

BETTY AND CLARENCE L. GUFFEY

IBLA 79-307

Decided May 7, 1980

Appeal from decision of the Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void. M MC 2501 and M MC 2502.

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 calendar year following the date of location or the claim will be conclusively deemed to have been abandoned.

APPEARANCES: William G. Sternhagen, Esq., Keller, Reynolds, Drake Sternhagen, and Johnson, Helena, Montana, for the appellants.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Betty and Clarence L. Guffey have appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated March 12, 1979, declaring their mining claims, the Hope, M MC 2501, and the Lucky Strike, M MC 2502, abandoned and void for failure to file an affidavit of annual assessment work or a notice of intention to hold the mining claims on or before December 30, 1978.

In his statement of reasons for appeal, appellant contends that an "affidavit of annual representation" covering the subject mining claims was filed on August 23, 1978, in the office of the Lewis and Clark County Clerk.

[1] Section 314(a)(2) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a)(2) (1976), and the pertinent regulation, 43 CFR 3833.2-1(b), 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 appropriate BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. <sup>1/</sup> Failure to file the required instruments is conclusively deemed to constitute an abandonment of the mining claim and renders the claim void. Section 1744(c), supra; 43 CFR 3833.4(a). Appellants' claims were located March 15, 1977.

Appellants have not filed either of the documents with the BLM State Office. Accordingly, pursuant to the mandate in FLPMA and its implementing regulations we hold that the claims must be deemed abandoned and void. William A. Berry, 44 IBLA 162 (1979); Roger Kuhn, 43 IBLA 182 (1979). Inadvertent error will not excuse a failure to comply with the filing requirement. Nuclear Power and Energy Co., 41 IBLA 142 (1979); Lawrence A. Landry, 40 IBLA 212 (1979). Appellants have 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 appealed from is affirmed.

Joseph W. Goss  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

James L. Burski  
Administrative Judge

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<sup>1/</sup> 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."

