

FERN L. EVANS  
GARY L. CARTER

IBLA 82-982

Decided July 10, 1985

Appeal from decision of the Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void. M MC 31426 through M MC 31433.

Affirmed.

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

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 period prescribed results in a conclusive presumption of abandonment of the 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 documents filed with them is rebuttable by probative evidence to the contrary. The presumption is not overcome by a statement, without corroborating evidence, that a document was mailed.

APPEARANCES: John L. Peterson, Esq., Butte, Montana, for appellants.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Fern L. Evans and Gary L. Carter appeal from a May 28, 1982, decision of the Montana State Office, Bureau of Land Management (BLM), 1/ declaring mining

---

1/ By order dated May 8, 1984, this appeal was suspended pending consideration of United States v. Locke, No. 83-1394, by the United States Supreme Court. On Apr. 1, 1985, a decision was rendered, United States v. Locke, 105 S. Ct. 1785 (1985).

claims M MC 31426 through M MC 31433 abandoned and void for failure to file evidence of assessment work performed or notice of intention to hold the claims within the calendar year 1981, as required by 43 U.S.C. § 1744(a) (1982) and 43 CFR 3833.2.

The record discloses that the eight claims which are the subject of this appeal were located between October 1888 and March 1939. <sup>2/</sup> The claims were initially recorded with BLM on August 15, 1979, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982). Thereafter, claimants filed a copy of their proof of assessment work for 1979 and 1980, but BLM did not receive an annual filing for 1981.

In their statement of reasons, appellants assert they "duly filed" evidence of assessment work when a copy of their annual proof of labor was mailed on August 24, 1981, well within the statutory period. They have furnished on appeal a copy of their "Affidavit of Annual Representation of Mining Claim" for the subject claims which was recorded by the county recorder, Powell County, Montana, on August 20, 1981. Appellants argue that such evidence persuasively shows the claims were not abandoned and assert "[t]he substance of that filing [with the county recorder] should dictate, not the fact that the copy of the annual assessment was either lost in the mail or misplaced by the agency." Finally, they aver that under section 314 of FLPMA, abandonment cannot be presumed unless the claimants fail to file both the location or recordation data and the annual assessment affidavit or notice of intention to hold.

[1] Section 314 of FLPMA, clearly 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. Congress intended in section 314(c) to extinguish claims recorded with BLM for which timely annual filings are not made. Failure to timely file either proof of labor or notice of intent will result, under the statute, in conclusive presumption of abandonment by the owner; intent is irrelevant if the annual filing deadline is not complied with. United States v. Locke, *supra* at 1796; James Boatman, 87 IBLA 31 (1985). Moreover, filing of the required evidence only in the local recording office does not constitute compliance with the statutory requirement that it be filed with BLM. See Edmund J. Cowan, 76 IBLA 257 (1983); C. G. Rhinehart, 76 IBLA 228 (1983). This Department has no authority to waive or excuse noncompliance with the statute. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

<sup>2/</sup> The claims are identified in the decision as follows:

<u>Claim Name</u>	<u>Serial Number</u>	<u>Location Date</u>
Bull Moose	M MC 31426	1-01-1913
Castle Garden	M MC 31427	9-07-1888
Deep Gulch	M MC 31428	1-07-1913
Hidden Hand	M MC 31429	10-05-1888
Mountain Chief	M MC 31430	10-15-1888
Red Fox	M MC 31431	10-20-1926
Silver King	M MC 31432	1-07-1913
Howard Fraction	M MC 31433	3-04-1939

[2] Appellants claim they submitted the required 1981 affidavit, but the record does not show BLM received the document. It is the responsibility of the owner an unpatented mining claim to comply with the recording requirements and to ensure all required filings are duly submitted. James Boatman, supra; John R. Wellborn, 87 IBLA 20 (1985). The regulations define "file" in this situation to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.0-5(m). Moreover, depositing a document in the mails does not constitute filing. Id. Appellants suggest BLM may have "misplaced" the transmitted copy of the affidavit. However, 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); John R. Wellborn, supra at 21. In James Boatman, supra at 33, we stated:

When an appellant maintains that a document was sent to BLM, but BLM has no record of it, the presumption of regularity works against a finding that BLM received the document and subsequently lost it through mishandling. Glenn W. Gallagher, 66 IBLA 49, 51 (1982). Although the Board has held that the presumption of regularity may be rebutted, e.g., Bruce L. Baker, 55 IBLA 55 (1981); L. E. Garrison, 52 IBLA 131 (1981), the presumption is not overcome by a statement that a missing document was mailed to BLM.

See Wilson v. Hodel, 758 F.2d 1369 (10th Cir. 1985). Although appellants are able to produce evidence that the affidavit of assessment was filed with the local recorder, there is no probative evidence to establish a copy of the affidavit was timely filed with BLM.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

Franklin D. Arness  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

Will A. Irwin  
Administrative Judge

