

MELVIN AND BERNICE DARBY

IBLA 81-660

July 8, 1981

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void. N MC 118505 through N MC 118512.

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 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: Melvin and Bernice Darby, pro sese.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Melvin and Bernice Darby have appealed from a decision of Nevada State Office, Bureau of Land Management (BLM), dated April 27, 1981, declaring the Copper King, Nos. 1 through 8, mining claims, N MC 118505 through N MC 118512, abandoned and void for failure to file timely proofs of labor or notices of intent to hold the claims as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976) and 43 CFR CFR 3833.2-1.

The Copper King claims, Nos. 1 through 4, N MC 118505 through N MC 118508, were located on February 14, 1955, and claims Nos. 5 through 8, N MC 11509 through N MC 11512, were located on October 11, 1961. Proofs of labor for the prior assessment year had been timely submitted.

Section 314(a) of FLPMA, requires the owner of an unpatented mining claim located on or before October 21, 1976, to file evidence of assessment work for the claims within the 3-year period following that date, and prior to December 31 of each year thereafter. 43 U.S.C. § 1744(a) (1976); 43 CFR 3833.2-1(a). Appellants' evidence of assessment work for the year ending September 1, 1980, was not received by BLM until December 31, 1980, 1 day late.

The failure to file evidence of assessment work within the prescribed time period is conclusively deemed to constitute an abandonment of the claims under section 314(c) of FLPMA, supra, and 43 CFR 3833.4(a), and it must be declared void. The Board is without authority to excuse lack of compliance. James Watkins, 54 IBLA 54 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

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.

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Bernard V. Parrette  
Chief Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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C. Randall Grant, Jr.  
Administrative Judge