

KATHRYN MACKENZIE

IBLA 81-499

Decided September 22, 1981

Appeal from decision of the California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 23292 through 23296.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

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 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Assessment Work

The filing of evidence of annual assessment work in the county recording office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

3. Notice: Generally--Regulations: Generally--Statutes

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

APPEARANCES: Kathryn Mackenzie, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Kathryn Mackenzie appeals from the March 24, 1981, decision of the California State Office, Bureau of Land Management (BLM), which declared mining claims CA MC 23292 through 23296 abandoned and void because evidence of assessment work or a notice of intent to hold the mining claims had not been filed with BLM by December 30, 1980, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976) and its implementing regulations, 43 CFR 3833.2-1 and 43 CFR 3833.4. The claims, designated Old Times, Ten Strike, Marine Robert, Scotia, and Manzanita, were located on various dates from 1941 to 1946 in secs. 35 and 36, T. 2 S., R. 3 E., San Bernardino meridian, Riverside County, California. They have apparently been leased for the past 18 years to the Whitewater Rock and Supply Company.

Appellant states that on September 4, 1980, she did file her notice of annual assessment work for the 1979-80 assessment year with the recorder of Riverside County, as she has since she acquired the claims from her brother in 1962. She does recall receiving an ambiguous postcard from BLM at a time when she was preoccupied with the care of a sister-in-law who was dying of cancer. Loss of these claims would jeopardize her livelihood, appellant notes, since she is 80 years old and has no social security income. She states that Riverside County ensures that removal of the distinctive building stone from these claims comports with its environmental impact requirements. She emphasizes that she never abandoned these claims, but simply neglected to forward a copy of the required document and that there are extenuating circumstances, which should excuse this lapse.

[1] The owner of an unpatented mining claim located on public land before October 21, 1976, must file with the proper BLM office by October 22, 1979, and on or before December 30 in each subsequent calendar year, a notice of intent to hold or proof of the assessment work performed on the claim. 43 U.S.C. § 1744 (1976). Appellant timely filed with BLM copies of the notices of location and the initial proof of labor in 1979. The next evidence of assessment work was due to be filed with BLM on or before December 30, 1980. Congress has declared that the failure to file the required document is "deemed conclusively to constitute an abandonment of the mining claims * * *." FLPMA, 43 U.S.C. § 1744(c). Therefore, these mining claims must properly be found abandoned and void.

[2, 3] 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. All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 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 of FLPMA rested with appellant. The requirement herein is one of a statutory, rather than regulatory, nature. See generally Feldslite Corporation of America, 56 IBLA 78, 88 I.D. (1981). Thus, this Board has no authority to excuse lack of compliance. Lynn Keith, 43 IBLA 192, 88 I.D. 369 (1981). Such relief as may be available must be sought in a different forum.

Accordingly, 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.

James L. Burski
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Gail M. Frazier
Administrative Judge