

Appeal from decision of California State Office, Bureau of Land Management, refusing notices of location of placer mining claims. CA MC 117211, CA MC 117212.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Where mining claims were located July 18 and 20, 1982, and a copy of the official record of the notices of location was not filed with the proper office of the Bureau of Land Management within 90 days thereafter, the claims are properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

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.

APPEARANCES: David F. Matuszak, pro se.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

David F. Matuszak appeals the October 25, 1982, decision of the California State Office, Bureau of Land Management (BLM), which returned, unrecorded, the location notices for the Pacific Sunset XII and Pacific Sunset XIII placer mining claims, CA MC 117211 and CA MC 117212, because the notices had not been timely filed with BLM as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The claims were located July 18 and 20, 1982, respectively, and the location notices were filed with BLM October 20, 1982.

Appellant has not pointed to any error in the BLM decision. The explanation given for his failure to comply with the requirements of FLPMA is that the county recorder of Plumas County, California, did not return the copies of the recorded location notices in time for him to meet the time limit set by FLPMA.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located on public land after October 21, 1976, to file in the proper BLM office within 90 days after the date of location of the claim, a copy of the official record of the notice of location, and on or before December 30 of each calendar year after the year in which the claim was located, to file evidence of the assessment work performed on the claim, as recorded in the appropriate local recording office. The section further provides that failure to file such instruments, *i.e.*, copies of both the location notices and the evidence of assessment work, within the specified time period shall be deemed conclusively to constitute an abandonment of the mining claim.

The responsibility for complying with the recordation requirements of FLPMA rests solely with the claim owners individually. 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, 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. Leonard W. Nelson, Sr., 61 IBLA 353 (1982); Nicholaus P. Newby, 60 IBLA 264 (1981); Lynn Keith, *supra*.

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.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Will A. Irwin  
Administrative Judge

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C. Randall Grant, Jr.  
Administrative Judge

