W. A. SHEPHERD
VIOLA M. SHEPHERD

IBLA 82-652 Decided June 23, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 10038 and I MC 10039.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold 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 an unpatented mining claim located after Oct. 21, 1976, must file both in the office where the location is of record and in the proper office of BLM a notice of intent 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 or a notice of intent to hold the claim is not filed in both places, for whatever reason, the claim is conclusively presumed to be abandoned.

2. Notice: Generally -- Regulations: Generally -- Statutes
   All persons dealing with the Government are presumed to have knowledge of

pertinent statutes and regulations duly promulgated thereunder.

APPEARANCES: Matthew Mullaney, Esq., Boise, Idaho, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

W. A. Shepherd and Viola M. Shepherd appeal the March 1, 1982, decision of the Idaho State Office, Bureau of Land Management (BLM), which declared the unpatented Brown Bear #2 and Brown Bear #3 lode mining claims, I MC 10038 and I MC 10039, abandoned and void because no proof of labor or notice of intention to hold the claims was filed with BLM by December 30, 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 3833.2-1.

The claims were located in November 1978, and recorded with BLM February 6, 1979, as required by FLPMA. The record does not show any proof of labor or notice of intention to hold the claims as being filed in calendar year 1979, but a proof of labor has been filed in the subsequent years, 1980 and 1981.

Appellants state they were unaware that any filing other than the notice of location was required in 1979, relying on the general mining laws which require assessment work to be performed in the assessment year commencing on September 1 next following the date of location. As BLM took no adverse action prior to their 1980 affidavit of assessment work, any deficiencies in the record of their claims should be cured by the subsequent proofs of labor. They suggest filing of the notices of location in 1979 should satisfy the FLPMA requirement. They argue that the filing regulations of FLPMA are contrary to the general mining laws, are unreasonable, burdensome and oppressive, and deprive them of their property without due process.

Section 314 of FLPMA provides, in pertinent part:

> Sec. 314. (a) * * * The owner of an unpatented lode or placer mining claim located after the date of this Act [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 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, or a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1), relating thereto.

> (2) File in the office of the Bureau [of Land Management] 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.
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> * * * * * * *
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> (c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner * * *.

[1] Thus, the owners of an unpatented mining claim located in 1978 must file either a proof of labor or a notice of intention to hold the claim, both in the county recorder's office where the location notice is of record and in the proper office of BLM, prior to December 31, 1979. The date of recordation of the location notice with BLM has no bearing on the situation; it is the date of physical location of the claim which determines the year in which the proof of labor or notice of intention to hold must be first filed. Where, as to these claims, no proof of labor or notice of intention to hold the claims was filed with BLM and in the proper county in 1979, the mining claims were properly deemed abandoned and void. The filing of the location notice with BLM in 1979 cannot possibly be construed as a notice of intention to hold the mining claims so as to satisfy the recordation requirements of FLPMA. As neither a proof of labor or a notice of intention to hold the claims was filed, the statutory consequences of conclusive presumption of abandonment attached by operation of law without any action or decision by any administrative official. Nicholaus P. Newby, 60 IBLA 264 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). In enacting FLPMA, 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. Lynn Keith, supra.

The argument that FLPMA is contrary to the general mining laws is not determinative. In Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981), the court held that the FLPMA requirement for filing of information about unpatented mining claims is not arbitrary or unreasonable. In Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), the court held the regulations promulgated under FLPMA which authorized that unpatented mining claims could be deemed abandoned and void if filings required by the Act were not made was not in excess of statutory jurisdiction, authority, limitations, or short of statutory right under the Act.

[2] All persons who deal with the Government are presumed to have knowledge of the law and regulations duly promulgated thereunder. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978).

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.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge