DEE WRIGHT

IBLA 83-77 Decided December 23, 1982

Appeal from decision of Utah State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. U MC 131324 through U MC 131331.

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

   The recordation requirement of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims located prior to Oct. 21, 1976, 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 on or before Oct. 22, 1979, is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance either 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. Notice: Generally -- Regulations: Generally Statutes

All persons dealing with the Government are presumed to have knowledge of pertinent statutes and regulations duly promulgated thereunder.

APPEARANCES: Dee Wright, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Dee Wright appeals the Utah State Office, Bureau of Land Management (BLM), decision of October 5, 1982, which declared the unpatented Snowball #201 through #208 placer mining claims, U MC 131324 through U MC 131331, abandoned and void because no notice of intention to hold the claims or evidence of assessment work performed on the claims was filed with BLM on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The claims had been located February 1, 1973.

Appellant states only that he was not fully informed of the recordation requirements for his claims.

Section 314(a) of FLPMA, 43 U.S.C. § 1744(a)(1) and (2) (1976), reads:

The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. * * *

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim * * *, an affidavit of assessment work performed thereon, * * *.

(2) File in the office of the Bureau [of Land Management] designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, * * *.

[1] Section 314 of FLPMA specifies that the owner of a pre-FLPMA unpatented mining claim must file evidence of assessment work or a notice of intention to hold the claim on or before October 22, 1979, and prior to December 31 of every calendar year thereafter. Such filing must be made both in the office where the notice of location is recorded, i.e., the county recorder's office, and in the proper office of BLM. These are separate and

distinct requirements. Compliance with the one does not constitute compliance with the other. Accomplishment in the proper county of a proper recording of evidence of assessment work or a notice of intention to hold the mining claim does not relieve the claimant from recording a copy of the instrument in the proper office of BLM under FLPMA and the implementing regulations. Thomas Mason, 64 IBLA 104 (1982); Enterprise Mines, Inc., 58 IBLA 372 (1981); Johannes Soyland, 52 IBLA 233 (1981). The filing requirements of section 314 of FLPMA are mandatory, not discretionary. Failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Enterprise Mines, Inc., supra; Fahey Group Mines, Inc., 58 IBLA 88 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements of FLPMA rests with appellant. This Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. Lynn Keith, supra.

[2] 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 consequence. Thomas F. Byron, 52 IBLA 49 (1981).

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

[3] We sympathize with appellant to the extent he might have been misled by any misstatement in the BLM's brochure of what is required under section 314 of FLPMA. In this case, the facts about which appellant suggests he was misinformed were the applicable statutory and regulatory rules of recordation. It is an established rule of law that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); 44 U.S.C. §§ 1507, 1510 (1976). See John Murphy, 58 IBLA 75 (1981); John Plutt, Jr., 53 IBLA 313 (1981); Edward W. Kramer, 51 IBLA 294 (1980). A careful reading of the statute and the governing regulations, 43 CFR 3833.2-1(a), would have clearly indicated that evidence of assessment work or a notice of intention to hold the claims must have been filed both in the county recorder's office and with the proper office of BLM or before October 22, 1979. Moreover, as we recently stated:

> [R]eliance upon erroneous or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed by statute, or create rights not authorized by

> law, or relieve the claimant of the consequences imposed by the statute for failure to comply with its requirements. Parker v. United States, 461 F.2d 806 (Ct. Cl. 1972); * * * Atlantic Richfield Co. v. Hickel, 432 F.2d 587 (10th Cir. 1970) * * *.

53 IBLA at 198, 88 I.D. at 373.

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:

Edward W. Stuebing
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge