

WILLIAM A. BERRY

IBLA 79-378

Decided November 30, 1979

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring mining claim abandoned. OR MC 5196 (Wash).

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 with the appropriate office of the Bureau of Land Management an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year or the claim will be conclusively deemed to have been abandoned.

APPEARANCES: William A. Berry, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

William A. Berry appeals from the April 6, 1979, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Bull Stone I placer mining claim, OR MC 5196 (Wash), 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. ^{1/} The mining claim was located December 15, 1977.

In his statement of reasons appellant states that he filed a "notice of assessment in the County of Pierce, of the State of Washington on Dec. 26, 1978. Due to an error in my paperwork, I neglected to complete the filing of assessment with the Bureau of Land Management."

[1] Section 314(a)(1) and (2), supra, and the pertinent regulation, 43 CFR 3833.2-1(c), require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with the BLM State 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 conclusively deemed to constitute an abandonment of the mining claim. Section 314(1)(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. The 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 the required document was not 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.

^{1/} The language of the statute requires filing the documents "prior to December 31." The new regulations, published in 44 FR 9720 (Feb. 14, 1979), and in 44 FR 20428 (Apr. 5, 1979), change the language, but not the requirement, to "on or before December 30."

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.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

