

OLIVE M. STIRLAND

IBLA 82-913

Decided July 20, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. I MC 40262.

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 on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must 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. This requirement is mandatory, not discretionary. Filing evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

2. 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.

3. Administrative Authority: Generally -- Constitutional Law: Generally -- 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

Department of the Interior, as an agency of the executive branch of the Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

APPEARANCES: Richard G. Boren, Esq., Farmington, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Olive M. Stirland appeals the Idaho State Office, Bureau of Land Management (BLM), decision of May 19, 1982, which declared the unpatented Eureka placer mining claim, I MC 40262, abandoned and void because no proof of labor or notice of intention to hold the claim for 1980 was filed with BLM on or before December 30, 1980, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), and 43 CFR 3833.2.

The claim was located in 1923. A copy of the location notice and a proof of labor were filed with BLM October 22, 1979. The claim is situated in the S 1/2 SE 1/4 sec. 21, N 1/2 NE 1/4 sec. 28, T. 11 N., R. 15 E., Boise meridian, within the Sawtooth National Recreation Area administered by the United States Department of Agriculture. 16 U.S.C. § 460aa (1976).

Appellant states, without further proof, that the proof of labor for 1980 was filed with BLM. She contends the action of BLM in declaring the claim abandoned and void was improper, illegal, and unconstitutional, and constitutes the latest event in a series of illegal harassment activities by BLM against her.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located before October 21, 1976, to file with the proper office of BLM, on or before October 22, 1976, a copy of the official record of the notice of

location and evidence of assessment work performed on the claim or a notice of intention to hold the claim, and a proof of labor or notice of intention to hold prior to December 31 of each calendar year thereafter. The statute also provides that failure to file such instruments within the prescribed time periods shall be deemed conclusively to constitute an abandonment of the mining claim. As no proof of labor was filed with BLM on or before December 30, 1980, BLM properly deemed the claim to be abandoned and void. Margaret E. Peterson, 55 IBLA 136 (1981). The responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim. This Board has no authority to excuse lack of compliance, or to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] 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 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. Lynn Keith, *supra*.

[3] 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 an unpatented mining claim to be deemed abandoned and void if the filings required by the Act were not made, were not in excess of statutory jurisdiction, authority, limitations, or short of statutory right under the Act. As to the constitutionality of FLPMA, this Board adheres to its earlier holdings that the Department of the Interior, being an agency of the executive branch of the Government, is not the proper forum to decide whether an Act of Congress is constitutional. Old Hundred Gold Mining Co., 63 IBLA 56 (1982); William O. Bahny, 56 IBLA 190 (1981); Lynn Keith, *supra*; Alex Pinkham, 52 IBLA 149 (1981), and cases cited.

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).

BLM has stated that it has no record of receipt of the proof of labor or a notice of intention to hold the Eureka placer mining claim for 1980, and appellant has not shown anything to the contrary. Therefore it must be found that BLM was not acting improperly in its decision declaring the claim abandoned and void under the terms of FLPMA.

Accordingly, 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

James L. Burski
Administrative Judge

