

DENVER N. TALLMAN

IBLA 81-567

Decided February 8, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring mining claims abandoned and void. I MC 42207 through I MC 42218, I MC 48475.

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 the claim, or evidence of performance of annual assessment work on it, 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.

APPEARANCES: Denver N. Tallman, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Denver N. Tallman 1/ has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated March 20, 1981, declaring the Delma Nos. 1 through 13 mining claims, I MC 42207 through

1/ The record indicates that appellant and Blaine Wight were colocators of the mining claims involved in this case. It would appear from the statement of reasons that appellant is also appealing on behalf of Blaine Wight. In any case, the decision herein will be conclusive as to his interest in the claims.

I MC 42218 and I MC 48475, abandoned and void for failure to file evidence of annual assessment work or notice of intention to hold the claims by December 30, 1980, 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.

Appellant's mining claims were located in July 1975 and subsequently filed for recordation with BLM pursuant to section 314(b) of FLPMA in 1979. Although evidence of annual assessment work was also filed with BLM on October 22, 1979, no evidence of annual assessment work or notice of intention to hold the claims was filed during calendar year 1980.

In his statement of reasons for appeal, appellant contends that the failure to submit evidence of annual assessment work was "an error on our part due to unusual circumstances beyond our control." Appellant states that he was involved in a serious accident. He says that an affidavit of assessment work as to all of the claims for the 1980 assessment year was recorded with the Cassia County Recorder's Office on November 4, 1980, and encloses a copy thereof.

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), specifies 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 evidence of annual assessment work performed or a notice of intention to hold the claim with BLM. 2/ (Emphasis added.) See 43 CFR 3833.2-1(a).

The filing requirements of section 314 of FLPMA are mandatory, not discretionary. Failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Fahey Group Mines, Inc., 58 IBLA 88 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements of FLPMA rests with appellant. This Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. Lynn Keith, *supra*; see Western Mining Council v. Watt, 643 F.2d 618, 628 (9th Cir. 1981).

2/ Such filing must be made both in the office where the notice of location is recorded, i.e., the county recorder's office, and in the proper office of BLM. Therefore, accomplishment in the proper county of a proper recording of evidence of assessment work does not relieve the claimant from recording a copy of the instrument in the proper office of BLM under FLPMA and its implementing regulations. Johannes Soyland, 52 IBLA 233 (1981).

The deadline for filing, as to assessment work performed during the 1980 assessment year, was December 30, 1980, i.e., "prior to December 31." 43 U.S.C. § 1744(a) (1976). In the absence of evidence that appellant filed timely his evidence of annual assessment work or notice of intention to hold the claims, BLM properly declared the mining claims abandoned and void. Major G. Atkins, 60 IBLA 284 (1981); Elizabeth Francis, 60 IBLA 6 (1981).

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.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

