

ALAN T. TREES
JAMES L. BARNES

IBLA 82-981

Decided August 26, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management declaring unpatented mining claims abandoned and void. I MC 44111 and I MC 44112.

Affirmed.

1. 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 must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Dec. 30 of each calendar year. 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 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.

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: Alan T. Trees and James L. Barnes, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Alan T. Trees and James L. Barnes appeal the Idaho State Office, Bureau of Land Management (BLM), decision of June 2, 1982, which declared the unpatented Gold Grabber #1 and Gold Grabber #2 placer mining claims, I MC 44111 and I MC 44112, abandoned and void because no proof of labor or notice of intention to hold the claims for 1981 was filed with BLM prior to December 31, 1981, 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.

Appellants allege they mailed the required proofs of labor to BLM and to Owyhee County, Idaho, in December 1981. After receiving a copy of the recorded instruments from the county, they checked with BLM and were advised that a huge backlog prevented BLM from issuing receipts for the proofs of labor filed for mining claims. They allege they were advised not to file a duplicate copy of the proofs of labor as it would not be necessary as long as they had copies of the county recordation. After being told by a neighbor that because their claims did not have proofs of labor for 1981 filed with BLM, he had top-filed the claims, appellants assert they rechecked with BLM and were told by an employee in the mining record section that BLM accepts no responsibility for papers lost in the mails or in the BLM office. Appellants assert they have not abandoned the claims, and they submitted a detailed report of the assessment work performed on the claims in 1981. They state the proofs of labor were sent by ordinary mail so they have no proof of actual mailing.

[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 intent to hold the claim, both to the county where the location notice is recorded and to the proper office of BLM, prior to December 31 of 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 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).

* * * 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. [Emphasis in original.]

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 (1926); *Legille v. Dann*, 544 F.2d 1 (D.C. Cir. 1976); *Kephart v. Richardson*, 505 F.2d 1085, 1090 (3rd. Cir. 1974); *Lawrence E. Dye*, 57 IBLA 360 (1981). Rebuttal of such a presumption requires the presentation of substantial countervailing evidence. *Stone v. Stone*, 136 F.2d 761 (D.C. Cir. 1943); *H. S. Rademacher*, 58 IBLA 152, 88 I.D. 873 (1981).

We find the assertions of appellants do not constitute a sufficient predicate for holding that the proofs of labor were properly submitted to BLM and that BLM then lost or misplaced them.

The Department has consistently held that one who entrusts to the Postal Service instruments for delivery to a BLM office is employing the Postal Service as his agent, and consequently must suffer the penalty for late delivery or loss of the mailed items. See *Regina McMahon*, 56 IBLA 372

(1981); Don Chris A. Coyne, 52 IBLA 1 (1981); Mobil Oil Corp., 35 IBLA 265 (1978); Vern H. Bolinder, 30 IBLA 26 (1977); A. E. White, 28 IBLA 91 (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:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

