

ALL MINERALS CORP.

IBLA 80-475

Decided November 19, 1981

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring mining claims KD Nos. 1 through 34 null and void. N MC 51047 through N MC 51080.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment -- Mining Claims: Assessment Work

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

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

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

The timely filing of a notice of location of a mining claim with BLM does not satisfy the additional requirement that either evidence of assessment or a notice of intention to hold a mining claim be filed timely. 43 U.S.C. § 1744(a)(1) and (2) (1976); 43 CFR 3833.2-3.

APPEARANCES: Hugh C. Garner, Esq., of Salt Lake City, Utah, for appellant; Earl M. Hill, Esq., and Robert E. McCarthy, Esq., of Reno, Nevada, for N.L. Industries, Inc. 1/

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

All Minerals Corporation (AMC), has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated January 8, 1980, declaring the KD Nos. 1 through 34 lode mining claims null and void for failure to file an affidavit of annual assessment work or a notice of intention to hold prior to October 22, 1979. Such filing was required pursuant to section 314, Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR 3833.2-1(a) and 3833.4(a).

The record shows that the claims were located September 6, 1967, and filed for recordation with BLM February 22, 1979. Evidence of assessment work for the 1979 assessment year was recorded with the county clerk of Nye County on November 29, 1979, and a copy was filed with BLM on December 6, 1979. 2/ AMC states that due to inadvertence of its office personnel the filing of affidavits of annual assessment work with BLM was made after October 22, 1979, but before December 30, 1979.

1/ N.L. Industries appeared in this case as an adverse party because it claims an interest in conflicting mining claims held in the same area. These claims, N MC 11431 through N MC 11441, are similarly involved in an appeal before this Board in N.L. Baroid Petroleum Services, IBLA 81-251. All Minerals is currently named as a defendant in a civil suit filed by N.L. Industries in N.L. Industries, Inc. v. All Minerals Corp., in the Fifth Judicial District Court of the State of Nevada, Nye County, Case No. 8859, to quiet title to the possessory rights to the claims in question.

2/ Appellant has submitted an affidavit of its employee, Melvin J. Park, alleging performance of annual assessment work on these claims for the assessment year ending September 1, 1980.

[1, 2] Section 314 of FLPMA, 43 U.S.C. § 1744 (1976), provides in relevant part:

§ 1744. Recordation of mining claims

(a) Filing requirements

The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. * * *

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon * * *.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

* * * * *

(c) Failure to file as constituting abandonment; defective or untimely filing

The failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner * * *.

The implementing regulations are set forth in 43 CFR Subpart 3833.

Since the claims in question were located prior to October 21, 1976, the statute and regulations require that either affidavits of assessment work or notices of intention to hold the claims be submitted to BLM on or before October 22, 1979, in addition to the notice of location. The failure to file timely either instrument triggers the penalty provision, 43 U.S.C. § 1744(c) (1976). In Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981), we said:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72. When appellant failed to file either evidence of assessment work or a notice of intention to hold the claims within the statutory time period, BLM properly declared the claims void. William J. Kroetch, 57 IBLA 29 (1981); Robert Fennell, 56 IBLA 43 (1981).

[3] Appellant contends, *inter alia*, that it substantially complied with the law by filing its certificate of location for recordation with BLM on February 22, 1979, and that filing additional evidence of interest in the claims would be an unnecessary duplication. It is appellant's position that the filing of the location notice constitutes sufficient notice to the Government of its intentions to hold the claims and to satisfy section 314 of FLPMA and the congressional intent to wipe out stale and unknown claims.

However, 43 U.S.C. § 1744 (1976) required appellant to file two distinct instruments on or before October 22, 1979. implementing regulations, 43 CFR 3833.1-2 and 3833.2-3, specify the required form for a notice of location and notice of intention to hold. Under neither the statute nor the regulations will a certificate of location suffice as a notice of intention to hold. William N. Barbat, 56 IBLA 26 (1981); Don Sagmoen, 50 IBLA 84 (1980); Stanley Bishop, 50 IBLA 371 (1980).

Appellant's arguments alleging lack of due process in the Bureau's manner of adjudication of these claims have repeatedly been considered and rejected by this Board. See William Adolph Yonkee, 54 IBLA 232, 235-36 (1981), and cases cited therein; Alex Pinkham, 52 IBLA 149 (1981). Moreover, to the extent that the recordation regulations have been considered by the courts, they have been upheld. See Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981); Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), *aff'd*, Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, *supra*.

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.

Gail M. Frazier
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

