

PARKE POTTER

IBLA 83-449

Decided August 2, 1983

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void.

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 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 with BLM 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 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, 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: Parke Potter, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Parke Potter appeals the decision of the Idaho State Office, Bureau of Land Management (BLM), dated February 15, 1983, which declared the unpatented Grand Central lode mining claim, I MC 16204, 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 claim, 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 he held the claim for many years and has done the required assessment work each year. He asserted that he transmitted to BLM the 1982 proof of labor on October 2, 1982, after recording it in Lemhi County, Idaho. Appellant stated that BLM sent him an acknowledgement of receipt of the 1982 proof of labor, but he cannot now find the card.

BLM stated it has no record of receipt of the 1982 proof of labor before it received a copy on January 12, 1983. The microfiche record for I MC 16204 shows the latest proof of labor received timely was for 1981.

[1] Under section 314(a) of FLPMA, the owner of a mining claim located on or before 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 county where the notice of location is recorded and in the proper office of BLM on or before December 30 of each calendar year following the date of first recording a proof of labor or notice of intention to hold 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 arguments 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 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.

Although appellant asserts that the proof of labor was mailed to BLM on October 2, 1982, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 1/ 43 CFR 1821.2-2(f); 43 CFR

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1/ While appellant claimed in his statement of reasons that timely receipt by BLM of his 1982 proof of labor had been acknowledged by BLM, in a subsequent submission he stated that he did not have the acknowledgment card. However, to support his claim of timely filing he argues that BLM would not have had his change of address if BLM had not timely received the 1982 proof of labor mailed in October 1982, because the change was included as part of his transmittal letter. The record shows that appellant filed a copy of the 1982 proof of labor with BLM on Jan. 12, 1983. The transmittal letter accompanying that proof of labor included appellant's change of address.

3833.1-2(a). Thus, even if there was loss of the envelope containing evidence of assessment work by the Postal Service, that fact would not excuse appellant's failure to comply with the cited regulations. Hughes Minerals, Inc., 74 IBLA 217 (1983); 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. As no proof of labor was received by BLM in 1982, BLM had no choice but to declare the claim abandoned and void pursuant to FLPMA.

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

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

Gail M. Frazier  
Administrative Judge

