

KLONDEX GOLD & SILVER MINING CO.

IBLA 83-108

Decided December 20, 1982

Appeal from decisions of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 132125 through N MC 132141.

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: Abandonment

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 after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

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: Abandonment

Where the claimant inadvertently omits the names of several mining claims from his affidavit of annual assessment work, which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

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

APPEARANCES: Ross P. Eardley, Esq., Elko, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Klondex Gold & Silver Mining Company, appeals the October 7, 1982, decision of the Nevada State Office, Bureau of Land Management (BLM), which declared the unpatented Yes, Yes #1 Fraction, and Fire Creek Extension #4 through #15 lode mining claims, N MC 132125, N MC 132126, and N MC 132130 through N MC 132141, abandoned and void because no proof of labor or notice of intention to hold the claims was received by BLM prior to December 31, in either 1980 or 1981, 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. Klondex also appeals the October 7, 1982, decision of the Nevada State Office which declared the unpatented Fire Creek Extension #1 through #3 lode mining claims, N MC 132127 through N MC 132129, abandoned and void because no proof of labor was received before December 31, 1980.

Appellant states the assessment work was performed on all the claims at issue, but because of an inadvertent clerical error, the proofs of labor did

not list these claims in the indicated years. Appellant further states that these claims are an integral part of a large group of claims which appellant is actively working and developing. The claims have not been abandoned and in the interest of fairness, equity, and justice, and as there are no intervening rights, the decisions of BLM should be reversed.

[1] Under section 314 of FLPMA, the owner of a mining claim located after October 21, 1976, must file a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to December 31 of each year following the calendar year in which the claim was located. 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. The recordation requirement of section 314 of FLPMA that evidence of assessment work or a notice of intention to hold be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary. Lynn Day, 63 IBLA 70 (1982).

[2, 3] The purpose of section 314(a) of FLPMA is not to ensure that assessment work is done on a mining claim but rather to ensure that there is a record of continuing activity on the claim so that the Federal Government will know which mining claims on Federal lands are being maintained, and which have been abandoned. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981). The statute expressly requires that a mining claimant file the instrument recorded in the local state recording office, whether proof of labor or notice of intention to hold the claim, in the proper BLM office. Where, as in this case, the 1980 proof of labor did not include the names of the Yes, Yes #1 Fraction, and Fire Creek Extension #1 through #15, there was no discretion under the statute for BLM to determine that the claims had not been abandoned. We recognize that appellant's error was inadvertent, but neither BLM nor this Board has any authority to excuse lack of compliance with the statutory requirement of FLPMA, or to afford any relief from the statutory consequences. Peter Laczay, 65 IBLA 291 (1982). See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); Glen J. McCrory, 46 IBLA 355 (1981). As the Board stated in Lynn Keith:

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).

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

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Jerry Muskrat
Administrative Judge
Alternate Member