

NUCLEAR POWER AND ENERGY CO.
AND B-2, INC.

IBLA 79-219

Decided June 14, 1979

Appeal from decisions of the Wyoming State Office, Bureau of Land Management, declaring 1537 uranium lode mining claims abandoned and void. W MC 2852 et al. 1/

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Assessment Work -- Mining Claims: Recordation

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if an unpatented mining claim located after Oct. 21, 1976, is not supported annually by either an affidavit of assessment work or notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement there was no intent to abandon and that failure to file was an oversight.

APPEARANCES: Ed Calvert, Nuclear Power and Energy Company and B-2, Inc.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Nuclear Power and Energy Company and B-2, Inc., appeal from decisions dated January 23, 1979, January 25, 1979, January 29, 1979,

1/ The mining claims are set forth in Appendix I.

January 30, 1979, and February 6, 1979, of the Wyoming State Office of the Bureau of Land Management (BLM). These decisions held the listed 1537 uranium lode mining claims to be abandoned for failure to file an affidavit of assessment work or notice of intention to hold each claim, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR 3833.2-1(b)(7), and 43 CFR 3833.4(a). Section 314 provides in part:

RECORDATION OF MINING CLAIMS -- AND ABANDONMENT

Section 314(a) . . . The owner of an unpatented lode or placer mining claim located after [October 21, 1976] shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by . . . (30 U.S.C. § 28-1), relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

.
(c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim . . . by the owner. . . .

90 Stat. 2769 (1976).

The claims were located on various dates from December 1976 through September 1977. Copies of the location notices were duly filed with the State Office. Under section 1744 and 43 CFR 3833.2-1(b)(1), owners of unpatented mining claims located after

October 21, 1976, shall file annually "in the proper BLM Office evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim." 43 CFR 3833.2-1(b)(1). Failure to file these documents is "deemed conclusively to constitute an abandonment of the mining claim . . . and it shall be void." 43 CFR 3833.4(a).

Appellant argues that there was no intent to abandon the claims and that filing of affidavits of assessment with the Counties of Fremont and Sweetwater, Wyoming, on June 16 and August 31, 1978, showed its good faith. The assessment work on the EE, NP, RV, and Rain claims was alleged to have cost \$101,892 over the period April 5 through May 26, 1978. Appellant claims that failure to file with BLM a copy of the assessment affidavits which were duly recorded by the counties was an oversight. The June 16, 1978, affidavit was filed for Gulf Oil Corporation, which states it performed that assessment work and later quitclaimed to Nuclear the claims W MC 2852 through 2878 and 3311 through 3526. Appellants state it was assumed that affidavits had also been filed by Gulf with BLM.

[1] Since the claims were located after October 21, 1976, filing with BLM was required for each claim during 1978. FLPMA and its implementing regulations mandate the consequences of failure to file. The Board has held repeatedly that when the requirements of section 314(a)(2), supra, are not met, the mining claims must be deemed abandoned and void. 43 CFR 3833.4(a). Al Sherman, 38 IBLA 300 (1978); Ronald L. Nordwick, 36 IBLA 238 (1978); Paul S. Coupey, 35 IBLA 112 (1978).

Since the required documents were not filed, the mining claims were properly deemed abandoned and void. Inadvertent error does not excuse a failure to make timely filing. Lawrence A. Landry, 40 IBLA 212 (1979). Because of the purpose of the statute and its particular wording, it is not possible to apply the doctrine set forth in El Paso Brick Co. v. McKnight, 233 U.S. 250 (1913) and Stock Oil Company, 40 L.D. 198 (1911). See 2A Sands, Sutherland Statutory Construction at 423 (4th ed. 1973).

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.

Joseph W. Goss
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

APPENDIX I

<u>BLM Serial Number</u>	<u>Claim Name</u>
W MC 2852 through 2878	EE 1 through 27
W MC 3311 through 3526 through 634	Rain 417 through 623, 625, 627 through 634
W MC 7387 through 7393	RV 2 through 8
W MC 7395	RV 10
W MC 7397	RV 12
W MC 7399	RV 14
W MC 7401	RV 16
W MC 7403 through 7411	RV 18 through 26
W MC 7414 through 7457	RV 29 through 72
W MC 7460 through 7479	RV 75 through 94
W MC 7482	RV 97
W MC 7484 through 7485	RV 99 through 100
W MC 9895 through 9999	RV 101 through 150, NP 1 through 55
W MC 10001	NP 57
W MC 10003 through 10051	NP 59 through 107
W MC 10737 through 11169	Rain A through Q, Rain 1 through 28, 29 A, 30, 30 A, 31, 33, 35, 35 A, 36 A, 37 through 205, 207 through 247, 206, 248 through 416
W MC 15741 through 16360	Linda 1 through 276, 313 through 348, 457 through 492, 565 through 599, 600 A, 692 through 726, 678 through 690, 727 through 762, 799 through 870, 600 through 671, 671 A, 672 through 677, 691

Appellants' affidavit of assessment work incorrectly lists W MC 16125 as Linda #602 rather than Linda #692.

