

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 24133 through A MC 24152.

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: Assessment Work

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

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: Floren Klopfenstein, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Floren Klopfenstein appeals the December 8, 1981, decision of the Arizona State Office, Bureau of Land Management (BLM), which declared the unpatented K No. 3 through K No. 9, K No. 15, K No. 21, K No. 27 through K No. 31, K No. 33, and K No. 35 through K No. 39 placer mining claims, A MC 24133 through A MC 24152, abandoned and void because no notice of intention to hold the claims or evidence of assessment work performed on the claims was filed with BLM by December 30, 1979, for the assessment year ending September 1, 1979, as required by 43 CFR 3833.2. The claims were located June 2, 1978, and were recorded with BLM June 19, 1978. A copy of the official record of the affidavit of assessment work for the years 1979 and 1980 was filed with BLM December 8, 1980; an unrecorded affidavit of the labor was received by BLM August 29, 1980.

Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim located after October 21, 1976, to file with BLM a copy of the official record of the notice of location within 90 days after the location is made, and to file with BLM a copy of the evidence of assessment work performed on the claim or a notice of intention to hold the claim prior to December 31 of each year following the calendar year in which the claim was located. The proof of labor must also be recorded in the local jurisdiction where the location notice is recorded, within the same time period. The statute also provides that failure to file any such instrument within the time periods prescribed shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. 43 U.S.C. § 1744(c) (1976). The statutory requirements and the consequences of failure are replicated in 43 CFR 3833.1-2, 3833.2-1, and 3833.4.

Appellant states the development work was performed in 1979. He thought his engineer had filed the evidence in the county and with BLM, whereas the engineer thought that appellant had done the filing. Because of the misunderstanding no filing was made for the claims in 1979. However, as the required work had been performed, appellant thought the claims were valid.

[1] Section 314 of FLPMA specifies that the owner of an unpatented mining claim located after October 21, 1976, must file evidence of assessment work or a notice of intention to hold the claim prior to December 31 of each year following the calendar year in which the claim was located. Such filing must be made both in the office where the location notice is recorded, i.e., the county recorder's office, and in the proper office of BLM. These are separate and distinct requirements. Compliance with the one does not constitute compliance with the other. Filing in the proper county does not relieve

the claimant from the requirement of recording a copy of the instrument in the proper BLM office under FLPMA and the implementing regulations. Johannes Soyland, 52 IBLA 233 (1981). The filing requirements of section 314 of FLPMA are mandatory, not discretionary. Failure to comply is 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 mandatory statutory requirements of recordation or to afford any relief from the statutory consequences. Lynn Keith, *supra*. There we held

[t]he 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).

53 IBLA at 196, 88 I.D. at 371-72.

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
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

