

ROBERT E. BAUER

IBLA 83-705

Decided August 5, 1983

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 49049 and N MC 49050.

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: Abandonment

Where a mining claim was located in December 1978, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1979, a notice of intention to hold the claim or evidence of the performance of assessment work, both in the county where the location notice is of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

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: Abandonment

With respect to an unpatented mining claim located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of

location is recorded and in the proper office of BLM prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

APPEARANCES: Robert E. Bauer, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Robert E. Bauer appeals the decision of May 3, 1983, wherein the Nevada State Office, Bureau of Land Management (BLM), declared the unpatented Treasure Hill Nos. 504 and 505 lode mining claims, N MC 49049 and N MC 49050, abandoned and void because no notice of intention to hold the claims or evidence of assessment work was filed with BLM in 1979, 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 December 1978, and are situated in section 34, T. 15 S., R. 47 E., Mount Diablo meridian, Nye County, Nevada. The record does not show that any proof of labor or notice of intention to hold the claims was filed with BLM for these claims.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located after October 21, 1976, to file a copy of the recorded location notice in the proper office of BLM within 90 days after the location. In addition, prior to December 31 of each year following the calendar year in which the claim was located, the owner must file for record in the county office where the notice of location is of record and in the proper office of BLM evidence of assessment work performed or required by FLPMA within the prescribed time limits is conclusively deemed to constitute an abandonment of the claim. Homestake Mining Co., 73 IBLA 117 (1983); Evelyn Parent, 66 IBLA 147 (1982); Herschel Knapp, 65 IBLA 314 (1982). See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981). 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 of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Francis Skaw, 63 IBLA 235 (1982); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

As the claims herein were located in December 1978, a proof of labor or a notice of intention to hold the claims was required to be recorded both in the records of Nye County, Nevada, and with BLM prior to December 31, 1979. Since no filing was made either with BLM or in the county, the claims were properly deemed to be abandoned.

[2] The mining law does not require performance of assessment work until the assessment year commencing at noon of September 1, first succeeding

the date of location of the claim, 30 U.S.C. § 28 (1976), so appellant was not required to perform assessment work until sometime during the year running from September 1, 1979, to September 1, 1980. However, this did not obviate the necessity for compliance with section 314 of FLPMA, which required either an affidavit of assessment work or a notice of intention to hold the claim be filed both with the local recording office and with BLM on or before December 30, 1979, since 1979 was the year following the calendar year in which the claims were located. Cletius G. Rogers, 73 IBLA 1 (1983); Evelyn Parent, supra; Ted Dilday, 56 IBLA 337, 88 I.D. 682 (1981).

It is noted that the subject claims have been relocated and now have serial numbers N MC 154532 and N MC 154533.

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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Bruce R. Harris  
Administrative Judge

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Gail M. Frazier  
Administrative Judge

