

(1981); John Walter Starks, 55 IBLA 266 (1981). Rebuttal of such a presumption requires presentation of substantial countervailing evidence. Stone v. Stone, 136 F.2d 761, 763 (D.C. Cir. 1943).

Thus, where after diligent and thorough search BLM states it did not receive the instrument, the burden is on 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 it transmitted the 1980 proof of labor to BLM does not overcome the presumption of regularity by BLM employees. It is the receipt of the instrument which is critical. The regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f), 43 CFR 3833.1-2(a).

After a careful review of the submission by appellant, we do not believe that it has overcome the presumption of regularity by the BLM employees. It does not appear that appellant did, in fact, transmit a copy of the 1980 proof of labor for these claims to BLM. We must hold that BLM properly deemed the claims abandoned pursuant to 43 U.S.C. § 1744 (1976).

Therefore, 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

Bruce R. Harris
Administrative Judge

