

S. F. COOK

IBLA 82-1245

Decided November 5, 1982

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. CA MC 37682.

Vacated and remanded.

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 3833.2, 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. Evidence: Credibility -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

Where a preponderance of the evidence supports a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1774 (1976), were timely filed, a decision declaring a mining claim abandoned and void for failure to file timely the required documentation will be vacated.

APPEARANCES: King McPherson, Esq., Nevada City, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

S. F. Cook has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated July 26, 1982, declaring the Grub

Stake Gold Mine #2 placer mining claim, CA MC 37682, abandoned and void pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the implementing regulations, 43 CFR 3833.2-1(a) and 3833.4(a). The rationale for the decision was that appellant had failed to file either a notice of intention to hold the claim or evidence of annual assessment work for 1981 on or before December 30, 1981.

In his statement of reasons for the appeal, it is contended that the evidence of annual assessment work was filed with BLM on September 1, 1981, the same day that it had been recorded in Yuba County, California. A copy of the instrument was submitted with the appeal, and bears the date of September 1, 1981, as the date of recordation in Yuba County. Appellant submitted his affidavit in support of his contention. Appellant also submitted affidavits from Rita J. Cook and Thomas E. Carrington, each dated August 17, 1982. These affidavits state generally that affiants accompanied appellant to the Yuba County Courthouse where the evidence of assessment work was recorded September 1, 1981, and then to the BLM office in Sacramento where appellant presented the instrument to a clerk, who made a copy and then returned the original to appellant. When asked if anything further was required, the clerk told appellant that everything was "okay." Appellant stated he did not think anything amiss when he did not receive an acknowledgment for the proof of labor, as he had in earlier years, thinking that perhaps BLM had changed its procedures. When he learned that BLM did not have any record of his 1981 proof of labor, he requested a thorough search by BLM, which, he was advised, did not turn up the missing document.

[1] The applicable regulation, 43 CFR 3833.2-1(a), provides:

The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

See 43 U.S.C. § 1744(a) (1976). 43 CFR 3833.4(a) provides the penalty for failure to satisfy the filing requirement of 43 CFR 3833.2-1(a): "The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void."

[2] Under the circumstances of this case, we believe that appellant's evidence of annual assessment work should be deemed to have been filed timely. The affidavits confirm that the proof of labor was given by appellant to a clerk in the BLM office, that the BLM employee copied and kept a copy of the instrument, advising appellant that the case was in order.

There is a legal presumption of regularity which attends the official acts of public officers in the proper discharge of their official duties.

However, the presumption is rebuttable. Bernard J. Braker, 54 IBLA 332 (1981); L. E. Garrison, 52 IBLA 131 (1981). While appellant has not conclusively established that BLM received his evidence of annual assessment work on or before December 30, 1981, nevertheless, we believe that a preponderance of evidence before us supports a finding that the required document was timely filed. See L. E. Garrison, *supra*; see also E. Joe Swisher, 44 IBLA 44 (1979).

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 vacated, and the case remanded to BLM for further action not inconsistent herewith.

Douglas E. Henriques  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

