

FRANCES J. DARGER

IBLA 82-492

Decided March 30, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. I MC 10895.

Affirmed.

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

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the claim by the owner.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment

Where the claimants inadvertently omit the name of a mining claim from their affidavit of annual assessment work, which was otherwise properly recorded both in the county and with BLM, the omitted claim must be deemed conclusively to be abandoned under the provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

APPEARANCES: Frances J. Darger, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Frances J. Darger appeals the February 5, 1982, decision of the Idaho State Office, Bureau of Land Management (BLM), which declared the unpatented December lode mining claim (I MC 10895) abandoned and void because no evidence of assessment work or notice of intention to hold the claim was filed with BLM on or before October 22, 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. The claim was located December 2, 1923, and a copy of the notice of location was filed with BLM on March 16, 1979.

Appellant concedes the December lode claim was inadvertently omitted from the proof of labor recorded August 3, 1979, in Blaine County, Idaho, and filed with BLM August 14, 1979. The proof of labor recited the November, Annex, Thanksgiving, April, Lydia, Charles, and Peter lode mining claims. Appellant asserts the necessary assessment work was performed on the December claim as well. Subsequent proofs of labor filed with BLM December 1, 1980, and October 2, 1981, listed the latter seven claims as well as the December claim.

[1] Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), requires the owner of an unpatented mining claim located prior to October 31, 1976, to file evidence of assessment work for the claim with BLM within the 3-year period following that date and prior to December 31 of each year thereafter. Failure to so file is statutorily considered conclusively to constitute an abandonment of the claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4. See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] The purpose of section 314(a) of FLPMA is not to ensure that assessment work is done on a mining claim but rather to ensure that there is a record of continuing activity on the claim so that the Federal Government will know which mining claims on Federal lands are being maintained and which have been abandoned. 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). The statute expressly requires that a mining claimant file the instrument recorded in the county office, whether proof of labor or notice of intention to hold the claim, in the proper BLM office. Where, as in this case, the proof of labor did not include the December claim, there was no discretion under the statute for BLM to determine that that claim had not been abandoned. We recognize that appellant's error was inadvertent, but neither BLM nor this Board has authority to excuse lack of compliance with the statutory requirements of FLPMA, or to afford any relief from the statutory consequences. See Lynn Keith, supra; Glen J. McCrorey, 46 IBLA 355 (1980).

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

Gail M. Frazier
Administrative Judge

