

WALTER E. NELSON
THOMAS C. NELSON

IBLA 83-722

Decided August 26, 1983

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. CA MC 37873.

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: Walter E. Nelson, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of May 23, 1983, the California State Office, Bureau of Land Management (BLM), declared the unpatented Pennsylvania South Extension lode mining claim, CA MC 37873, abandoned and void because no proof of labor or notice of intention to hold the claim 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.

Walter E. Nelson and Thomas C. Nelson appeal, stating that the 1981 proof of labor was mailed to BLM November 18, 1981, after recording it in Alpine County, California, October 2, 1981. A copy of the recorded 1981 proof of labor accompanied the notice of appeal.

[1] Section 314 of FLPMA requires that the owner of an unpatented mining claim located on Federal land file with the proper office of BLM and in the office where the location notice is recorded each year prior to December 31, a notice of intention to hold the claim or evidence of performance of assessment work on the claim. 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 claim for 1981 was filed with BLM by December 30, 1981, BLM properly deemed the claim 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 Co., Inc. 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 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.

Although appellants state the proof of labor was properly mailed to BLM, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if a timely mailed instrument was prevented by Postal Service error from reaching the BLM office, that fact would not excuse the claimants' failure to

comply with the cited regulations. Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980). This Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his documents. Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, *supra*. Filing is accomplished only when a document is received by and date stamped by BLM. Merely placing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

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

Appellants may wish to consult with BLM about the possibility of relocating this mining claim.

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