

Editor's note: Overruled to the extent inconsistent with Harvey A. Clifton 60 IBLA 29 (Nov. 16, 1981)

VALDA WATERS

IBLA 79-212

Decided December 26, 1979

Appeal from decision of the Wyoming State Office, Bureau of Land Management, declaring 24 lode mining claims void. W MC 12185 through 12208.

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

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before the last day of the calendar year following the year the claim was recorded with BLM, the claim is properly deemed void.

APPEARANCES: Robert W. Costin, Esq., Laramie, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Valda Waters appeals from a February 1, 1979, decision of the Wyoming State Office, Bureau of Land Management (BLM). That decision held her 24 lode mining claims void for failure to file with BLM in 1978 either evidence of annual assessment work performed or notice of intention to hold the claims. The claims (Valda claims 1 through 24), designated W MC 12185 through 12208, are located in T. 27 N., Rs. 73 and 74 W., sixth principal meridian, Albany County, Wyoming.

Appellant asserts that the required assessment work was done and submits on appeal the proofs of labor that were filed for the claims with the local county clerk. Appellant states that Alfred B. Waters did not file the documents with the Department. A check to cover filing fees was submitted with the appeal.

Section 314a of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulation require that:

[T]he owner of an unpatented mining claim located on Federal land * * * on or before October 21, 1976, shall file before October 22, 1979, and prior to December 31 of each calendar year following the calendar year of recording in the proper BLM office pursuant to this subpart 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(a)(1). The 24 claims, located on September 24, 1976, were recorded with BLM on August 8, 1977.

[1] Because the claims, located prior to October 21, 1976, were recorded with BLM in 1977, assessment affidavits or notices of intention to hold the claims were required by December 31, 1978. FLPMA and its implementing regulations specify that failure to file this information within the indicated time period "shall be deemed conclusively to constitute an abandonment of the mining claim * * * and it shall be void." 43 CFR 3833.4(a). The Board has held repeatedly that where these required documents are not timely filed, the mining claims are properly declared abandoned and void. E.g. Charles Caress, 41 IBLA 302 (1979); Al Sherman, 38 IBLA 300 (1978). Filing in a local county recorder's office does not obviate strict compliance with the deadlines outlined in Subpart 3833. See Nuclear Power and Energy Company, 41 IBLA 142 (1979).

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.

Joseph W. Goss
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Douglas E. Henriques
Administrative Judge

