

**Editor's note: Appealed -- administratively terminated (without prejudice), Civ.No. 83-1497 (D.Idaho Apr. 4, 1984)**

ROBERT J. KING  
L. K. HOLLENBEAK

IBLA 82-884

Decided April 12, 1983

Appeal from decisions of the Idaho State Office, Bureau of Land Management, declaring unpatented placer mining claims abandoned and void (I MC 20584) and null and void ab initio (I MC 63058).

Affirmed.

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 3833.1 and 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. 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

The mailing of a proof of labor to BLM prior to the due date is not sufficient to comply with the requirements of the statute unless the proof is actually received by the proper BLM office on or before such date.

3. Administrative Procedure: Burden of Proof--Evidence: Burden of Proof--Evidence: Presumptions--Evidence: Sufficiency--Mining Claims: Abandonment

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. Therefore, appellant's bare assertion that his proof of labor was timely filed is insufficient to rebut the presumption.

4. Mining Claims: Determination of Validity--Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

5. Administrative Procedure: Hearings--Constitutional Law: Due Process--Rules of Practice: Appeals: Effect of--Rules of Practice: Hearings

Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

APPEARANCES: Robert H. Remalkus, Esq., Cascade, Idaho, for appellants.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Robert J. King appeals from the May 4, 1982, decision of the Idaho State Office, Bureau of Land Management (BLM), declaring the relocated China Creek #1 placer claim (I MC 63058) null and void ab initio. L. K. Hollenbeak joins with Robert J. King to appeal the BLM decision declaring the China Creek #1 claim abandoned and void. On July 15, 1982, BLM declared the China Creek #1 placer claim, I MC 20584, abandoned and void because BLM had not received either evidence of annual assessment work or notice of intent to hold the claim by December 30, 1980, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulations found at 43 CFR 3833.2. Earlier on May 4, 1982, BLM issued a decision which declared the relocated China Creek #1 placer mining claim (I MC 63058) null and void ab initio because it was located on June 24, 1981, after the land involved was withdrawn from mineral entry.

The record discloses that the China Creek #1 claim (I MC 20584) originally located in 1894, was recorded with BLM in September of 1979 by L. K. Hollenbeak who held a deed to the claim. Proof of labor was filed with BLM at the same time in 1979. It is asserted on appeal that the claim was subsequently sold to appellant King in December of 1979.

Appellants assert that Robert J. King did, in fact, perform the required annual assessment work in 1980 and 1981 and mailed proofs to BLM by December 30 of each year, but that King did not, however, indicate on these filings the serial number assigned to the original China Creek #1 placer claim, I MC 20584. The statement of reasons for appeal submitted by King, at page 2 reads in part:

[A]ppellant upon being advised by the Bureau of Land Management that his proof of work done had not been properly filed, called the Bureau of Land Management by telephone in year of 1981 to find out what to do at which time he was advised by a Bureau of Land Management employee that he should file a new location of said mining claim and on the 24th day of June, 1981, he relocated such claim \* \* \*.

This claim, designated I MC 63058, was recorded with BLM on July 16, 1981. On subsequent review of the filings, BLM issued the decision of May 4, 1982. Appellant King did not challenge the BLM finding that the land embraced by the relocated claim has been withdrawn from mineral entry. He asserts, however, that he did not intend to abandon the original claim. In addition, appellants assert that BLM's action was legally unsupported, premature, and a denial of due process. Appellants also request a hearing to determine whether evidence of assessment work was submitted to BLM.

[1] Section 314 of FLMPA, 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 on or before December 30 of each calendar year, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Filing is accomplished only when a document is delivered to and received by the proper BLM office. 1/

[2, 3] Despite appellants' contention that the required documents were properly filed when mailed to BLM prior to the deadline, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 3833.1-2(a); 43 CFR 1821.2-2(f). The Board has repeatedly held that the mining claimant, having chosen the Postal Service as the means of delivery, must accept the responsibility and bear the consequences of loss or late delivery of the filings. See Maureen Carr, 67 IBLA 162 (1982); Don Chris A. Coyne, 52 IBLA 1 (1981). The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the document is actually received and date stamped by the proper BLM office by that date. Marvin G. Stuck, 60 IBLA 197 (1981). While the proof of labor for the 1981 assessment year was received timely, there is no indication in either file that appellants filed proof of labor

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1/ Pursuant to a revision of the regulations effective Dec. 30, 1982, for purposes of assessment work filing required by 43 CFR 3833.2-1, the term "timely filed" is now defined to include instruments received by Jan. 19 if postmarked by Dec. 30. 43 CFR 3833.0-5(m). 47 FR 56,305 (Dec. 15, 1982).

with BLM at any time during 1980. A copy of the proof of labor for 1980, which was recorded with the county recorder on August 25, 1980, was filed with BLM on September 11, 1981, by appellant King subsequent to relocating the claim. Proof of labor for 1981 was filed with BLM at the same time.

In response to the contention of King that proof of labor was mailed to BLM in 1980, this Board requested BLM to recheck the possibility that the document was filed and inadvertently omitted from the record. BLM advised by memorandum dated February 16, 1983, that they thoroughly searched all files and that their effort to locate the proof of labor, allegedly filed in 1980, was fruitless.

There is a presumption of regularity that attends the official acts of public officers in the proper discharge of their official duties. Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976). It is presumed that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them. H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). In this case, this presumption conflicts with the presumption invoked by appellants that mail properly addressed, with proper postage affixed, which is deposited in the custody of the postal service, is duly delivered. Where these presumptions conflict, the Board has held that the presumption of regularity must prevail in the absence of substantial corroborating evidence of BLM's receipt of the documents. Bernard S. Storper, 60 IBLA 67 (1981), appeal filed, Storper v. Watt, No. 82-0449 (D.D.C. Feb. 17, 1982). Therefore, the July 15, 1982, BLM decision declaring the (old) China Creek #1 placer claim (I MC 20584) abandoned and void must be affirmed.

[4] When the claim was relocated on June 24, 1981, this land adjoining Salmon River had been withdrawn pursuant to the Wild and Scenic Rivers Act of October 2, 1968, as amended, P.L. 90-542, 16 U.S.C. § 1274 (1976). A mining claim may only be located on lands open to the operation of the mining laws. 30 U.S.C. § 22 (1976). Because the claim was relocated on land previously withdrawn from mineral entry, the relocated claim was correctly declared null and void ab initio. Joe Karren, 65 IBLA 387 (1982); Clayton S. Hale, 62 IBLA 35 (1982).

[5] Appellants' arguments claiming a denial of due process are without merit. Due process does not require notice and a right to a prior hearing in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the initial BLM decision, adverse to him, becomes final. Appeal to this Board satisfies the due process requirements. George H. Fennimore, 50 IBLA 280 (1980); Dorothy Smith, 44 IBLA 25 (1979); H. B. Webb, 34 IBLA 362 (1978).

With respect to the issue of whether proof of labor was ever filed with BLM during 1980, a hearing would be of little value in the absence of corroborating evidence that the proof of labor allegedly mailed was actually received by BLM. There has been no proffer of such corroboration on appeal.

We point out that the courts have validated section 314(c) of FLPMA, despite attacks against its constitutionality. When presented with the argument that the conclusive presumption of abandonment acts as a forfeiture

statute violative of due process, the Court of Appeals for the Ninth Circuit, in Western Mining Council v. Watt, 643 F.2d 618, 629 (9th Cir. 1981), relying on Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), aff'd, 649 F.2d 475 (10th Cir. 1981), stated, "We reject plaintiff's conclusion that the provisions of § 1744(c) are unreasonably harsh in requiring that mining claims be conclusively presumed to be abandoned upon failure to file." Thus, the statute's clear provision for conclusive abandonment requires us, on these facts, to find that the BLM decisions are correct.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Idaho State Office are affirmed.

Gail M. Frazier

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Administrative Judge

We concur:

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C. Randall Grant, Jr.  
Administrative Judge

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James L. Burski  
Administrative Judge.

