

Appeal from decision of California State Office, Bureau of Land Management, declaring placer mining claim abandoned and void. CA MC 23911.

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: Abandonment--Mining Claims: Assessment Work--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 an unpatented mining claim located before Oct. 21, 1976, must file 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 conclusively constitutes an abandonment of the claim by the owner and renders the claim void.

2. Notice: Generally--Regulations: Generally

Those who deal with the Government are presumed to have knowledge of the law and regulations duly adopted pursuant thereto.

APPEARANCES: Harley A. Merritt, Esq., Oroville, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Mrs. Walter E. Bolles appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated April 20, 1981, declaring the Winchester placer mining claim, C MC 23911, abandoned and void for failure to file timely evidence of annual assessment work or notice of intention to hold the mining claims for the 1979-80 assessment year pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR Subpart 3833.

In her notice of appeal and statement of reasons, appellant states that the subject mining claim has been in the appellant's family since 1925. All taxes concerning the mining claim have been paid since 1925, and assessment work had been kept current on the mining claim from 1925. Appellant, however, says she was unaware of the changes in the Federal law requiring that, in addition to recording a proof of labor pursuant to State law, a copy of that proof of labor be filed with BLM in Sacramento. Further, appellant never received in the mail form No. 3830-1 entitled "Mining Claim Annual Recordation Requirements," which would have informed appellant of the mining claim annual recordation requirements with BLM. Had she received such notification, or been informed of the requirement of filing a copy of the proof of labor with BLM's Sacramento office, appellant asserts that she would have complied with that requirement, and she requests that BLM's decision be set aside.

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), provides in relevant part that the owner of an unpatented mining claim "located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter" file either an affidavit of assessment work or a notice of intention to hold the mining claim. Thus, appellant was first required to file with BLM no later than October 22, 1979. The applicable regulation, 43 CFR 3833.2-1(a), implements the statutory provision. Appellant, notwithstanding her assertion that she was unaware of the change in the law, complied with this requirement by filing an affidavit of annual labor with BLM on October 12, 1979. However, she failed to file either document during calendar 1980.

Section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), provides the penalty for failure to satisfy the filing requirement of section 314(a) of FLPMA, supra, that is, "it shall be deemed conclusively to constitute an abandonment of the mining claim." Similarly, the applicable regulation, 43 CFR 3833.4(a), provides: "The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void." (Emphasis added.)

Although appellant recorded notices and filed for the period 1978-79, she failed to file with BLM evidence of assessment work or intent to hold. Such failure to file is conclusively deemed an abandonment of the claim, and it is void.

[2] Further, those who deal with the Government are presumed to have knowledge of the law and the regulations duly adopted pursuant thereto. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978). Under FLPMA, supra, the responsibility for complying with the recordation requirements rests with appellant.

Despite appellant's asserted good faith, Congress did not invest the Secretary of the Interior with authority either to waive or excuse compliance with the statute or to afford mining claimants any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

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.

Edward W. Stuebing

Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Douglas E. Henriques
Administrative Judge

