CHARLES W. SHANNON
RUTH KUNKEL

IBLA 82-1327 Decided December 23, 1982

Appeal from decision of the Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 71469 through A MC 71478.

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 before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of the notice of location and a notice of intention to hold the claim or evidence of assessment work performed on the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for any reason, the consequence 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 duties.

APPEARANCES: Charles W. Shannon, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appeal has been taken by Charles W. Shannon and Ruth Kunkel from the Arizona State Office, Bureau of Land Management (BLM), decision dated August 31, 1982, which declared the unpatented Polaris Nos. 3, 4, 5, 6, 7, 8, 10, and 11, and the River View Nos. 1 and 2 placer mining claims, A MC 71469 through A MC 71478, abandoned and void because no proof of labor or notice of intention to hold the claims was filed with BLM on or before 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.

The claims were located prior to October 21, 1976, and were recorded with BLM October 11, 1979. 1/

Appellants state as follows, in support of their appeal:

1. It is felt that there must be an error in that all required documents were filed with the Phoenix office as of 11 October 1979 along with documents for claims A MC 71479 thru 71485. Proof of labor had been previously filed for the referenced claims as shown by the enclosed copy of that filing. I believe the document in question was submitted.

2. Mr. Robert L. Peterson, Chief, Branch of Records and Data Management, in a letter dated 21 February 1980 requested book and page number of the referenced claims as they were apparently illegible on the Recorder's copies, "so that your

1/ These claims were part of a group of 17 claims for which notices of location were filed with BLM October 11, 1979. BLM received proofs of labor for the other seven claims, A MC 71479 through A MC 71485 but BLM has no record of any 1979 proofs of labor for the subject claims.

filings will be complete." There was no mention of missing documents.

3. Affidavits of labor have been submitted for the subsequent years and it has been our assumption that the claims have been validly held. Why, then, three years later are we notified that we are in default?

4. In good faith, we had leased the claims as of May 1982 to Vincent P. Orlando who has been conducting preliminary exploration. (A copy of this appeal has been sent to him.) The Bureau's tardy action puts both the owners and Mr. Orlando in jeopardy, and we appeal to the Bureau for redress.

BLM, in response to our specific inquiry, reported that it has no record of the proofs of labor for the subject claims, filed in 1979, although such proofs of labor have been filed in 1980, 1981, and 1982.

[1] Section 314 of FLPMA, and the implementing regulations, 43 CFR 3833.2-1 and 3833.4(a), require that evidence of assessment work be filed in the proper BLM office by October 22, 1979, 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 document was properly mailed to BLM, 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 appellants thought the document had been mailed to BLM, but BLM has no record of its delivery or receipt, 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). This Board has repeatedly held that a mining claimant must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Magdalene Pickering Franklin, 57 IBLA 244 (1981); Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, supra. Filing is accomplished only when a document is delivered to and received by the proper BLM office. 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:

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.

[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, 773 (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 transmitted to BLM and that BLM then lost or misplaced them.

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

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:

Edward W. Stuebing
Administrative Judge

Bruce R. Harris
Administrative Judge