

EVELYN L. PARENT, GEORGE V. HALL

IBLA 82-862

Decided August 10, 1982

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 118901 through A MC 118935.

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: Abandonment

Where a mining claim was located in November 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work performed during 1981, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

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: Abandonment

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the

mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work in both the local recording office where the notice of location is recorded, and in the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

APPEARANCES: Evelyn L. Parent and George V. Hall, pro sese.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Evelyn L. Parent and George V. Hall appeal the decision of May 27, 1982, wherein the Arizona State Office, Bureau of Land Management (BLM), declared the unpatented Hapa A through M placer mining claims, and the Sunshine 1A through 22A lode mining claims, A MC 118901 through A MC 118935, abandoned and void because no notice of intent to hold or evidence of assessment work was filed with BLM in 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 claims were located November 21, 1980, and were recorded with BLM December 29, 1980. The claims are situated in sec. 13, T. 24 S., R. 16 E., and secs. 18 and 19, T. 24 S., R. 17 E., Gila and Salt River meridian, Santa Cruz County, Arizona.

Appellants contend the first assessment year for newly located mining claims runs from noon September 1 following the date of location of the claims to noon September 1 of the following year, so that for their claims located November 21, 1980, the first assessment year commenced at noon September 1, 1981, and accordingly no forfeiture of the claims could occur less than 1 year thereafter.

[1] Section 314 of FLPMA requires that the owner of an unpatented mining claim located on public land after October 21, 1976, must file a copy of the recorded location notice in the proper office of BLM within 90 days of location, and that prior to December 31 of each year following the calendar year in which the claim was located, he must file or record in the state or county office where the notice of location is recorded and in the proper office of BLM evidence of assessment work performed or a notice of intention to hold the claim. Failure to submit any of the instruments required by FLPMA within the prescribed time limits is conclusively deemed to constitute an abandonment of the claim. Herschel Knapp, 65 IBLA 314 (1982); Francis Skaw, 63 IBLA 235 (1982); Charles A. Behney III, 63 IBLA 231 (1982). See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981). 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. Francis Skaw, *supra*; Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

As the claims herein were located November 21, 1980, a proof of labor or a notice of intent to hold the claims was required to be recorded both in the records of Santa Cruz County, Arizona, and with BLM prior to December 31, 1981. As no such filings were made, the claims were properly deemed to be abandoned.

[2] It is true, as appellants state, that the mining law does not require performance of assessment work until the assessment year commencing at noon of September 1 first succeeding the date of location of the claim. 30 U.S.C. § 28 (1976). Thus, appellants were not required to perform assessment work until sometime during the year running from September 1, 1981, to September 1, 1982. However, this does not obviate the necessity for compliance with section 314 of FLPMA, requiring either an affidavit of assessment work or a notice of intention to hold the claims to be filed both with the local recording office and with BLM on or before December 30, 1981, since 1981 is the year following the calendar year in which the claims were located. Herschel Knapp, *supra*; Ronald Willden, 60 IBLA 173 (1981); Ted Dilday, 56 IBLA 337, 88 I.D. 682 (1981).

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:

Anne Poindexter Lewis  
Administrative Judge

Bernard V. Parrette  
Administrative Judge  
Alternate Member

