

GITHA T. NAVO

IBLA 83-416

Decided June 7, 1983

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 42418 through CA MC 42421.

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

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 by the owner and renders the claim void.

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: Githa T. Navo, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Githa T. Navo appeals the February 11, 1983, decision of the California State Office, Bureau of Land Management (BLM), which declared the unpatented Triangle, Aclare, and Dorrissa lode mining claims, and the New Hope placer mining claim, CA MC 42418 through CA MC 42421, abandoned and void because no proof of labor or notice of intention to hold the claims for 1981 was filed with BLM on or before December 30, 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.

Appellant states that she had done everything she thought was required under the mining laws, including performance of annual assessment work for more than 25 years, evidence of which has been duly recorded in Sierra County, California. She thinks that she mailed the 1981 proof of labor to BLM, but concedes that it is possible she did not. She alleges that she does not have a copy of the 1981 proof of labor in her file, so she assumes that it was mailed to BLM.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located before October 21, 1976, to file with the proper office of BLM on or before October 22, 1979, a copy of the official record of the notice of location and evidence of assessment work performed on the claim or a notice of intention to hold the claim, and a proof of labor or notice of intention to hold the claim prior to December 31 of each calendar year thereafter. The statute also provides that failure to file such instruments within the prescribed time periods shall be deemed conclusively to constitute an abandonment of the claim. As no proof of labor or notice of intention to hold the claims for 1981 was filed with BLM by December 30, 1981, BLM properly deemed the claims to be abandoned and void. J & M Mining Co., 65 IBLA 335 (1982); Margaret E. Peterson, 55 IBLA 136 (1981). The responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim. 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 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. Lynn Keith, *supra* at 196, 88 I.D. at 371-72.

BLM has stated that it did not receive the 1981 proof of labor. Appellant has not shown anything to the contrary. Therefore, it must be found that BLM was not acting improperly in its decision declaring the mining claims abandoned and void under the terms of FLPMA.

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Accordingly, 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

