

LESTER L. RHOADS

IBLA 79-340

Decided October 31, 1979

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring mining claim abandoned. OR MC 3020.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work -- Mining Claims: Abandonment -- Mining Claims: Assessment Work

The owner of an unpatented mining claim located after Oct. 21, 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the calendar year following the year in which the claim was located or the claim will be conclusively deemed to have been abandoned.

APPEARANCES: Lester L. Rhoads, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Lester L. Rhoads appeals from the April 4, 1979, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring mining claim OR MC 3020 abandoned and void for failure to file an affidavit of assessment work or notice of intention to hold the claim by December 31, 1978, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the pertinent regulations 43 CFR 3833.2-1 and 3833.4. The mining claim was located August 17, 1977. The location notice was filed with BLM on October 10, 1977.

In his statement of reasons appellant states that when a notice of location is filed, the law requires only that the claimant "do location work first which is a hole 10 ft long, 6 ft deep and 4 ft wide and the law does not require any more work for a year or more." He also submitted a completed "Proof of Labor" form, notarized August 21, 1978, but not received by BLM until April 16, 1979.

[1] Section 314(a)(1) and (2), supra, and the pertinent regulation, 43 CFR 3833.2-1, require that the owner of an unpatented mining claim located after October 21, 1976, shall, among other matters, prior to December 31 of each year following the calendar year in which the claim was located, file with the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Failure to file the required instruments is deemed conclusively to constitute an abandonment of the mining claim. Section 314(c), supra; 43 CFR 3833.4(a). Since this claim was located in calendar year 1977, one or the other of the documents had to be filed prior to December 31, 1978.

FLPMA and its implementing regulations mandate the consequences of failure to file. This Board has repeatedly held that when these requirements are not met the mining claims must be deemed abandoned and void. Charles and Pete Caress, 41 IBLA 302 (1979); Nuclear Power and Energy Co., 41 IBLA 142 (1979); Al Sherman, 38 IBLA 300 (1978); Ronald L. Nordwick, 36 IBLA 238 (1978); Paul S. Coupey, 35 IBLA 112 (1978).

Since neither of the required documents was timely filed, the mining claim was properly deemed abandoned and void. Inadvertent error does not excuse a failure to make a timely filing. Nuclear Power and Energy Co., supra; Lawrence A. Landry, 40 IBLA 212 (1979). Appellant has offered nothing on appeal which can vitiate this result.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

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Joan B. Thompson  
Administrative Judge

We concur:

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Frederick Fishman  
Administrative Judge

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Newton Frishberg  
Chief Administrative Judge

