

JOHN DILLINGHAM
MABEL DILLINGHAM

IBLA 83-662

Decided August 17, 1983

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 125134 through N MC 125139.

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 the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and 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 the Bureau of Land Management. 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 3833.2-1.

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.

APPEARANCES: Gary T. Watson, Esq., Las Vegas, Nevada, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of April 28, 1983, the Nevada State Office, Bureau of Land Management (BLM), declared the unpatented Sunshine Nos. 1 through 6 lode mining claims, N MC 125134 through N MC 125139, abandoned and void because no proof of labor or notice of intention to hold the claims for 1980, 1981, or 1982, was filed with BLM by December 30 of each 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.

John Dillingham and Mabel Dillingham appeal, stating that they had done everything they thought was required under the mining laws, including performance of annual assessment work since 1961, evidence of which has been duly recorded in Clark County, Nevada. In 1980, because of advanced age and health problems, the claims were leased to one Edward Bump. Appellants relied in good faith upon the representations of Bump that he was complying with all Federal and State regulations regarding the annual filings required. They allege that Bump affirmatively represented to them that all required Federal filings had been made, but that early in 1983, Bump advised them that because they had not made the necessary Federal filings, he, Bump, had relocated the Sunshine Nos. 1 through 6 claims in his own name.

[1] Section 314 of the FLPMA requires that the owner of an unpatented mining claim located before October 21, 1976, 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 1980, 1981, or 1982 was filed with BLM by December 30 of each year, BLM properly deemed the claims to be abandoned and void. J & B 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 without the regulations. See Northwest Citizens for Wilderness Mining, 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 any proof of labor since 1979, at the time the location notices were recorded as required by FLPMA. Appellants have 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.

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:

Edward W. Stuebing
Administrative Judge

R. W. Mullen
Administrative Judge

