

DAVID R. JACQUES

IBLA 89-293

Decided May 30, 1989

Appeal from a decision of the California State Office, Bureau of Land Management, declaring unpatented Maya Turtle and Morgana Rose placer mining claims (CA MC 140119 and CA MC 140118) abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claims--Mining Claims: Recordation

BLM may properly declare an unpatented mining claim abandoned and void when a claimant fails to file either evidence of annual assessment work or a notice of intent to hold the claim on or before Dec. 30 of a calendar year.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claims--Mining Claims: Recordation

The provisions of 43 CFR 3833.4(b) apply to the filing of supplemental information not specifically called for in 43 U.S.C. | 1744 (1982), and the filing of notices of intention to hold millsites and tunnel site claims. The latitude set out in 43 CFR 3833.4(b) is not available if no annual filing has been made for a lode or placer mining claim, and, in such case, the Department is without authority to allow a 30-day period after notice for a claimant to file the required documents.

APPEARANCES: David R. Jacques, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

David R. Jacques appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated February 17, 1989, declaring his unpatented Maya Turtle and Morgana Rose placer mining claims (CA MC 140119 and CA MC 140118) abandoned and void for failure to timely file either evidence of assessment work performed or a notice of intention to hold the claims with BLM during the filing period ending December 30, 1988.

In his statement of reasons Jacques indicates it was not his intention to abandon the mining claims in question. He states he filed the affidavit of assessment work on December 31, 1988, by certified mail. He also cites 43 CFR 3833.4(b) for the proposition that failure to file affidavits of assessment work shall not constitute an abandonment if filed within 30 days of the decision.

On appeal, Jacques has submitted a copy of the proof of labor for 1988 recorded with Siskiyou County, California, on September 30, 1988. That document does not reflect that a copy was received by BLM during the filing period at issue. Filing or recording the required documents with the local recording office alone does not constitute compliance with the requirement that they be filed with BLM. Fern L. Evans, 88 IBLA 45 (1985). Thus, a claimant challenging a determination of abandonment has the burden of presenting evidence of timely filing with BLM.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1744 (1982), and Departmental regulation 43 CFR 3833.2-1 require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to December 31 of each year following the year in which the claim is located. Such filing must be made within each calendar year, *i.e.*, on or after January 1 and on or before December 30. Ronald Willden, 97 IBLA 40 (1987); Robert C. LeFaivre, 95 IBLA 26 (1986). Failure to properly file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. | 1744(c) (1982); 43 CFR 3833.4. Because its records do not indicate that evidence of assessment work performed or notice of intention to hold was timely filed for the subject mining claims with BLM on or before December 30, 1988, BLM properly deemed the claims to be abandoned and void. Charlene Schilling, 87 IBLA 52 (1985); J. Neil Smith, 77 IBLA 239 (1983); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Congress mandated that failure to file the proper documents in the proper office within the time periods prescribed in section 314 of FLPMA will, in and of itself, cause the claim to be lost. Thus, a claim for which timely filings are not made is extinguished by operation of law regardless of the claimant's intent to hold the claim. See United States v. Locke, 471 U.S. 84 (1985). As Congress did not provide for waiver of this requirement, the Department is without authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from the statutory consequences. See Lynn Keith, 53 IBLA at 196, 88 I.D. at 372. Accordingly, the Board may not consider special facts or provide relief in view of mitigating circumstances.

It is well established that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. || 1507, 1510 (1982); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim with or without the benefit of notice from the Department.

Where an annual filing is not timely received, for whatever reason, the consequences must be borne by the claimant.

The purpose of section 314 is not to ensure that assessment work is done on a mining claim but rather to ensure that there is a record of continuing activity on the claim so that the Federal Government will know which mining claims are being maintained on Federal lands and which have been abandoned. The fact that assessment work was done or that timely filings have been made in other years has no effect on the conclusive presumption of abandonment embodied in the statute. Since the statute is self-operative, a claim must be deemed abandoned when an annual filing is not timely received. See Ptarmigan Co., 91 IBLA 113 (1986). As appellant has not submitted evidence that an annual filing for the subject mining claims was received by BLM during the 1988 filing period, they are properly deemed to be abandoned and void.

[2] Appellant relies on 43 CFR 3833.4(b) to preclude abandonment where the filings are received within 30 days of a BLM decision. 1/ Contrary to the assertion made by appellant, although 43 CFR 3833.4(b) refers to 43 CFR 3833.2-2(a), the latter section defines the "contents for evidence of assessment work," and does not apply to when evidence of assessment work performed or notice of intention to hold must be filed for a lode or placer mining claim. Section 3833.4(b) is applicable to the filing of supplemental information not specifically called for in 43 U.S.C. | 1744 (1982), and the filing of notices of intention to hold millsites and tunnel site claims. The latitude set out in 43 CFR 3833.4(b) is not available if no annual filing has been made for a lode or placer mining claim, and, in such case, the Department is unable to afford a 30-day period after notice for a claimant to file those documents.

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.

Wm. Philip Horton
Chief Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge

1/ This regulation reads in part:

"(b) The failure to file the information required in || 3833.1-2(b), 3833.2-1(c), 3833.2-2(a) and (b) or 3833.2-3(b) and (c) shall not be deemed conclusively to constitute an abandonment of the claim or site, but such information shall be filed within 30 days of receipt of a decision from the authorized officer calling for such information * * *."