

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. N MC 128821.

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 November 1979, 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, 1980, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claim or evidence of performance of assessment work on the claim, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. 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 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, 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 with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. 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 unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining laws 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 BLM office, 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: James Camp, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

James Camp appeals the decision of June 15, 1983, wherein the Nevada State Office, Bureau of Land Management (BLM), declared the unpatented Ringside lode mining claim, N MC 128821, abandoned and void because no notice of intention to hold the claim or evidence of performance of assessment work on the claim was filed with BLM in 1980, 1981, or 1982, 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 claim was located November 13, 1979, and was recorded with BLM on November 15, 1979. The claim is situated in sec. 32, T. 9 N., R. 37 E., Mount Diablo meridian, Mineral County, Nevada.

Appellant asserts that he had hired a person to handle the required paperwork for the claim, and she had assured him that she would keep the paperwork current. He makes no assertion relative to any assessment work performed on the claim, or the filing of a notice of intention to hold.

[1, 2] Section 314 of FLPMA requires that the owner of an unpatented mining claim located on public land after October 21, 1976, must file a copy of the recorded location notice in the proper office of BLM within 90 days after location, and that prior to December 31 of each year following the calendar year in which the claim was located, he must file for record in the county office where the location notice is recorded and in the proper office of BLM evidence of assessment work performed on the claim or a notice of intention to hold the claim. Failure to submit any of the instruments required by FLPMA within the prescribed time limits is conclusively deemed to constitute an abandonment of the claim. Evelyn Parent, 66 IBLA 147 (1982); Herschel Knapp, 65 IBLA 314 (1982); Francis Skaw, 63 IBLA 235 (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, *supra*; Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

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). Filing is accomplished only when a document is received and date stamped by BLM.

[3] The mining law does not require performance of assessment work until the assessment year commencing at noon 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, 1980, to September 1, 1981. However, this does not obviate the necessity for compliance with section 314 of FLPMA, requiring either an affidavit of assessment work performed on the claim or a notice of intention to hold the claim to be filed both in the local recording office and with BLM on or before December 30, 1980, since 1980 is the year following the calendar year in which the claim was located. Jack Devault, 72 IBLA 324 (1983); Evelyn Parent, *supra*; Ted Dilday, 56 IBLA 337, 88 I.D. 682 (1982).

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

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.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

