

CASCADE ENERGY & METALS CORP.  
REX MONTIS SILVER CO.

IBLA 83-929 Decided May 31, 1985

Appeals from decisions of California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CA MC 31686, etc.

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

BLM may properly declare an unpatented mining claim located prior to 1982 abandoned and void under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), where the owner failed to file either evidence of annual assessment work or a notice of intention to hold the claim with BLM on or before Dec. 30, 1982.

2. 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: Recordation

The presumption that BLM employees have not lost or misplaced evidence of annual assessment work for an unpatented mining claim, required to be filed by a certain date under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1982), will not be overcome by an affidavit that the document was mailed with another document which was received.

APPEARANCES: W. David Weston, president, Cascade Energy & Metals Corporation and Rex Montis Silver Company, for appellants.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Cascade Energy & Metals Corporation (Cascade) and the Rex Montis Silver Company (Rex Montis) have appealed from separate decisions of the

California State Office, Bureau of Land Management (BLM), dated July 29, 1983, declaring certain mining claims abandoned and void for failure to file either evidence of annual assessment work or notices of intention to hold the claims on or before December 30, 1982, pursuant to section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982). <sup>1/</sup>

The Independence Nos. 1 through 88 lode mining claims (CA MC 31841 through CA MC 31928), and the Independence Placer Nos. 1 through 6 mining claims (CA MC 31929 through CA MC 31934) were located between September 25, 1969 and September 14, 1975, and recorded with BLM on August 20, 1979, pursuant to section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1982). These claims are currently owned by Rex Montis. The Agua Dulce Nos. 1 through 52, Agua Dulce Lomex No. 1, Cascade Gold Dyke North, Cascade Gold Dyke South, Cascade Gold Dyke Nos. 1 through 21, Telegraph Nos. 1 through 21, North Telegraph, and the North Telegraph No. 1 and 2 mining claims (CA MC 31686 through CA MC 31689, CA MC 86246 through CA MC 86256, CA MC 86297 through CA MC 86320, and CA MC 98683 through CA MC 98743), were located between June 12, 1968, and September 18, 1981, and recorded with BLM on August 21, 1979, April 20, 1981, and October 20, 1981. These claims are currently owned by Cascade.

The record indicates that BLM received on October 7, 1982, a copy of three "Assessment Reminder" cards, addressed to Cascade reminding the recipient to file either evidence of annual assessment work or a notice of intent to hold the claims for those claims located prior to 1982 "on or before 12/30/82." The address for Cascade on one of the reminder cards is circled with the handwritten notation: "This notice was sent in triplicate. This would be the most correct address." In addition, the record indicates that W. David Weston, president of both appellants, called the BLM State Office on February 28, 1983, "inquiring about his assessment work notices for 1982." Memorandum to the Files, dated March 3, 1983. A BLM employee returned the call on March 3, 1983:

Mr. Weston informed me that he did not receive any acknowledgement for his assessment work notices, and I told him that I had checked and could not find anything as yet. He told me that his notices had been sent the same time along with the assessment reminder cards showing the correct address for Cascade Energy & Metal (received October 7, 1982). Mr. Weston said he was going to send in duplicates and I told him that we wouldn't be able to record those since they would be past the deadline of December 30. I also told him that we still might locate the documents by the time we are finished processing all of the assessment work notices for 1982.

Id.

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<sup>1/</sup> Review of this case was originally suspended by Board order dated May 8, 1984, pending the Supreme Court's consideration of the constitutionality of sections 314(a) and (c) of FLPMA to the extent that they provide for a conclusive presumption of abandonment for failure to make annual filings. In United States v. Locke, 105 S. Ct. 1785 (1985), the Supreme Court upheld the constitutionality of the statute.

On March 16, 1983, appellants submitted notices of performance of assessment work and intent to hold claims, with respect to the mining claims involved herein, along with evidence of assessment work filed with the Inyo County recorder on September 30, 1982. In an attached letter dated March 8, 1983, Weston stated that "[t]hese notices were properly forwarded in the time specified by law, but have been subsequently misplaced by the Bureau, unrecorded due to the workload of the Bureau, or lost in the United States Mail." Appellants also submitted an affidavit dated March 8, 1983, in which Weston stated that he "personally" mailed the above-mentioned notices and evidence of assessment work to the BLM State Office on October 5, 1982, in addition to the "notice of change of address form." Weston further stated that he inquired in December 1982 and March 1983 as to whether BLM had received the submissions.

By letter dated July 29, 1983, BLM informed Weston that: "A research of our records was again conducted and we do not find any evidence that the 1981-1982 assessment year proof of labor notices were received." In its July 1983 decisions, BLM declared appellants' mining claims abandoned and void.

Appellants argue on appeal 2/ that their claims cannot be deemed to be "abandoned" where there was not the requisite intent to voluntarily relinquish the claims and that all their actions demonstrate that they did not intend to abandon the claims. Appellants contend that the voiding of the claims by BLM constitutes an unconstitutional "taking of the property without just compensation." Appellants also argue that they filed timely evidence of annual assessment work for the 1981-1982 assessment year and that BLM should have exercised its discretion by accepting appellants' March 1983 submission "upon the affidavit of W. David Weston."

[1] Under section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982), the owner of an unpatented mining claim located prior to October 21, 1976, must "file" with BLM either evidence of annual assessment work or a notice of intention to hold the claim by October 22, 1979, and "prior to December 31" of each calendar year thereafter. With respect to claims located after October 21, 1976, such an instrument must be filed "prior to December 31" of each calendar year following the year in which the claim was located. Failure to file the required instrument in accordance with the statute "shall be deemed conclusively to constitute an abandonment of the mining claim \* \* \* by the owner." 43 U.S.C. § 1744(c) (1982). In such circumstances, the claim is thereby rendered "void." 43 CFR 3833.4(a).

We have long held that the statute is self-operative and that 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. Homestake Mining Co., 77 IBLA 235 (1983), and cases cited therein. Moreover, in Homestake, we reiterated the holding that because the statute provides for a conclusive presumption of abandonment upon the failure to comply with the statutory filing requirement, the Department does not

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2/ Appellants' reasons for appeal are stated in the text of a letter dated Aug. 19, 1983, addressed to United States Senator Jake Garn which accompanied the notice of appeal for the Rex Montis claims.

have the authority to consider whether a claimant in fact intended to abandon the affected claim under the common law rules of abandonment. This holding was recently affirmed in United States v. Locke, supra at 1795-96. Thus, it is irrelevant whether appellants intended to abandon the claims involved herein. 3/

[2] Appellants, however, assert that they complied with the statutory filing requirement by mailing evidence of annual assessment work for the 1981-1982 assessment year, previously filed with the county on September 30, 1982, on October 5, 1982, and that such documents were received at the BLM State Office on October 7, 1982. Under the applicable regulation, 43 CFR 3833.0-5(m), "file" is defined to mean "being received and date stamped by the proper BLM office." Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). Thus, in order to conclude that a document was filed with BLM in accordance with 43 U.S.C. § 1744(a) (1982), there must be proof that the document was actually received by BLM. Homestake Mining Co., supra.

In the present case, BLM has searched its records and has been unable to discover the evidence of annual assessment work purportedly filed by appellants. In such circumstances, relying on the presumption of regularity which supports the official acts of public officers in the proper discharge of their official duties, it is presumed that BLM employees did not lose or misplace the documents and, hence, that they were never received. S. H. Partners, 80 IBLA 153 (1984), and cases cited therein. The presumption may be rebutted by convincing and uncontradicted evidence "which clearly and distinctly establishes a fact, so that reasonable minds can draw but one inference." John Walter Starks, 55 IBLA 266, 270 (1981), appeal dismissed, Starks v. Watt, Civ. No. 81-0711 (C.D. Utah, Mar. 2, 1982); see Wilson v. Hodel, 758 F.2d 1369, 1374 (10th Cir. 1985).

The only proof appellants submit that the required documents were received by BLM is the fact that the copy of the assessment reminder notices, which was mailed "in addition to" the documents, according to the affidavit of W. David Weston, was received on October 7, 1982, well before the December 30, 1982, statutory deadline. However, as we said in S. H. Partners, supra at 155:

An uncorroborated statement, in the form of an affidavit, to the effect that a document was included in a mailing together with other documents that were received by BLM has long been held to be insufficient to overcome the inference, arising from the absence of the document from the file, that the document was not filed. LBS Associates, Inc., 74 IBLA 192 (1983) [appeal dismissed, LBS Associates, Inc. v. Watt, Civ. No. 83-3024 (D.D.C. 1984)]; R. E. Frasch, [69 IBLA 66 (1982)], and cases cited therein.

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3/ The Locke decision also rejected the contention that section 314 of FLPMA effectuated an unconstitutional taking of the claimant's property. 105 S. Ct. at 1799-1801.

See Wilson v. Hodel, supra. Accordingly, appellants have not overcome the presumption that the evidence of annual assessment work for the claims involved herein, although recorded with the county, was not filed with BLM.

The only filing of the required documents with BLM evident in the record is the March 16, 1983, filing, well after the statutory deadline. In such circumstances, we conclude that BLM properly declared appellants' mining claims abandoned and void.

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.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

Will A. Irwin  
Administrative Judge

