

CHARLES MAYO
MARIE G. MAYO

IBLA 83-787

Decided September 21, 1983

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 79482 through N MC 79484.

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 with BLM 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 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 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 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 any 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: Charles Mayo, Marie G. Mayo, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Charles Mayo and Marie G. Mayo appeal the decision of the Nevada State Office, Bureau of Land Management (BLM), dated June 16, 1983, which declared the unpatented East Gate, Sunny Jim and Sunny Jim Extension lode mining claims, N MC 79482 through N MC 79484, abandoned and void for failure to file on or before October 22, 1979, and 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.

Appellants state that a proof of labor was filed with BLM on October 26, 1979, and that the proof of labor for 1980 and 1981 were filed with BLM on October 16, 1980. Appellants assert that the instructions given them by BLM did not state the filings had to be made between January 1 and December 30 of each year. Appellants allege assessment work has been performed annually on the claims since their location in 1906, and evidence has been duly recorded in Churchill County, Nevada. They contend erroneous information by BLM brought about the present situation.

The record shows that the claims were recorded with BLM August 2, 1979. The 1979 proof of labor was filed with BLM October 26, 1979, a proof of labor for 1980 and a proof of labor for 1981 were both filed with BLM October 16, 1980, and the proof of labor for 1982 was filed with BLM October 5, 1982.

[1] Under section 314 of FLPMA, the owner of a mining claim located on public land on or before October 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before October 22, 1979, and on or before December 30 of each year thereafter both in the county where the location notice is recorded and with BLM. When it enacted FLPMA, Congress made this requirement mandatory, not discretionary, and failure to comply timely 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 (1981).

[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, saying, in essence, that the act of filing the certificates of location for record in BLM and the payment of recording fees on the last day on which notices of intention to hold, or evidence of assessment work could be submitted, clearly indicated that the claims were not abandoned. 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.]

Lynn Keith, 53 IBLA at 196-97, 88 I.D. 371-72.

Thus, where BLM states that it did not receive an instrument within the time prescribed, the burden is on appellant to show that the instrument was, in fact, timely received by BLM. See H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981).

The record in this case shows that the 1979 proof of labor was received by BLM October 26, 1979, after the prescribed time had expired. The record also shows that no proof of labor was filed with BLM in 1981, although the 1981 proof of labor was filed in October 1980. The Board has held that the FLPMA recordation requirement is for either a proof of labor or a notice of intention to hold the claim to be filed every year, that is, between January 1 and December 30. Oregon Portland Cement Co., 66 IBLA 204 (1982) (on appeal); James V. Joyce (On Reconsideration), 56 IBLA 327 (1981).

Appellants 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:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

