

ERNA JELLEN
SUZANNE K. MARCO

IBLA 83-197

Decided January 6, 1983

Appeal from decision of Fairbanks District Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. F 54758, F 54759.

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 state 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: Suzanne K. Marco, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appeal has been taken by Erna Jellen and Suzanne K. Marco from the Fairbanks, Alaska, District Office, Bureau of Land Management (BLM), decision of November 12, 1982, which declared the unpatented Greenback #1 and #2 lode mining claims, F 54758 and F 54759, 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 were located in May 1946 and May 1947, respectively. The 1979 proof of labor was received by BLM November 13, 1979.

Appellants state that the claims were leased to Charles Lazeration from 1956 until he could no longer operate them at a profit. He continued to perform annual assessment work as a favor to Mrs. Jellen, who had obtained title to the claims from her deceased husband in 1956. Because of illness in 1979, Lazeration had to go to the "lower 48" and so was not able to file the 1979 proof of labor until after his return to Alaska in November 1979. Mrs. Jellen, who now resides in Phoenix, Arizona, was unaware of the shortened filing period for the 1979 proof of labor, and had no way of anticipating the illness of Lazeration so that she could make other arrangements for filing the proof of labor. As the filing of the proof of labor was only 21 days late and well before the usual deadline of December 30, appellants request acceptance of the 1979 proof of labor as timely, and reinstatement of the mining claims. Proofs of labor have been timely filed in 1980, 1981, and 1982.

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 state recording 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 state recording office 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 (1981); 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 appellants. 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 said 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. 371-72.

[3] We sympathize with appellants to the extent they might not have been aware of what is required under section 314 of FLPMA, but 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 governing regulations, 43 CFR 3833.2-1, 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 state recording office and with the proper office of BLM on or before October 22, 1979.

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

C. Randall Grant, Jr.
Administrative Judge

