

NORMAN A. WHITTAKER

IBLA 84-8

Decided October 28, 1985

Appeal from a decision of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CA MC 23543, et al.

Affirmed.

1. 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.

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

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), the owner of an upatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed, for whatever reason, the consequence must be borne by the claimant.

APPEARANCES: Turner C. Graybill, Esq., Great Falls, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Norman A. Whittaker has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated September 2, 1983, which declared twenty-two mining claims abandoned and void for failure to file either evidence of assessment work or a notice of intention to hold the claims for calendar year 1982, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982). 1/

1/ The claims involved in this appeal and the location dates are listed in Appendix A.

By letter dated October 4, 1983, appellant wrote BLM: "On April 22, 1982, via U.S. Certified Mail (#225392) I sent you copies of proof of labor covering all claims in question, comprising 2 sheets covering many claims * * * I filed a copy of my county recorded assessment work for all claims noted in your letter [the September 2, 1983 decision]." On November 2, 1983, appellant submitted copies of the sheets he believes he sent BLM on April 22, 1982. These two sheets, dated April 19, 1982, are proofs of labor for several claims, including all claims involved in this appeal except the Brooke and the Rare Earth #1 and #2, that were apparently recorded in Inyo County, California, on April 20, 1982, on page 1664 of Book 82. In a document filed with the Board October 17, 1983, counsel for appellant adds: "Appellant is informed and believes that the State Office's decision may be due to the assignment of duplicate file numbers for the claims at issue and that appellant's proof of annual assessment work should be on record under the alternative file numbers."

[1] Although appellant contends he submitted all the required filings to BLM, BLM does not have any record of receipt of those filings for the claims in question. The case files do reflect that BLM received and date-stamped two proof of labor sheets from appellant on April 26, 1982. There are two copies of one proof of labor for the Ag New and the Cu New lode claims, one copy of which is marked as recorded with the Inyo County Recorder on April 20, 1982, at 11:49 a.m. on page 1664 of Book 82 and the other copy of which is marked the same way except the page indicated is 1665. The other proof of labor, of which two copies were also received, lists several claims not involved in this appeal. ^{2/} The cover letter contained in the file states: "Please find copies of recorded proofs [of] labor for 54 mineral claims." Although the claims covered by the proofs of labor received by BLM on April 26, 1982, and filed by appellant on November 2, 1983, total 54, BLM has no record of the proofs of labor filed by appellant on November 2, 1983, that include the claims involved in this appeal. It is possible that appellant inadvertently sent extra copies of the two proofs of labor BLM received instead of the two proofs of labor filed on November 2, 1983.

In any event, 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

^{2/} Listed are: L1-L9, CA MC 39382-39390; Pan #1 and Pan #2, CA MC 23544 and 23545; New, CA MC 89749; Ley, CA MC 39345; Valley, CA MC 39396; Val, CA MC 39397; North, CA MC 51601; Falls, CA MC 51602; High, CA MC 51603; Stone, CA MC 51604; Lim, CA MC 51605; E, CA MC 51606; Carl, CA MC 51607; Bill, CA MC 51608; Muriel, CA MC 51609; You, CA MC 51610; G, CA MC 51611; and Jim, CA MC 51612.

BLM acknowledged receipt of these filings by letter dated June 11, 1982. On Nov. 18, 1982, appellant filed the documents again, noting that BLM's letter erroneously read "CAMC 51601 through 51602," and had not acknowledged the Ley, Valley, and Val claims. BLM acknowledged the clerical errors and sent a revised list of the claims covered by the filings by letter dated Mar. 3, 1983.

duties and not lost or misplaced legally significant documents submitted for filing." When an appellant claims he sent 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. Id., at 52. Although appellant filed some notices of assessment work for the 1981-82 period with the BLM state office, there is no evidence in the record that notices were received by BLM for the claims involved in this appeal. The copy of the certified mail return receipt card submitted by appellant does not constitute such evidence because it does not indicate that the mail contained the proofs of labor for the claims involved. It did contain other proofs of labor, however.

[2] Section 314 of FLPMA requires that the owner of an unpatented mining claim located on public land shall file with the proper office of BLM before December 31 of each year a proof of labor or notice of intention to hold the mining claim. 43 U.S.C. 1744(a) (1982). The statute also provides that failure to file such instruments within the prescribed time period shall be deemed conclusively to constitute an abandonment of the mining claim. 43 U.S.C. § 1744(c). The responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim. This Board has no authority to excuse lack of compliance, or to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). 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 (1985). Because no proofs of labor were received by BLM before December 31, 1982, it properly declared these claims void. 43 CFR 3833.4(a). 3/

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.

Will A. Irwin
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Gail M. Frazier
Administrative Judge

3/ Although it is improper to declare a mining claim void where an affidavit of assessment work or a notice of intention to hold the claim is filed under one of two serial numbers, see Ralph C. Memmott, 88 IBLA 377 (1985), appellant provided no evidence to support his suggestion that this had occurred in this case.

APPENDIX A

<u>Claim Name</u>	<u>Serial No.</u>	<u>Location Date</u>
XX Lode	CA MC 23543	March 10, 1979
Diatom #29	CA MC 39368	September 24, 1976
Diatom #20	CA MC 39369	September 24, 1976
3JMW	CA MC 39370	April 26, 1974
Nodular	CA MC 39375	February 28, 1964
Iron	CA MC 39376	January 13, 1961
Coso #2 & #1	CA MC 39377-78	January 30, 1960
Nodule	CA MC 39379	February 28, 1964
Iron Contact	CA MC 39380	January 13, 1961
Garnet	CA MC 39381	October 10, 1976
Iron King #18-21	CA MC 39398-39401	May 28, 1960
D & N	CA MC 64397	January 30, 1980
Toni Mix Minerals	CA MC 76491	September 21, 1980
X Placer	CA MC 89267	March 23, 1981
XX Placer	CA MC 89268	March 23, 1981
Brooke	CA MC 103982	December 14, 1981
Rare Earth #1 & #2	CA MC 103983-84	December 20, 1981

