

ROGER FERGUSON
SYBIL R. FERGUSON

IBLA 82-1093

Decided September 29, 1982

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. N MC 14304.

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 Oct. 1977, 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, 1978, a notice of intention to hold the claim or evidence of assessment work performed during 1978, 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 with the local recording office where the notice of location is recorded, and a copy thereof 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: L. H. Erickson, agent, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Roger Ferguson and Sybil R. Ferguson appeal the decision of July 13, 1982, wherein the Nevada State Office, Bureau of Land Management (BLM), declared the unpatented Reveille #496 lode mining claim, N MC 14304, abandoned and void because no notice of intent to hold or evidence of assessment work was filed with BLM in 1978, 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 claim was located October 31, 1977, and was recorded with BLM January 9, 1978. The claim is situated in sec. 19, T. 2 N., R. 52 E., Mount Diablo meridian, Nye County, Nevada.

Appellants contend that under James V. Joyce (On Reconsideration), 56 IBLA 327 (1981), the recordation of a claim in January 1978 was adequate compliance with all recordation requirements of FLPMA in 1978, and that a proof of labor has been filed in each subsequent year, 1979, 1980, and 1981.

[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 for record in the 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 limit is conclusively deemed to constitute an abandonment of the claim by the owner. Evelyn Parent, 66 IBLA 147 (1982); 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 claim herein was located October 31, 1977, a proof of labor or a notice of intent of hold the claim was required to be recorded both in the records of Nye County, Nevada, and with BLM prior to December 31, 1978. As no such filings were made, the claim was properly deemed to be abandoned.

James V. Joyce (On Reconsideration), supra, cited by appellants holds that either a proof of labor or a notice of intent to hold must be filed each year, both in the county and with BLM. It does not state that filing of a proof of labor may be commenced in the year following the recording of a claim with BLM. Such a holding would be contrary to the statute where the claim was located after October 21, 1976.

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

Bruce R. Harris
Administrative Judge

