

GEORGE WHITEHEAD

IBLA 82-635

Decided May 17, 1982

Appeal from decision of New Mexico State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. NM MC 77311 and NM MC 77312.

Affirmed, as modified.

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: Abandonment

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because of a snowstorm, the consequence must be borne by the claimant.

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

For mining claim located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with the proper office of BLM within 90 days after the date of location. 43 CFR 3833.4 states that failure to submit the required instruments within the specified time limits is conclusively considered abandonment of the claim and it shall be void. 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 non-compliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: George Whitehead, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

George Whitehead appeals the New Mexico State Office, Bureau of Land Management (BLM), decision of February 9, 1982, which declared the unpatented Ojo de Amado #1 and #2 lode mining claims, NM MC 77311 and NM MC 77312, abandoned and void because the proof of labor for 1981 was not 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 43 CFR 3833.2. The proof of labor was received January 4, 1982.

Appellant states that his partner left Amarillo, Texas, December 14, 1981, on a trip which was to include filing of the proof of labor with the BLM office in Santa Fe, New Mexico, before December 30, 1981. A very heavy snow storm in Provo, Utah, on December 27, 1981, made it impossible for him to get to Santa Fe by December 30, 1981, to make the required filing. Appellant states that he called the BLM office and advised that the proof of labor would be delivered by January 4, 1982. He was told that a "notice of intent" was necessary to keep the claims open. He wrote such a letter and mailed it to BLM. Both the letter and the required proof of labor were received by BLM January 4, 1982.

[1] Section 314 of FLPMA requires that a proof of labor for unpatented mining claims be filed with the proper office of BLM prior to December 31 of each calendar year or the claim is conclusively deemed to be abandoned. "Filed" is defined in 43 CFR 3833.1-2(b) as "being received and date stamped by the proper BLM office."

When the proof of labor was not received by BLM prior to December 31, 1981, the claims were properly deemed abandoned and void. The responsibility for making the required filing timely rested with the claimants. This Board has no authority to excuse failure to file within the statutory period or to afford any relief from the statutory consequences of such failure. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] Examination of the case record discloses another defect in the recording of these claims. The claims were located June 5, 1978, and copies of the location notices were not recorded with BLM until October 19, 1979. Section 314 of FLPMA requires that a copy of the location notice for a claim

located after October 21, 1976, be filed for record in the proper office of BLM within 90 days after the date of location. This is a mandatory requirement, and failure to comply is deemed conclusively to constitute an abandonment of the claim. When the location notices were not submitted to BLM within 90 days after the date of location, the claims were void. Lee Smart, 59 IBLA 235 (1981). The conclusive presumption of abandonment which attends the failure to file an instrument required by section 314 of FLPMA 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 any relief from the statutory consequences. Nicholaus P. Newby, 60 IBLA 264 (1981).

The BLM decision is modified to show the claims are abandoned and void because a copy of the notice of location was not filed with BLM within 90 days after the date of location of the 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 is affirmed, as modified.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

