

DANNER MINES, INC.

IBLA 82-538

Decided March 30, 1982

Appeal of a decision of the Nevada State Office, Bureau of Land Management, declaring certain mining claims abandoned and void. N MC 9338 through N MC 9346.

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: Donald C. Danner, President of Danner Mines, Inc.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

[1] By decision of February 18, 1982, the Bureau of Land Management's Nevada State Office (BLM), declared certain mining claims, owned by Danner Mines, Inc., abandoned and void for failure to file timely with BLM in 1978 either proof of labor performed on the claims or notice of intention to hold them. ^{1/} Such filing is required by section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 which provide that for claims located after October 21, 1976, filing of such documents must be made prior to December 31 of each year following the calendar

^{1/} All of the claims were located July 16, 1977, and filed with BLM Oct. 3, 1977. The claims are designated as Bryce Dawn #1, #2, #3, #4, #5, #6, #7, #8, and #9, N MC 9338 through N MC 9346, respectively.

year in which the claim was located. Failure to so file gives rise to a conclusive presumption that the mining claims were abandoned, and the claims are void. 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

In response to BLM's decision, appellant concedes that the required filings were not made for 1978. Appellant's president indicates that he had spoken with a BLM employee about the claim's assessment work and that

[i]t was determined that because these were new and there was a large work load that I did not need to use the proof of labor on these claims for that year. However, I did have it with me and I hereby submit it for your record as being done, duly filed in the Pershing County Office and notarized.

The statute and its regulations required appellant to file these documents in 1978, and in each subsequent calendar year, and this Board has no authority to excuse noncompliance. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). As we said in John Murphy, 58 IBLA 75, 83 (1981):

This result is ineluctable because the sole and fundamental purpose of section 314 is to provide for recordation of certain named instruments. Compliance with this statute requires, by its nature, that the instruments be properly and timely delivered to the prescribed offices, and if this is not accomplished, a claimant's good-faith subjective intent to comply is no cure. [Emphasis in original.]

Appellant seems to imply that during a conversation between appellant's president and a BLM employee, appellant's failure to file in 1978 was in some way excused. Since BLM had no authority to waive compliance with the statutory filing requirement, that implication is rejected. John Murphy, supra. We find the BLM decision to be correct.

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 is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

