

REX MINING CO.

IBLA 83-421

Decided June 7, 1983

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 124206 through A MC 124209 and AMC 160259 through A MC 160272.

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 after Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year after 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.

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 or 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.

APPEARANCES: William Lee Eaton, Esq., Prescott, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Rex Mining Company appeals from the decision of the Arizona State Office, Bureau of Land Management (BLM), dated January 31, 1983, which declared the unpatented Full Count #11 through #14, and Taps #100 through #113 lode mining claims, A MC 124206 through A MC 124209, and A MC 160259 through A MC 160272, abandoned and void for failure to file on or before December 30, 1982, 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 the envelope containing the proof of labor was metered on December 30, 1982, and deposited in a post box in the post office at Prescott, Arizona, prior to 6:30 p.m., the posted time for the last mail pick-up. As the envelope was given a December 31, 1982, postmark by the Postal Service, appellant assumes the mail was not processed the same day it was deposited in the mail box. Appellant contends it did everything in its power to get the envelope into the mail before midnight December 30. Appellant states it had no intention of abandoning any of the claims, as the necessary assessment work was performed in 1982.

[1] Under section 314(a) 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 the performance of annual assessment work on the claim in the proper BLM office on or before December 30 of every calendar year following the date of location of the claim. 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 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 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. The responsibility for complying with the recordation requirements of FLPMA rested with appellant.

Although appellant asserts that the proof of labor was actually mailed December 30, 1982, the regulations 1/ provide that if the envelope containing the proof of labor is postmarked by the United States Postal Service before midnight of December 30, and delivered to the proper BLM office by January 19, the proof of labor will be accepted by BLM as being "timely filed." In this case, the clear postmark of December 31, 1982, does not permit BLM to accept the proof of labor as "timely filed." 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.

1/ 43 CFR 3833.0-5(m), 47 FR 56300, 56305 (Dec. 15, 1982).

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:

C. Randall Grant, Jr.
Administrative Judge

James L. Burski
Administrative Judge

