

WILLIAM M. M. UNDERWOOD

IBLA 82-216

Decided January 25, 1982

Appeal from decision of Arizona State Office, Bureau of Land Management, deeming an unpatented mining claim abandoned and void. A MC 44587 and A MC 44588.

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 Oct. 1969 and evidence of the assessment work 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: William M. M. Underwood, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

William M. M. Underwood appeals the November 12, 1981, decision of the Arizona State Office, Bureau of Land Management (BLM), which declared the unpatented Green Serpent Nos. 1 and 2 lode mining claims, A MC 44587 and A MC 44588, abandoned and void because no evidence of assessment work had been filed on or before October 22, 1979, as required by 43 CFR 3833.2-1(a), for mining claims located before October 21, 1976. The claims at issue were located October 25, 1969, and were recorded with BLM June 15, 1979. The first proof of labor for the claims was filed with BLM November 26, 1979.

Appellant states his failure to file the proof of labor was because of his misunderstanding of the new regulations. Based on a public notice that copies of the notices of location for unpatented mining claims had to be filed with BLM on or before October 22, 1979, he complied. He asserts the notice did not refer to any requirement that a proof of labor had to be filed before October 22, 1979, and he thought that he had until December 30, 1979, to file his proof of labor with BLM. He asserts that although he had made his living from these claims in recent years, they were top filed by a third party in the summer of 1981.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires that the owner of an unpatented mining claim located before October 21, 1976, shall file with the proper office of BLM, on or before October 22, 1979, a copy of the official record of the notice of location and evidence of assessment work performed on the claim or a notice of intention to hold the claim. The statute also provides that failure to file such instruments within the prescribed time period shall be deemed conclusively to constitute an abandonment of the mining claim. As the proof of labor was not filed with BLM on or before October 22, 1979, BLM properly deemed the claims to be abandoned and void. Margaret E. Peterson, 55 IBLA 136 (1981). The responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim. 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).

[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. 371-72.

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

Edward W. Stuebing
Administrative Judge

