

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 111529 through N MC 111534.

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: Jon D. Dowers, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Jon D. Dowers, for himself and the coowners of the claims, ^{1/} appeals the May 26, 1983, decision of the Nevada State Office, Bureau of Land Management (BLM), which declared the unpatented BD## 1 through # 6 lode mining claims, N MC 111529 through N MC 111534, 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 a copy of the 1981 proof of labor for the claims was mailed to BLM about September 15, 1981, after recordation in Mineral County, Nevada, on August 28, 1981. Appellant states that the 1982 and 1983 assessment work was completed and filed with BLM, and that the claims have not been abandoned.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located before October 12, 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 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 within the time limits prescribed in FLPMA. Appellant has not shown anything to the

^{1/} The claims appear to be owned by Jon D. Dowers, Frosinia G. Deskatos, Joseph M. Deskatos, Warren L. Hendrix, and Edward R. Sherwood.

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:

Gail M. Frazier
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

