

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 49995 through I MC 49999 and I MC 51205 through I MC 51220.

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

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 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 Mining 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: Brent K. Young, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Brent K. Young appeals the Idaho State Office, Bureau of Land Management (BLM), decision of August 11, 1982, which declared the unpatented Lucky Ladies Nos. 1 through 5 lode mining claims, I MC 49995 through I MC 49999, and the Eagle's Roost Nos. 1 through 8, Lucky Ladies Nos. 6 through 9, and Bottoms Up Nos. 1 through 4 lode mining claims, I MC 51205 through I MC 51220, abandoned and void because no proof of labor 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 3833.2-1. The decision also returned, unrecorded, the 1982 proof of labor, stating that as the claims are considered abandoned the 1982 proof of labor cannot be accepted. The claims had been located in May and June 1980, and were timely recorded with BLM.

Appellant states that after recording the 1981 proof of labor in Custer County, Idaho, July 16, 1981, he sent copies of the proofs of labor for I MC 22856 through I MC 22859, I MC 49995 through I MC 49999, and I MC 51205 through I MC 51220 to BLM in a single envelope. He received acknowledgement for the proof of labor on I MC 22856 through I MC 22859, but no other. He maintains that BLM must have lost or misfiled the other proofs of labor.

Examination of the case file for I MC 22856 through I MC 22859 discloses that a proof of labor was received by BLM August 10, 1981, but it is a proof of labor subscribed and sworn to June 11, 1980. It would appear that appellant transmitted the wrong proof of labor for I MC 22856 through I MC 22859. As the claims at issue were located in May and June 1980, there was no need or requirement for them to have a proof of labor filed in 1980.

[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 the performance of assessment work on the claim prior to December 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 by the owner and renders the claim 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 Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] The purpose of section 314(a) of FLPMA is not to ensure that assessment work is done on the 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 office of BLM. Where, as in this case, the 1981 proof of labor was not submitted to BLM, there was no discretion under the statute for BLM to determine that the claims had not been abandoned. This Board has no authority to excuse the statutory consequences. See Lynn Keith, *supra*; Glenn J. McCrory, 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 M (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).

52 IBLA at 196, 88 I.D. at 371-72.

Despite appellant's statement that the documents were properly and timely mailed, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 3833.1-2(a). BLM has reported that it has no record the proofs of labor being received, after searching in every case file pertinent to this appellant.

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:

Bruce R. Harris
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

