

RUPERT THORNE

IBLA 81-725

Decided October 16, 1981

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 40400 through I MC 40457.

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 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 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: Assessment Work--Mining Claims: Assessment Work

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, i.e., on or after Jan. 1 and on or before Dec. 30.

3. 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.

4. Administrative Authority: Generally--Constitutional Law  
Generally--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

Department of the Interior, as an agency of the executive branch of the Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

5. Administrative Procedure: Hearings--Constitutional Law: Due Process--Rules of Practice: Hearings

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

APPEARANCES: Claude Marcus, Esq., Boise, Idaho, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Rupert Thorne appeals the May 7, 1981, decision of the Idaho State Office, Bureau of Land Management (BLM), which declared a number of unpatented mining claims 1/ abandoned and void because no evidence

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1/ See appendix for names of claims and serial numbers.

of annual assessment work or notice of intention to hold the claims was filed with BLM on or before December 30, 1979, 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. All of the claims were located before 1976.

Appellant asserts that assessment work was performed for all the listed claims for assessment years ending September 1, 1979, and September 1, 1980, and affidavits for the assessment year ending September 1, 1980, were filed with BLM prior to December 30, 1980. Appellant also asserts the decision is arbitrary, legally unsupported, and entered without due process or notice, and if the decision correctly interprets FLPMA, it effects an unconstitutional taking of property without due process.

[1] Section 314 of FLPMA, supra, requires the owner of unpatented mining claims located before October 21, 1976, to file in the proper office of BLM within 3 years after approval of the Act (i.e., on or before October 22, 1979) a copy of the official record of the location notice and evidence of assessment work performed on or for the benefit of the claim or a notice of intention to hold the claim. Prior to December 31 of each year thereafter a claimant is further required to file, in the office where the location notice is recorded, evidence of assessment work or a notice of intention to hold the claim, and to file a copy of the official record of the instrument filed or which will be filed in the county with BLM. 43 U.S.C. § 1744(a) (1976); 43 CFR 3833.2-1, 3833.0-5(i).

The record shows that on October 22, 1979, appellant filed with BLM copies of the location notices for the claims at issue and affidavits of assessment work for the assessment year ending September 1, 1980. There is no evidence in the record that any proof of labor or notice of intention to hold the claims was filed with BLM during calendar year 1980.

[2] The Board has held that the statutory requirement of filing proof of labor or notice of intention to hold means that one or the other instrument must be filed for record in the appropriate county where the location notice is of record and a copy must also be filed in the proper BLM office within each calendar year, i.e., on or after January 1, and on or before December 30. James V. Joyce (On Reconsideration), 56 IBLA 327, 331 (1981).

In this case, no proof of assessment work or notice of intention to hold was filed with BLM during calendar year 1980. Appellant's failure to comply with the statutory requirements thus conclusively constitutes abandonment of the claims. 43 CFR 3833.4(a). Congress imposed that consequence in enacting the statute. 43 U.S.C. § 1744(c) (1976).

Those who deal with the Government are presumed to have knowledge of relevant statutes and regulations duly promulgated thereunder.

Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978); 44 U.S.C. §§ 1507, 1510 (1976). The responsibility for complying with the recordation requirements of FLPMA rests with appellant.

Where appellant failed to file during calendar year 1980 either an affidavit of assessment work or a notice of intention to hold the claims, they were properly held to be abandoned and void. Stephen G. Rudisill, 56 IBLA 158 (1981). The BLM decision is modified to reflect that the subject claims are deemed abandoned and void because no evidence of assessment work or notice of intention to hold was filed with BLM during calendar year 1980. See James V. Joyce, supra.

[3] The Board responded to arguments similar to those presented here in Lynn Keith, 53 IBLA 192, 196, 88 I.D. 369, 371-72, and held:

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 (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).

[4] As to the constitutionality of section 314 of FLPMA, this Board adheres to its earlier holdings that the Department of the Interior, being an agency of the executive branch of the Government, is not the proper forum to decide whether an Act of Congress is constitutional. Lynn Keith, supra; Alex Pinkham, 52 IBLA 149 (1981), and cases cited therein. Jurisdiction of such an issue is reserved exclusively to the judicial branch. However, to the extent that the recordation section of FLPMA has been considered by the courts, it has been upheld. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981).

[5] Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final. Appeal to this Board satisfies due process requirements. Fahey Group Mines, Inc., 58 IBLA 88 (1981); George H. Fennimore, 50 IBLA 280 (1980); Dorothy Smith, 44 IBLA 25 (1979); H. B. Webb, 34 IBLA 362 (1978).

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.

Douglas E. Henriques

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Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Gail M. Frazier  
Administrative Judge

## APPENDIX

I MC 40400 Ivanho	I MC 40429 Enterprise
40401 Silver King	40430 Northern Light
40402 Richard K. Fox	40431 Sun Beam
40403 Lizzie	40432 No. 2
40404 Snow Bird	40433 Argenta
40405 Highland Chief	40434 Queen of the Hill
40406 Monitor	40435 Independence
40407 Big Croppings	40436 America
40408 No. 2	40437 Emperor
40409 Avalanche	40438 Silver King
40410 Bragg	40439 Grand Prize
40411 Big Croppings #2	40440 Mountain Goat
40412 No. 1	40441 Sampson
40413 First Chance	40442 Yellow Jacket
40414 Mugwump Extension	40443 Washington
40415 Mugwump	40444 Red Warrior
40416 Ivanhoe #4	40445 Hudson
40417 Ivanhoe #3	40446 Cleveland
40418 Ivanhoe #2	40447 Julia
40419 Ivanhoe #1	40448 Whale
40420 Stella #3	40449 Mammoth
40421 Stella #2	40450 El Dorado
40422 Stella #1	40451 Star
40423 Alpha	40452 Ivenhoe
40424 Etta #2	40453 Silver Star
40425 Etta #4	40454 Crown Point
40426 Etta #3	40455 Overland

