

RODNEY N. CATES

IBLA 81-832

Decided August 31, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. CA MC 63692.

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: Rodney N. Cates, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of June 19, 1981, the California State Office, Bureau of Land Management (BLM), declared the unpatented Maria Louise 1-2-3-4-5, Maria Louise 6-7-8-9-10, Maria Louise 11-12-13-14-15, Maria Louise 16-17-18-19-20, and Old Jura 1-2-3-4-5-6 placer mining claims, CA MC 59768 through CA MC 59771 and CA MC 63692 abandoned and void because no evidence of assessment work or notice of intent to hold had been filed with BLM on or before December 30, 1980, as required by 43 CFR 3833.2-1, implementing the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Rodney N. Cates has appealed the decision only insofar as it affects the Old Jura 1-2-3-4-5-6 claim. No appeal is taken in regard to the Maria Louise claims because the lands involved are encumbered by pre-existing locations held by other persons. Appellant states the Old Jura claim has been sold to the Lucky Chance Mining Company, which had responsibility to file the evidence of assessment work with BLM, and the failure to file the appropriate instrument was strictly an oversight, since the assessment work was performed.

[1] The above-cited statute and regulations impose a conclusive presumption of mining claim abandonment for any failure to file the required instruments in the proper BLM office by the date on which they are due. The Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Appellant may wish to consult with BLM about the possibility of relocating the 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:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

