

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 69936 through I MC 69969; I MC 71063 through I MC 71098; I MC 71797 through I MC 71875; I MC 71887 through I MC 71948; I MC 72198 through I MC 72230; and I MC 72288 through I MC 72291.

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 in the local office where the location notice is recorded and in the proper office of the Bureau of Land Management 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, 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.

APPEARANCES: John M. Bybee, Esq., Idaho Falls, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Moonwalker, Inc., appeals the decision of the Idaho State Office, Bureau of Land Management (BLM), dated April 6, 1983, which declared unpatented mining claims, I MC 69936 through I MC 69969; I MC 71063 through I MC 71098; I MC 71797 through I MC 71875; I MC 71887 through I MC 71948; I MC 72198 through I MC 72230; and I MC 72288 through I MC 72291, abandoned and void for failure to file on or before December 30, 1982, evidence of performance 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 Departmental regulations concerning the filing of a notice of intention to hold are vague and unenforceable. Appellant asserts that 43 CFR 3833.4(c) [sic] allows retention of the claims based upon the proof of labor MD 10106, instrument No. 165347, dated September 10, 1982, filed by Phillips Petroleum Company (Phillips) for record in Custer County, Idaho, September 27, 1982, and with BLM on November 8, 1982.

Examination of the proof of labor filed by Phillips shows that it is for 77 claims held under lease by Phillips from Ken West, *et al.* The claims in the proof of labor bear serial numbers I MC 64327 through I MC 64339, and I MC 65464 through I MC 65527, none of which are involved in this appeal.

[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 local state office where the location notice is recorded and in the proper office of BLM on or before December 30 of every calendar year after the year of location of the claim. This requirement is mandatory, not discretionary. Failure to comply is conclusively deemed to constitute an 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 (1976).

[2, 3] In Lynn Keith, supra, this Board discussed the conclusive presumption of abandonment and claimant's argument that the intent not to abandon was manifest, as follows:

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.

Appellant's argument that the proof of labor submitted by Phillips may be used for appellant's benefit has no merit, as the claims in the proof of labor are wholly different from those in this appeal.

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:

Will A. Irwin
Administrative Judge

R. W. Mullen
Administrative Judge

