

LYNN DAY

IBLA 82-539

Decided March 30, 1982

Appeal from decision of Utah State Office, Bureau of Land Management, declaring mining claims abandoned and void. U MC 230130 through U MC 230183.

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 after Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each calendar year following the year in which the claim was located. 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.

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: 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.

3. 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: Lynn Day, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Lynn Day has appealed from the February 1, 1982, decision of the Utah State Office, Bureau of Land Management (BLM), which declared the Copper Clad A #1, Copper Clad Fraction #1, and Copper Clad #54 through Copper Clad #105 lode mining claims, U MC 230130 through U MC 230183, abandoned and void because no evidence of assessment work or notice of intention to hold the claims had been filed with BLM on or before December 30, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the implementing regulation, 43 CFR 3833.2-1. The claims had been located October 10, 1980, and recorded with BLM November 26, 1980.

Appellant contends that as Utah State law allows a year and a fraction to file evidence of assessment work done on the claims, he was not required to file any evidence of such work with BLM until 1982. He asserts he had no intention of dropping the claims within the year of location. He opines that the Federal regulations should coincide with the State and county laws.

[1, 2] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), provides, in pertinent part, that:

The owner of an unpatented lode or placer mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for the record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an

affidavit of assessment work performed thereon, on [sic] a detailed report provided by section 28-1 of title 30, relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground. [Emphasis added.]

Section 314 of FLPMA specifies that the owner of a 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 every calendar year after the year of location of the claim. 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. These are separate and distinct requirements. Compliance with one does not constitute compliance with the other. In this case no filing was made in either place.

The filing requirements of FLPMA are mandatory, not discretionary. Failure to comply with the filing requirements of section 314 of FLPMA is conclusively deemed to constitute an abandonment of the mining claims by the owner, and renders the claims void. Enterprise Mines, Inc., 58 IBLA 372 (1981); 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). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements rested 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.

[3] 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 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 by 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 192, 88 I.D. at 371-72.

It is true, as appellant suggests, that the mining law does not require performance of assessment work until the assessment year commencing on the first day of September succeeding the date of the claims. 30 U.S.C. § 28 (1976). Thus, appellant was not required to perform assessment work until the assessment year commencing on September 1, 1981, and running to September 1, 1982. However, this does not eliminate the necessity for compliance with section 314 of FLPMA, requiring the filing of either an affidavit of assessment work or a notice of intention to hold the mining claims, in both the local

county recording office and the proper office of BLM, by December 30 of the year following the location of the claims. Ted Dilday, 56 IBLA 337, 88 I.D. 682 (1981). The deadline for filing the required notices for appellant's claims was December 30, 1981, following the calendar year in which the claims were located. In the absence of such filing of either a notice of intention to hold the claims or an affidavit of assessment work in both the county and with BLM, BLM properly declared the claims abandoned and void. David Truesdell, 57 IBLA 60 (1981); William J. Kroetch, 57 IBLA 29 (1981).

Appellant may wish to consult with BLM as to the possibility of relocating these claims.

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

---

Bruce R. Harris  
Administrative Judge

