

NICOLAUS P. NEWBY

IBLA 82-101

Decided December 15, 1981

Appeal from decision of Colorado State Office, Bureau of Land Management, refusing to accept notice of location of placer mining claim for recordation. C MC 183866.

Affirmed.

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

Where a mining claim was located in September 1974 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

2. 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.

APPEARANCES: Nicolaus P. Newby, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Nicolaus P. Newby appeals the October 21, 1981, decision of the Colorado State Office, Bureau of Land Management (BLM), which returned, unrecorded, the location notice for the Delta Placer #1 mining claim because it had not been timely filed with BLM as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The claim had been located in September 1974.

Appellant states he has had an interest in the Delta Placer #1 claim since 1974, and has done annual assessment work and paid the local taxes on the claim. He stated he thought his partners in the claim had made the required filings with BLM as they had agreed to do.

[1] Section 314 of FLPMA requires the owners of unpatented mining claims located on public land on or before October 21, 1976, to file in the proper BLM office within 3 years after the date of the Act (i.e., on or before October 22, 1979), a copy of the official record of the notice of location and a copy of the official affidavit of assessment work or a notice of intention to hold the claims, that was recorded in the appropriate county office. The section further provides that failure to file such instruments, i.e., copies of the notices of location and evidence of assessment work, within the specified time periods shall be deemed conclusively to constitute an abandonment of the mining claims.

The responsibility for complying with the recordation requirements of FLPMA rested with the claim owners individually. This Board has no authority to excuse lack of compliance, or to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Where a mining claimant relied upon another to perform the necessary actions toward recordation of his mining claims and that person failed to act, the claimant must bear the consequences.

[2] 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 without the regulations. See Northwest Citizens for Wilderness Mining, 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. Lynn Keith, supra at 196, 88 I.D. at 371-72.

Appellant may wish to consult with BLM about the possibility of relocating his claim.

Therefore, 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
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

