

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. CA MC 35142.

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 Federal lands must file a notice of intention to hold the claim or evidence of performance of assessment work prior to Dec. 31 of each calendar year. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the location notice for 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 noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: J. Neil Smith, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of September 12, 1983, the California State Office, Bureau of Land Management (BLM), declared the unpatented Gold Producer lode mining claim, CA MC 35142, 1/ abandoned and void because no proof of labor or notice of intention to hold the claim for 1982 was filed with BLM by December 30, 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.

Appeal has been taken by J. Neil Smith who states that the annual assessment work was performed in 1982 for the assessment year ending September 1, and on September 1 the proof of labor was recorded in Shasta County, California, and a copy was sent to BLM.

The case record reflects that proofs of labor were filed with BLM in 1979, 1980, and 1981. There is no evidence of the receipt by BLM of any proof of labor for 1982.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located on Federal lands to file both in the office where the location notice is of record and in the proper office of BLM evidence of assessment work performed on the claim or a notice of intention to hold the claim, prior to December 31 of every calendar year. 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 1982 was filed timely with BLM, BLM properly deemed the claims to be abandoned and void. Shamrock Mining, Inc., 75 IBLA 110 (1983); J & B Mining Co., 65 IBLA 335 (1982); Margaret E. Peterson, 55 IBLA 136 (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 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, 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 delivered to and received by the proper BLM office within the proper time period. The filing requirement is imposed by statute, and this Board has no authority to waive it. Lynn Keith, supra.

1/ The claim appears to be owned by Al Imhop, J. Neil Smith, Jeff Gasch, Herman Gunia, and Larry Whetstone.

BLM has stated that it did not receive the 1982 proof of labor for the claim within the proper time period. Appellant has not shown anything to the contrary. Therefore, it must be found that BLM was not acting improperly in its decision declaring the claim abandoned and void under the terms of FLPMA.

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

