

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. CA MC 72424

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 after Oct. 21, 1976, 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 following the year in which the claim was located. 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 of the Interior 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: Robert Wm. Speer, Esq., Woodland Hills, California, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

William C. Niederer, William R. Neiderer, Norman T. Annett, and Robert Wm. Speer appeal the California State Office, Bureau of Land Management (BLM), decision of October 26, 1982, which declared the unpatented P.I.T.S. #1 lode mining claim, CA MC 72424, abandoned and void because no proof of labor or notice of intention to hold the claim 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 3833.2-1.

The claim was located September 16, 1980, and recorded with BLM September 23, 1980.

Appellants state they mailed the required proofs for this claim and for two others August 25, 1981, after recording the proof in Mono County, California. Appellants assert they received the proof of labor back from BLM with a notice stating "THESE DOCUMENTS HAVE BEEN MICROFILMED AND ARE RETURNED FOR YOUR RECORDS."

BLM asked appellants to return the document allegedly returned to them so that there could be a verification that the instrument bore a BLM "received date stamp" impressed thereon. Appellants did not tender any document purporting to be the 1981 proof of labor for the P.I.T.S. #1 mining claim on which there was a BLM date stamp affixed in 1981.

[1] It is well established that the 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 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).

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).

[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, 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 do not find the assertions of appellants to constitute a sufficient predicate for holding that the proof of labor was properly transmitted to BLM and that BLM then lost or misplaced it.

Appellants may wish to consult with BLM about the possibility of relocating this claim.

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.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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Bruce R. Harris  
Administrative Judge

