

JOHN R. WELLBORN
CLARA JOE WELLBORN

IBLA 84-339 Decided May 21, 1985

Appeal from decisions of the Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void. N MC 59753 and N MC 59761.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims -- Abandonment

Failure to file instruments required by 43 U.S.C. § 1744 (1982), and 43 CFR 3833.2, in the proper BLM office within the time prescribed constitutes abandonment of mining claim.

2. Evidence: Presumptions -- Evidence: Sufficiency -- Rules of Practice: Evidence

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

APPEARANCES: John R. Wellborn and Clara Joe Wellborn, pro sese.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

John R. Wellborn and Clara Joe Wellborn appeal from two decisions both dated January 31, 1984, of the Nevada State Office, Bureau of Land Management (BLM), which gave notice that the BLM records did not contain documentary evidence of intention to retain the claims required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982) for

the calendar year 1980. The decision further stated that in the absence of proof of the contrary, appropriate notations would be made in the records that the Claire and Bonnie mining claims (N MC 59753 and N MC 59761) would be declared abandoned for failure to file.

These decisions provided 30 days within which appellants could file proofs of filing as required by FLPMA section 314 or appeal to this Board; failing to do so, the claims would be noted as void. Appellants chose to appeal to this Board.

Appellants state they personally delivered evidence of assessment work for both claims to the Nevada State Office on November 18, 1980. They submit photocopies of BLM acknowledgement receipts, dated November 18, 1980, for evidence of assessment work for eight other mining claims. Appellants also attach a variety of inquiry correspondence with BLM relating to the status of other mining claims. The only supporting document provided in support of their appeal which mentions the Claire and Bonnie placer claims is a 1980 affidavit of assessment work filed with Nye County, Nevada.

The BLM case record indicates the Claire and Bonnie location notices, dated February 14, and 15, 1979, were filed with BLM on May 2, 1979. The case records also contain affidavits of assessment work performed for the two disputed claims which were filed with BLM in 1981, 1982, and 1983.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located on or before October 21, 1976, to file with BLM, on or before December 30 of each year, an affidavit of assessment work performed or a notice of intent to hold the claim. See also 43 CFR 3833.2-1. Failure to file results in a conclusive presumption of abandonment by the owner. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4. Responsibility for compliance with this recordation requirement rests with the owner of the unpatented mining claim. Those claims for which timely filings are not made are extinguished by operation of law; intent is irrelevant if the necessary filings are not made. United States v. Locke, 105 S. Ct. 1785, 1796 (1985).

[2] Appellants claim they personally delivered to BLM the required evidence of assessment work for the Claire and Bonnie claims along with evidence for other mining claims. There is an implication that BLM omitted giving them receipts for these two claims and then lost the document filed by them. However, the record shows no indication that BLM received the assessment document in 1980. Further, the documents appellants submit in support of their appeal do not indicate that BLM received documentary evidence of assessment work on the Claire and Bonnie claims in the year 1980. The correspondence between appellants and BLM which is supplied on appeal makes no mention of any missing documentary evidence of assessment work for these claims, although it does establish that appellants inquired as to other claims.

A legal presumption of regularity supports the official acts of public officers in the proper discharge of their duties. Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Phillips Petroleum Co., 38 IBLA 344 (1978). As was stated

in H. S. Rademacher, 58 IBLA 152, 155, 88 I.D. 873, 875 (1981): "It is presumed that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing." When an appellant claims he brought a document to BLM, but BLM has no record of receiving it, this presumption of regularity weighs against a finding that BLM received the document and subsequently lost it through mishandling. Glenn W. Gallagher, 66 IBLA 49, 51 (1982). The presumption is not overcome by a statement that the missing document was submitted to BLM. Glenn W. Gallagher, supra at 52. Although there is little question that appellants did file notice of assessment work with the State of Nevada, there is no corresponding evidence to establish a 1980 affidavit of assessment work for the Claire and Bonnie mining claims was timely filed with BLM.

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.

Franklin D. Arness
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

R. W. Mullen
Administrative Judge.

