

HENRY ALLEN  
HAROLD DILS

IBLA 83-654

Decided September 6, 1983

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 32661 through CA MC 32664.

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, 54 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 the 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: Robert V. Cohune, Esq., Quincy, California, for appellant Harold Dils.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Henry Allen and Harold Dils appeal the April 18, 1983, decision of the California State Office, Bureau of Land Management (BLM), which declared the unpatented Mule Shoe, Muleshoe No. 4, Arbee and Vee Bee placer mining claims, CA MC 32661 through CA MC 32664, 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.

Appellants state that a copy of the 1981 proof of labor was transmitted to BLM after recordation in Plumas County, California, September 28, 1981, and the BLM records should reflect receipt thereof. A copy of the 1981 proof of labor, as recorded in Plumas County, was submitted with the appeal and shows only that it covers claims "1 & 2, 3, 4," without any further identification by name or BLM serial number.

BLM has reported that it has researched unidentified filings it received in 1981, and could find no record of the proof of labor in question.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located on or before October 21, 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 performance of assessment work on the claim or a notice of intention to hold the claim. A proof of labor or notice of intention to hold the claim must be filed both in the county recording office and with BLM prior to December 31 of every 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 (1981); 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 claims. 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 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 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.

Appellants may wish to consult with BLM about the possibility of relocating these claims.

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

