

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 7644 through N MC 7650.

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 after Oct. 21, 1976, must file with the Bureau of Land Management within 90 days after location of the claim a copy of the location notice and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of BLM. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976, or those in 43 CFR 3833.2.

2. 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 conclusive presumption of abandonment which attends the failure of a claimant 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 the requirements of the Act, or to afford claimant any relief from the statutory consequences.

APPEARANCES: David R. Mathews, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

David R. Mathews has appealed the Nevada State Office, Bureau of Land Management (BLM), decision of February 18, 1983, which declared the unpatented Ophir Nos. 1 through 7 lode mining claims, N MC 7644 through N MC 7650, abandoned and void because no proof of labor was filed with BLM on or before December 30, 1978, 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 claims were located in August 1977.

Appellant states he did submit to BLM a copy of the proof of labor for 1978 within 2 weeks after recording it in Lincoln County, Nevada, September 6, 1978. The record shows that the annual assessment work has been performed every year and evidence of the work has been filed with BLM every year since 1979.

BLM states that it has no record of the 1978 proof of labor, filed in 1978.

[1] Under section 314(a) of FLPMA, the owner of a mining claim located after October 21, 1976, must file with BLM a copy of the official record of the location notice within 90 days after location, and a notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim on or before December 30 of every calendar year thereafter. This statutory requirement is mandatory, not discretionary, and failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980). The responsibility for complying with the recordation requirements of FLPMA rested with appellant. Those who deal with the Government are presumed to have knowledge of the law and regulations duly promulgated thereto. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978); 44 U.S.C. §§ 1507, 1510

(1976). The filing requirement is imposed by statute, and this Board has no authority to waive it. Lynn Keith, supra.

[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 Co. 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 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.

Contrary to the argument of appellant, 43 CFR 3833.4 states: "The failure to file an instrument required by §§ 3833.1-2 (a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void." Similarly, section 314(c) of FLPMA states: "The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner." Neither the statute nor the regulation allows any time beyond December 30 of each year to submit the required instrument. Failure to file timely is not a defect which may be cured upon a 30-day notice.

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.

Douglas E. Henriques  
Administrative Judge

We concur:

R. W. Mullen  
Administrative Judge

Gail M. Frazier  
Administrative Judge

