

A. K. FLOREZ

IBLA 83-329

Decided May 23, 1983

Appeal from decision of the New Mexico State Office, Bureau of Land Management, declaring the Escondida lode mining claim abandoned and void. NM MC 82853.

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 an unpatented 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: Victor Flores, Esq., Tucson, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

A. K. Florez has appealed the December 22, 1982, decision of the New Mexico State Office, Bureau of Land Management (BLM), declaring the Escondida lode mining claim, NM MC 82853, abandoned and void for failure to file a copy of 1981 proof of annual assessment work on or before December 30, 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 3833.2-1 and 3833.4(a). We affirm.

Florez acknowledges on appeal that evidence of assessment work for 1981 was not filed with BLM until November 22, 1982, and that the failure to file timely is attributable to his simple oversight. The major thrust of appellant's presentation is that the declaration of his claim to be abandoned and void is unconstitutional.

[1] 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. 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. As the proof of labor for 1981 was not received by December 30, 1981, BLM properly deemed the claim to be abandoned and void. Mermaid Mining Co., 65 IBLA 172 (1982); Kivalina River Mining Association, 65 IBLA 164 (1982); Margaret E. Peterson, 55 IBLA 136 (1981). 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).

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 without the regulations. See Northwest Citizens for Wilderness Mining Co. 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. Lynn Keith, *supra* at 196, 88 I.D. at 371-72.

Appellant asserts that he has not actually abandoned this claim and that he is unfairly being denied the opportunity to prove this fact. It is the failure to file the required annual statement timely that triggers the conclusive presumption of abandonment. There is no doubt that appellant failed to file timely here: he admits that he has not. This fact is, by itself, adequate to support the determination that the claim has been abandoned. Indeed, the Department is compelled to make this determination in these circumstances, regardless of any evidence that the claim was not actually abandoned. Accordingly, it would serve no purpose to allow appellant an opportunity to so establish.

As to the constitutionality of FLPMA, this Board adheres to its earlier holdings that the Department of the Interior, being an agency of the executive branch of the Government, is not the proper forum to decide whether an act of Congress is constitutional. Old Hundred Gold Mining Co., 63 IBLA 56 (1982); Lynn Keith, *supra*. Jurisdiction of such an issue is reserved exclusively to the judicial branch. However, to the extent that the recordation section of FLPMA has been considered by the appellate courts, it has been upheld. 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).

In view of our holding, it is unnecessary to consider the propriety of BLM's undated letter, issued after the filing of appellant's notice of appeal, advising appellant that his failure to file a copy of his original notice of location on or before October 22, 1979, was additional grounds for declaring the claim abandoned and void.

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:

Gail M. Frazier
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

