

FRANK A. PUTNAM III

IBLA 84-347

Decided September 18, 1985

Appeal from a decision of the Anchorage District Office, Bureau of Land Management, declaring a mining claim abandoned and void for failure to file annual proof of assessment work or a notice of intent to hold the claim. F 34871.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), and 43 CFR 3833.2 in the proper office of the Bureau of Land Management within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: Frank A. Putnam III, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Frank A. Putnam III has appealed from a decision of the Anchorage District Office, Bureau of Land Management (BLM), dated January 31, 1984. That decision declared the Number One Below Discovery mining claim, F-34871, abandoned and void for failure to file either evidence of assessment work or a notice of intention to hold the claim 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 (1982), and 43 CFR 3833.2.

The subject claim was located on November 6, 1977, by Jeffery M. Gorman, and notice of location was filed with BLM on January 18, 1978. A notice of intent to hold for 1979 and an affidavit of assessment work for 1980 were timely filed. Appellant acquired the claim from Gorman through quitclaim deed filed with the Fairbanks District Office, BLM, January 29, 1981. No annual filing, however, was made in 1981. In a letter received by BLM on February 1, 1982, appellant requested that BLM send him filing information and the original deed which should have been filed with the State. Appellant indicated at this time his intention to hold the claim. On February 17, 1982, appellant filed an additional letter restating his intention to hold the claim.

On appeal, appellant states that he was not aware of the filing deadline until after he had received a booklet of regulations after his February 1982 inquiry, by which time the filing deadline for 1981 had expired. He further states that his "intent and desire to comply" with the regulations "should be evident."

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982), requires the owner of an unpatented mining claim located prior to October 21, 1976, to file with BLM, on or before December 30 of each year, an affidavit of assessment work performed or a notice of intent to hold the claim. See also 43 CFR 3833.2-1. Failure to file results in a conclusive presumption of abandonment by the owner. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4. Responsibility for compliance with this recordation requirement rests with the owner of the unpatented mining claim. Those claims for which timely filings are not made are automatically extinguished by operation of law; intent is irrelevant if the necessary filings are not made. United States v. Locke, 105 S. Ct. 1785, 1796 (1985); James Boatman, 87 IBLA 31 (1985). The Department has no authority to waive or excuse noncompliance with the statute. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

In the present case, appellant was required to file his affidavit of assessment work or notice of intention to hold the claim for 1981 prior to December 31, 1981. No document was filed until February 1, 1982.

We have long held that the statute is self-operative and that 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. Homestake Mining Co., 77 IBLA 235 (1983), and cases cited therein. Moreover, in Homestake, we reiterated the holding that because the statute provides for a conclusive presumption of abandonment upon the failure to comply with the statutory filing requirement, the Department does not have the authority to consider whether a claimant in fact intended to abandon the affected claim under the common law rules on abandonment. This holding was recently affirmed by the United States Supreme Court in United States v. Locke, supra at 1795-96. Thus, it is irrelevant whether appellant intended to abandon the claim involved herein.

We conclude that BLM properly declared appellant's mining claim abandoned and void for failure to comply with section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982). See Klondex Gold & Silver Mining Co., 69 IBLA 247 (1982).

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.

James L. Burski  
Administrative Judge

We concur:

Bruce R. Harris R. W. Mullen  
Administrative Judge

Administrative Judge

