

WILLIAM J. BOOTH

IBLA 83-548

Decided June 7, 1983

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 83710.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold 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 on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. 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 the 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 Claim -- Mining Claims: Abandonment

Where the claimant inadvertently omits the name of a mining claim from the affidavit of annual assessment work, which otherwise was properly recorded both in the county and with BLM, the omitted claim must be deemed conclusively to be abandoned under provisions

of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

3. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold 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: William J. Booth, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

William J. Booth 1/ appeals the April 7, 1983, decision of the Nevada State Office, Bureau of Land Management (BLM), which declared the unpatented Silver King #32 lode mining claim, N MC 83710, abandoned and void because no proof of labor or notice of intention to hold the claim was received by BLM prior to December 31, 1982, for that calendar year, 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 in June 1968. The proof of labor submitted to BLM September 7, 1982, listed only the Silver King #1 through #31 lode mining claims.

Appellant states the assessment work was performed on the Silver King #32 mining claim, and omission of the claim from the proof of labor for 1982 was either by oversight or a typographical error.

[1] Under section 314 of the FLPMA, the owner of a mining claim located before October 21, 1976, must file a copy of the location notice and evidence of assessment work with BLM by October 22, 1979, and a notice of intention to hold the claim or evidence of assessment work performed on the claim with BLM prior to December 31 of each year thereafter. 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 abandoned and 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

1/ William J. Booth is Administrator of the Estate of Jack Bishop, and appeals on behalf of Mrs. Jacqueline Sue Veseth, daughter of Jack Bishop.

of location is recorded and in the proper office of BLM is mandatory, not discretionary. Lynn Day, 63 IBLA 70 (1982).

[2, 3] The purpose of section 314(a) of FLPMA is not to ensure that assessment work is done on a 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 BLM office. Where, as in this case, the proof of labor did not include the Silver King #32 claim, there was no discretion under the statute for BLM to determine that claim had not been abandoned. We can accept that appellant's error was inadvertent, but neither BLM nor this Board has any authority to excuse lack of compliance with the statutory requirements of FLPMA, or to afford relief from the statutory consequences. See Peter Laczay, 65 IBLA 291 (1982); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); Glen 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).

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

Appellant may wish to consult with BLM about the possibility of relocating his claim.

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

James L. Burski
Administrative Judge

