

HAROLD L. LONG

IBLA 83-418

Decided June 7, 1983

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 57712 and CA MC 57713.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work of 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 on or before 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 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, 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. Administrative Procedure: Adjudication --Evidence: Generally -- Evidence: Presumptions -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work of Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and that he in fact did so. However, in enacting the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), Congress specifically placed the burden on the claimant to show, by his compliance with the Act's requirements, that the claim has not been abandoned and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

4. Notice: Generally -- Regulations: Generally -- Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Harold L. Long, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Harold L. Long appeals from the decision of the California State Office, Bureau of Land Management (BLM), dated January 20, 1983, which declared the unpatented Geraldine Mine and Cowoto placer mining claims, CA MC 57712 and CA MC 57713, abandoned and void for failure to file on or before December 30, 1981, evidence of annual assessment work or a notice of intention to hold the

claims, 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.

Appellant states that the 1981 proof of labor was mailed to BLM about October 10, 1981. He presumes it was lost in the mail as BLM did not receive it. He states the claims have not been abandoned, as shown by the proof of labor for 1982, filed with BLM October 25, 1982.

[1] Under section 314(a) of FLPMA, the owner of a mining claim located on or before October 21, 1976, must file notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim in the proper BLM office on or before October 22, 1979, and prior to December 31 of each year thereafter. This requirement is mandatory, not discretionary, and failure to comply is conclusively deemed to constitute abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980).

[2, 3] The Board responded to arguments similar to those presented here in Lynn Keith, *supra*. With respect to the conclusive presumption of abandonment and appellant's argument that the intent not to abandon was manifest, we stated:

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).

* * * 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.

[4] Those who deal with the Government are presumed to have knowledge of the law and the regulations duly promulgated thereto. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978); 44 U.S.C. §§ 1507, 1510 (1976). The responsibility for complying with the recordation requirements rested with appellant.

Although appellant asserts that the proof of labor was actually mailed in October 1981, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if the envelope containing the proof of labor was lost in transit by the Postal Service, that fact would excuse appellant's failure to comply with the cited regulations. Regina McMahon, 56 IBLA 372 (1981); Everett Yount, 46 IBLA 74 (1980). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). The filing requirement is imposed by statute, and this Board has no authority to waive it. Lynn Keith, *supra*.

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 decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

James L. Burski
Administrative Judge

