

EUGENE E. DAUGHERTY

IBLA 81-301

Decided May 12, 1981

Appeal from decision of the Utah State Office, Bureau of Land Management, declaring the Lookout Nos. 7 and 8 lode mining claims abandoned and void. UT MC 17417 and UT MC 17418.

Affirmed.

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

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1977, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1978, or the claims are conclusively deemed abandoned and, thus, void.

APPEARANCES: Eugene E. Daugherty, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Eugene E. Daugherty has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated January 9, 1981, declaring the Lookout Nos. 7 and 8 lode mining claims, UT MC 17417 and UT MC 17418, abandoned and void for failure to file evidence of assessment work or a notice of intention to hold the claims by December 30, 1978, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and Department regulations, 43 CFR Part 3833.

The Lookout Nos. 7 and 8 claims were located on June 13 and 18, 1977, respectively, and recorded with BLM August 12, 1977, under serial numbers UT MC 17417 and UT MC 17418.

On appeal appellant contends that he never received serial numbers for the Lookout Nos. 7 and 8 lode mining claims and as a result included the assessment work information for the claims with the affidavits of assessment work for the Lookout Nos. 1 through 6 (UT MC 94256 through UT MC 94261). Appellant further asserts that assessment work information for the Lookout Nos. 1 through 8 had been filed annually since 1977.

[1] Under section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located after October 21, 1976, is required to file either evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the claim, on or before December 30 of each calendar year following the calendar year in which the claim was located. Failure to file such instruments within the prescribed time period is conclusively presumed to constitute abandonment of the claim by the owner and the claim is void. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4.

Appellant's claims were located between June 13 and 18, 1977. Therefore, appellant was required to file either evidence of assessment work or a notice of intention to hold the claims on or before December 30, 1978, the calendar year following the calendar year in which the claims were located. This the appellant did not do.

The case record contains the following affidavits of labor and improvements:

1. Aff. dated 8/9/77 (Lookout Nos. 4, 7 & 8) filed w/BLM on 8/12/77.
2. Aff. dated 7/5/79 (Lookout Nos. 1 thru 8) date of filing w/BLM illegible, but obviously after date of execution.
3. Aff. dated 7/25/80 (Lookout Nos. 1 thru 8) filed w/BLM 8/26/80.

Inquiry to BLM elicited the information that although the location notices for Lookout Nos. 7 and 8 were recorded with BLM in 1977, the location notices for Lookout Nos. 1 through 6, which were pre-FLPMA claims, were not recorded with BLM until 1979. Thus, the claim numbers are not in sequence with the recording times. Nothing was filed during the 1977-78 assessment year or calendar year 1978. Although

nothing was needed to be filed that year for Lookout Nos. 1 through 6, because they had not yet been recorded, the Lookout Nos. 7 and 8 had been recorded in 1977, and it was necessary that either evidence of assessment work or a notice of intention to hold be filed in the proper BLM office on or before December 30, 1978.

Appellant asserts that BLM failed to provide him with serial numbers for Lookout Nos. 7 and 8 following their recordation, and that this accounts for the absence of any 1978 filings. We note, however, that all other documents were correctly filed by BLM despite the absence of serial numbers.

When appellant failed to file timely either an affidavit of assessment work or a notice of intention to hold these claims, BLM properly held the claims to have been abandoned and declared them void. Cleatus Sypult, 53 IBLA 171 (1981); Robert R. Eisenman, 50 IBLA 145 (1980); Geomet Exploration, Inc., 47 IBLA 135 (1980); Northwest Mining & Mercantile Inc., 46 IBLA 360 (1980); Willene Minnier, 45 IBLA 1 (1980); Juan Munoz, 39 IBLA 72 (1979); Donald H. Little, 37 IBLA 1 (1978). The procedures established pursuant to section 314 of FLPMA, *supra*, are mandatory and may not be waived. Lo Lo M. Cosby, 46 IBLA 363 (1980); Donald H. Little, *supra*.

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.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Acting Administrative Judge

