

LAS VEGAS PORTLAND CEMENT, INC.

IBLA 83-590

Decided August 11, 1983

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 211605 through N MC 211629.

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 the 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

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: Don L. Baile, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Las Vegas Portland Cement, Inc., appeals the April 5, 1983, decision of the Nevada State Office, Bureau of Land Management (BLM), which declared the unpatented Silica Stone #1 through #5, and Clay #1 through #20 placer mining claims, N MC 211605 through N MC 211629, abandoned and void because no proof of labor or notice of intention to hold the claims was received by BLM prior to December 31, 1982, for that calendar year, 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.

The claims had been located in June and July 1981. They were recorded in Clark County, Nevada, on August 18, 1981, and with BLM on August 26, 1981.

Appellant states that all corporate records of the Las Vegas Portland Cement, Inc., were stolen by a former officer of the company, and although he is under order from the 8th Judicial District Court of the State of Nevada to return the records, none have been recovered. Appellant contends that the corporate officers were restrained from knowledge of the filing date by the illegal actions of the former officer. Appellant states that several thousand dollars have been spent on the claims in testing and drilling.

[1] Under Section 314 of the 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 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 invalid and void. The recordation requirement of section 314 of FLPMA that evidence of assessment work or notice of intention to hold is filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, and not discretionary. Lynn Day, 63 IBLA 70 (1982).

[2] 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 with BLM a copy of the instrument recorded in the local state office, whether proof of labor or notice of intention to hold the claim, which was filed in 1982 in the local recording office for the subject mining claims. Congress afforded no discretion under the statute for BLM to determine that those claims had not been abandoned when it did not receive any filing in 1982. It is unfortunate that the loss of appellant's records occurred, but this Board has no authority to excuse lack of compliance with the statutory requirements 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). 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 decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

