

MERMAID MINING CO.

IBLA 82-845

Decided June 29, 1982

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 41307 through A MC 41323.

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

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim 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, 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 with authority to waive or excuse noncompliance with the statute, or to afford claimants

any relief from the statutory consequences.

APPEARANCES: Jack D. Haralson, representative of appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appeal has been taken on behalf of the owners 1/ of unpatented Saturn I, Saturn II, Saturn 3, Moon Mist #1 through Moon Mist #10, Moon Beam #1, Moon Beam #2, Moon Beam #5, and Moon Beam #6 placer mining claims, A MC 41307 through A MC 41323, declared abandoned and void by the May 10, 1982, decision of the Arizona State Office, Bureau of Land Management (BLM), because no proof of labor or notice of intention to hold the claims was filed with BLM on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

The claims were located in 1964 and 1965. Copies of the notices of location were filed with BLM May 11, 1979, but no proof of labor was submitted.

Appellants state the claims were leased to Western Lime, Inc., in 1979, and under the lease agreement Western Lime was supposed to complete and file the required proof of labor. Appellants were not aware that no proof of labor had been filed by October 22, 1979, until receipt of the BLM decision of May 10, 1982. Had they been aware of the deficiency, they assert they would have submitted the required affidavit in 1979. As proper affidavits were filed by Mermaid in 1980 and 1981, they state their intent to hold the claims is evident.

[1] Section 314 of FLPMA requires the owner of unpatented mining claims located prior to October 21, 1976, in addition to filing with BLM a copy of the official record of the notice of location, to file with BLM evidence of the assessment work performed on the claim, or a notice of intent to hold the claim, on or before October 22, 1979, and before December 31 of each calendar year thereafter. The statute also provides that failure to file such instruments within the prescribed time periods shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

[2] Failure to comply with these requirements is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Lawrence Paul, 63 IBLA 275 (1982); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements of FLPMA rests with appellant, and this Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. As the Board stated in Lynn Keith, *supra*:

1/ The claims are owned by Mermaid Mining Co., A. H. Haralson, A. H. Haralson, Jr., Georgie Haralson, Vernon Haralson, Vada Haralson, Mary Haralson, Alfred Haralson, Nell Haralson, Jack Haralson, and Sue Haralson.

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 M (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).

* * * Appellant also argues that the intention not to abandon these claims was apparent * * *. At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property, §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. [Emphasis in original.]

53 IBLA at 196-97, 88 I.D. at 371-72.

BLM properly declared the mining claims abandoned and void when no evidence of assessment work or a notice of intention to hold the claims was filed with BLM on or before October 22, 1979, pursuant to FLPMA and 43 CFR 3833.2.

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.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

