

JACK BOLKE  
PAUL PILCH

IBLA 84-314

Decided July 17, 1985

Appeal from a decision of Fairbanks District Office, Bureau of Land Management, declaring the Sharon Ann Mine placer mining claim abandoned and void for failure to timely file annual proof of labor or notice of intent to hold the claim. F-24866.

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

BLM may properly declare an unpatented mining claim located in 1977 abandoned and void under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), where the owner failed to file with BLM either evidence of annual assessment work or a notice of intention to hold the claim prior to Dec. 31 of each calendar year following the calendar year in which the claim was located.

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

The legal presumption of regularity 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 uncorroborated statement that an affidavit of assessment work was timely filed with the proper BLM office is insufficient to overcome that presumption.

APPEARANCES: Paul Pilch, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Jack Bolke and Paul Pilch appeal from a decision of the Fairbanks District Office, Bureau of Land Management (BLM), dated December 21, 1983,

which declared the Sharon Ann Mine claim F-24866 abandoned and void for failure to timely file evidence of assessment work or notice of intention to hold the claim as required by section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982). <sup>1/</sup>

The claim was located by Nowland Bamard on July 31, 1977. Pursuant to section 314 of FLPMA, Bamard filed with BLM a copy of the official record of the notice of location in August 1977 and an affidavit of assessment work in 1978. See 43 U.S.C. § 1744(a) and (b). By deed dated December 21, 1978, Bamard conveyed all interest in the claim to appellants. Review of the case file shows that the affidavit of assessment work for 1979 was not filed until March 6, 1980, and no affidavit of assessment work or notice of intention to hold the claim was filed for 1982.

In their statement of reasons appellants admit that their affidavit of assessment work for 1979 was filed late. As for the 1982 affidavit of assessment work, appellants state that it was recorded (presumably with the Fairbanks Recording District) on December 23, 1982, and that BLM should have received a copy the same day.

[1] Under section 314(a) of FLPMA, the owner of an unpatented mining claim located after October 21, 1976, must "file" with BLM either evidence of annual assessment work or a notice of intention to hold the claim "prior to December 31" of each year following the calendar year in which the claim was located. Accordingly, appellants were required to file their evidence of annual assessment work for 1979 prior to December 31, 1979, and evidence of annual assessment work for 1982 prior to December 31, 1982. Appellants' affidavit of assessment work for 1979 was not filed with BLM until March 6, 1980, and there is no record that the affidavit of assessment work for 1982 was ever filed. Failure to file the required instrument in accordance with the statute "shall be deemed conclusively to constitute an abandonment of the mining claim \* \* \* by the owner." 43 U.S.C. § 1744(c) (1982). In such circumstances, the claim is thereby rendered "void." 43 CFR 3833.4(a).

[2] Appellants admit that the evidence of assessment work for 1979 was not timely filed, but indicate that BLM should have received the evidence of assessment work for 1982. A legal presumption of regularity supports the official acts of public officers in the proper discharge of their

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<sup>1/</sup> On Oct. 21, 1983, the United States District Court for the District of Nevada issued a decision declaring section 314(a) and (c) of FLPMA, 43 U.S.C. § 1744(a) and (c) (1982), unconstitutional insofar as they provide for a conclusive presumption of abandonment of mining claims for a failure to provide timely annual filings with BLM. Locke v. United States 573 F. Supp. 472 (D. Nev. 1983). The United States appealed that decision to the Supreme Court.

During the pendency of that case before the Supreme Court, the Board suspended consideration of mining claim recordation appeals. On Apr. 1, 1985, the Supreme Court issued its decision in United States v. Locke, 105 S. Ct. 1785 (1985), reversing the decision of the district court and upholding the constitutionality of the recordation provisions of FLPMA.

duties. Ronald Edwards, 87 IBLA 367 (1985); John R. Wellborn, 87 IBLA 20 (1985). Administrative officials are presumed to have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing. H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). This legal presumption is rebuttable by probative evidence to the contrary. However, when BLM has no record of receiving a document, the presumption of regularity is not overcome by an uncorroborated statement that the document was submitted to BLM. Ronald Edwards, *supra*; Glenn W. Gallagher, 66 IBLA 49 (1982).

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.

Bruce R. Harris  
Administrative Judge

We concur:

Will A. Irwin  
Administrative Judge

R. W. Mullen  
Administrative Judge

