

MAGMA POWER CO. ET AL.

IBLA 82-1074

Decided November 10, 1982

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 37015, etc.

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 must file a notice of intention to hold or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the loss must be borne by the claimant.

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 official duties.

APPEARANCES: Richard Foss, Vice President, Magma Power Company, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appeal has been taken by Magma Power Company, Magma Energy, Inc., Standard Industrial Minerals, Inc., and Geothermal Resources International, Inc., from the California State Office, Bureau of Land Management (BLM), decision dated June 16, 1982, which declared certain unpatented mining claims n1 abandoned and void because no proof of labor or notice of intention to hold the claims for the period ending September 1, 1981, was filed with BLM on or before December 30, 1981, as required by 43 CFR 3833.2-1, implementing section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Appellants state that the required proofs of labor for the claims in Mono County, California, were recorded in that county September 21, 1981, and for the claims in San Bernardino County, California, were recorded in that county September 3, 1981. Thereafter copies of the recorded proofs of labor were sent to BLM with a cover letter dated October 21, 1981. When no acknowledgement was received within a reasonable time, inquiry was made to BLM in mid-November and in mid-December. Each time, it is alleged, information was given that BLM was short-handed and far behind in acknowledging receipt of proofs of labor. In February 1982, a personal visit to BLM elicited a reply that if the proofs of labor had been mailed in, an acknowledgement would eventually be sent in confirmation. Appellants suggest that BLM did receive the proofs of labor and then lost or misfiled them.

[1] Section 314 of FLPMA, and the implementing regulations, 43 CFR 3833.2-1 and 3833.4(a), require that evidence of assessment work for each assessment year be filed in the proper office of BLM within the specified

1/ See Appendix.

time limits, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed for recordation with BLM.

Despite appellants' statement that the documents were properly and timely mailed, the regulations define "file" to mean "being received and date stamped by the proper BLM office," 43 CFR 3833.1-2(a). Thus, even if the documents had been mailed and an error by the Postal Service prevented them from reaching the BLM office, that fact would not excuse appellants' failure to comply with the cited regulations. Edna L. Patterson, 64 IBLA 316 (1982); Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery to and receipt by the proper BLM office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f).

This Board has no authority to excuse lack of compliance with the statutes or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] 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).

* * * Appellant also argues that the intention not to abandon these claims was apparent. * * * At common law, evidence of 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, 14-15 (1926); 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, 763 (D.C. Cir. 1943).

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:

Gail M. Frazier
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

APPENDIX

The claims involved in this appeal are:

Geothermal Nos. 1 through 91 CA MC 37015 through CA MC 37105 Little
 Antelope Nos. 1, 3, and 4 CA MC 37106 through CA MC 37108 Steam Nos. 1
 through 4 CA MC 37109 through CA MC 37112 Kaolinite Nos. 22 through
 26 CA MC 37113 through CA MC 37117 Huntley No. 33 CA MC
 37118
 Huntley No. 1 CA MC 37119
 Huntley No. 6 CA MC 37123
 Huntley Nos. 14 through 16 CA MC 37132 through CA MC 37134
 Huntley Nos. 19 and 20 CA MC 37135, CA MC 37136
 Huntley Nos. 28 through 35 CA MC 37140 through CA MC 37146
 Kaolinite Nos. 8 through 17 CA MC 37151 through CA MC 37160
 Little Antelope No. 6 CA MC 37166
 Kaolinite Nos. 1 through 3 CA MC 37167 through CA MC 37169 Kaolinite
 Nos. 51 through 55 CA MC 37170 through CA MC 37174 Huntley No. 37
 CA MC 37175
 Huntley Nos. 39 through 41 CA MC 37176 through CA MC 37178 Magma
 Nos. 2 through 14 CA MC 37179 through CA MC 37191 Geyserte Nos. 1
 through 4 CA MC 37192 through CA MC 37195 Gorge Nos. 1 through 4
 CA MC 37196 through CA MC 37199 Endogenous Nos. 15 through 20 CA MC
 37200 through CA MC 37205 Endogenous Nos. 25 through 29 CA MC 37206
 through CA MC 37210 Lucille Nos. 1 and 2 CA MC 37211, CA MC
 37212
 White Owl Nos. 1 through 5 CA MC 37213 through CA MC 37217
 Huntley Nos. 17 and 18 CA MC 37218, CA MC 37219
 Huntley Nos. 21 and 22 CA MC 37220, CA MC 37221
 Huntley Nos. 25 and 26 CA MC 37222, CA MC 37223
 Huntley No. 36 CA MC 37224
 Huntley No. 38 CA MC 37225
 Magma No. 1 CA MC 37226
 Endogenous Nos. 21 through 24 CA MC 37227 through 37230

