

PETER LACZAY

IBLA 82-830

Decided July 13, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 7297 through I MC 7301.

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: Abandonment

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 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. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 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 is recorded and in the proper office of the BLM is mandatory, not discretionary.

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

Where the claimant inadvertently omits the name of several mining claims from his

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

3. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Claim -- 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: Peter Laczay, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Peter Laczay appeals the May 5, 1982, decision of the Idaho State Office, Bureau of Land Management (BLM), which declared the unpatented L-44, L-45, L-46, L-47, and L-48 lode mining claims, I MC 7297 through I MC 7301, abandoned and void because no proof of labor or notice or intention to hold the claims was received by BLM prior to December 31, 1979, for that calendar year, 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 claims had been located in August 1978. The proof of labor submitted to BLM October 4, 1979, listed L-1 through L-43 and Bull 1 through Bull 16 mining claims. The proof of labor submitted July 11, 1980, listed L-1 through L-48 mining claims.

Appellant states the assessment work was performed on the L-44 through L-48 mining claims in 1979. He submitted a copy of the affidavit of labor performed on the L-1 through L-48 and Bull 1 through Bull 16 mining claims, subscribed and sworn to September 14, 1979, which he asserted was filed with BLM in October 1979. He refers to a letter from BLM dated August 5, 1980, in response to his inquiry, advising him that the L group of claims, I MC 7296 through I MC 7301, are filed in accordance with 43 CFR 3833. He states that

without a proper proof of labor submitted prior to October 21, 1979, BLM could not have written such a letter.

Examination of the case file discloses that the proof of labor, a copy of which accompanied the appeal, was filed with BLM on July 14, 1980, and not in October 1979. As stated above, the proof of labor received by BLM on October 4, 1979, listed only the L-1 through L-43, and Bull 1 through Bull 16 claims.

The interpretation which we place on the BLM letter of August 5, 1980, concerning the L group of claims, I MC 7296 through I MC 7301, is that the notices of location had been timely filed for recordation, not that the required proofs of labor had been filed. In any event, reliance upon information or opinion of any employee of BLM cannot operate to vest any right not authorized by law. 43 CFR 1810.3(c).

[1] Under section 314 of FLPMA, the owner of a mining claim located after October 21, 1976, must file a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to December 31 of each year following the calendar 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 invalid and void. The recordation requirement of section 314 of FLPMA that evidence of assessment work or a notice of intention to hold be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary. Lynn Day, 63 IBLA 70 (1982).

[2, 3] 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 local state 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 L-44 through L-48 mining claims, there was no discretion under the statute for BLM to determine that those claims had not been abandoned. We recognized that appellant's error was inadvertent, but neither BLM nor this Board has any authority to excuse lack of compliance with the statutory requirements of FLPMA, or to afford any relief from the statutory consequences. See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981), Glen J. McCrorey, 46 IBLA 355 (1980). As the Board stated in Lynn Keith:

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 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.

Appellant may wish to consult with BLM about 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

