MARVIN E. NUKALA

IBLA 82-700 Decided June 10, 1982

Appeal from decisions of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 31670 and I MC 31671.

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

   The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Notice: Generally -- Regulations: Generally -- Statutes

   All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Marvin E. Nukala, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Marvin E. Nukala appeals the March 10, 1982, decisions of the Idaho State Office, Bureau of Land Management (BLM), which declared the unpatented Diamond Dog and Wishing Well lode mining claims, I MC 31670 and I MC 31671, abandoned and void because no proof of labor or notice of intent to hold was

filed with BLM in 1980 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 he did the required assessment work in 1980 for the two claims and recorded his affidavits of assessment work in Boise County, Idaho, on August 4, 1980. He alleges he went to the BLM office in 1980 to file a copy of the affidavit of assessment work and was told that he did not have to file anything in 1980. He contends he tried to comply with the requirements of FLPMA, but because of misinformation from a BLM employee he did not file his 1980 proof of labor timely.

The claims were located in 1966. Copies of the notices of location and evidence of assessment work were recorded with BLM October 17, 1979, as required by FLPMA.

[1] Section 314(a) of FLPMA requires the owner of an unpatented mining claim to file evidence of assessment work performed on the claim or a notice of intent to hold the claim with BLM on or before December 30 of each calendar year. Failure to so file within the prescribed time limit is statutorily considered conclusively to constitute an abandonment of the claim pursuant to section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4. See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). A filing with the county recorder does not satisfy this requirement.

When appellant failed to file timely with BLM either an affidavit of assessment work or a notice of intent to hold the unpatented claims, BLM properly held the claims abandoned and void. Robert E. Eisenman, 50 IBLA 145 (1980).

[2] The fact that appellant may have been misinformed of the recordation requirement of FLPMA, while unfortunate, does not excuse him from compliance. Reliance upon misinformation by an employee of BLM cannot operate to vest any interest not authorized by law. 43 CFR 1810.3(c). Those who deal with the Government are presumed to have knowledge of the law and regulations duly adopted pursuant thereto. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978). The responsibility for complying with the recordation requirements rested with appellant. This Board has no authority to excuse lack of compliance with the requirements of FLPMA. Lynn Keith, supra; A. J. Grady, 48 IBLA 218 (1980); Glen J. McCrory, 46 IBLA 355 (1980).

Accomplishment of a proper recording in the appropriate county does not relieve the claimant from recording with BLM under the filing requirements of FLPMA or the implementing regulations. While under 43 CFR 3833.4(b) a defective or untimely recording under state law does not, of itself, constitute a failure to file under FLPMA, neither does a valid or timely filing with a county constitute a FLPMA filing. There are two separate filing requirements, and compliance with the one does not constitute compliance with the other.

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:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge