

ADOLF DIECKMANN TRUST

IBLA 83-923, 83-961

Decided October 24, 1983

Appeal from decisions of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 79465 through N MC 79516; N MC 102851 through N MC 102853; N MC 102855 through N MC 102866; N MC 102868 through N MC 102878; N MC 102881; N MC 114248 through N MC 114252.

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: Gary R. Allan, Combined Metals Reduction Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decisions of July 20 and 28, 1983, the Nevada State Office, Bureau of Land Management (BLM), declared a number of unpatented mining claims in the name of Adolf Dieckmann Trust ^{1/} 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.

Asserting an interest in the claims, Combined Metals Reduction Company appeals, stating the required assessment work was performed in 1982, recorded in Esmeralda County, Nevada, and copies of the proofs of labor were then transmitted to BLM by letter of November 5, 1982. ^{2/}

The claims were located between 1907 and 1928, and were recorded with BLM in August and October of 1979, as required by FLPMA.

BLM stated that it has no record of receipt of the 1982 proofs of labor for any of the claims.

[1] Under section 314 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 with BLM. 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).

^{1/} See Appendix.

^{2/} It is noted that the copies of the transmittal letters submitted by appellant were dated Nov. 5, 1982, but each copy is addressed to BLM, Billings, Montana, rather than to BLM, Reno, Nevada.

[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 November 5, 1982, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if there was loss of the envelope containing evidence of assessment work by the Postal Service or the envelope was incorrectly addressed by the claimant, that fact would not excuse appellant's failure to comply with cited regulations. Hughes Minerals, Inc., 74 IBLA 217 (1983); Regina McMahon, 56 IBLA 372 (1981). 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 the proper office of BLM in 1982, BLM had no choice but to declare the claim abandoned and void, pursuant to FLPMA.

Copies of 1983 proofs of labor for these claims bear N MC serial numbers suggesting that the claims have been relocated.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

APPENDIX

<u>N MC serial</u>	<u>Claim name</u>
79495	Aspen
79496	See More
79497	Gold Rock
79498	Blue Bird
79499	Tiger
79500	Fourth of September
79501	Summit Fraction
79502	LV&T
79503	Chow
79504	Champion
79505	Gold Ridge
79506	Gold Bridge
79507	Blue Ribbon
79508	X-Ray
79509	Bell Brandon
79510	Chantecler
79511	Cyrano
79512	Coo Koo
79513	Summit
79514	Paymaster
79515	Mogul
79516	Upland
102851 through 102853	Whirlwind #1 through 3
102855	Orlean #1
102856	Orlean #2
102857	Orlean #3
102858	Lime Point #5
102859	January Fraction
102860 through 102862	Nettie L. #1 through #3
102863	Orlean Extension
102864	Nettie L. Extension
102865	Whale
102866	Taft
102868	Sunnyside Fraction
102869	Fault Fraction
102870	Gold Ledge
102871	Mohawk Fraction
102872	Arrowhead Fraction
102873	Gift
102874 through 102878	Gift #1 through #5
102881	Orlean Extension #1
114248	Gold Edge Fraction
114249	Nettie L. Fraction
114250	Lime Point #6
114251	Wedge Fraction
114252	Lime Point #4

