

KATHY SHANER

IBLA 81-868

Decided September 8, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining Claims abandoned and void. CA MC 47756 and CA MC 47757.

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: Kathy Shaner, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Kathy Shaner appeals a decision of the California State Office, Bureau of Land Management (BLM), which declared the unpatented Black Scorpion and Lyons Cabin lode mining claims, CA MC 47756 and CA MC 47757, abandoned and void because evidence of assessment work or notice of intent to hold the claims had not been filed with BLM on or before December 30, 1980, as required by 43 CFR 3833.2-1. The claims were located prior to 1976.

In her statement of reasons, appellant sets forth certain background information relative to her interest in the claims. One Larry Newhall acquired the claims by a quitclaim deed executed May 3, 1973, and recorded in records of Siskiyou County, California, the same date. Shaner acquired a one-half interest in the claims on November 18, 1980. By virtue of a judgment entered in the Superior Court of Marin County, California, on January 14, 1981, it was stipulated that Newhall must maintain the claims as valid by timely filing with BLM of evidence of assessment work.

Appellant further recites that Newhall sent proof of labor forms to the recorder of Siskiyou County, on December 27, 1980. Unknown to Newhall, the recording fees in Siskiyou County had been increased, so his proof of labor forms were returned January 6, 1981, unrecorded, because he had not submitted enough money to pay the new fees. On January 12, 1981, the proofs of labor were recorded in Siskiyou County, and allegedly on January 14, 1981, Newhall sent a copy of the recorded proofs and a change of address notice to BLM. BLM, however, has no record of receipt of those documents. The BLM decision declaring the claims abandoned and void was not received by Newhall until July 1981, as BLM had not received the notice of his changed address. Appellant contends that the spirit as well as the intent of the regulations requiring recordation of the unpatented mining claim assessment work were complied with, and prays that the BLM decision may be reversed.

Section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), requires that the owner of an unpatented mining claim located on public land prior to October 21, 1976, shall file a notice of intention to hold the claim or an affidavit of assessment work performed on or for the claim on or before December 30 of each year, in the proper BLM office. The section further provides that failure to file the required instruments timely shall be conclusively deemed to constitute an abandonment of the unpatented mining claim. The statutory requirements are replicated in 43 CFR 3833.2-1 and 3833.4.

As the required documents were not filed with BLM on or before December 30, 1980, the claims were properly deemed to be abandoned and void. Susan Mativo, 52 IBLA 134 (1981). This Board cannot waive failure to comply with statutory requirements. Lynn Keith, 53 IBLA 92, 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.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

