

RONALD FORAKER

IBLA 80-387

Decided May 30, 1980

Appeal from a decision of the Sacramento, California State Office, Bureau of Land Management, holding Mejer Oro Pais Lot No. 3 and No. 6 and Mejer Oro Pais S Q 4 placer mining claims abandoned and void. CA MC 21089-21091.

Affirmed.

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

Under 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, shall, on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in 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.

APPEARANCES: Ronald Foraker, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Ronald Foraker, hereinafter appellant, has appealed from a decision dated January 29, 1980, of the Sacramento, California State Office, Bureau of Land Management (BLM), holding Mejer Oro Pais Lot Nos. 3 and 6, and Mejer Oro Pais S Q 4 placer mining claims abandoned and void. The mining claims were located on December 1, 1978, and were filed for recordation on January 22, 1979. The State Office decision was based on the failure to file an affidavit of assessment work or a notice of intention to hold each such claim for calendar year 1979, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The pertinent regulation is 43 CFR 3833.2-1(c).

On appeal, appellant contends that he was not entirely familiar with all the rules, that he was not aware of the yearly filings, and that he requested forms in September, but he did not receive the forms until mid-December and "apparently sent them too late."

The record indicates that evidence of assessment work notice for the period of September 1, 1978, through September 1, 1979, was filed in the (BLM) office on January 3, 1980. The claims were located on December 1, 1978, in Kern County, and recorded on January 22, 1979. Accordingly, under 43 CFR 3833.2-1(c), the assessment notice or notice of intent to hold was due in the BLM office on or before December 31, 1979.

Under 43 CFR 3833.4(2), failure to file such instruments as are required by sections 3833.1 and 3833.2 within the time periods prescribed therein shall be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site, and it shall be void. See C. F. Linn, 45 IBLA 156 (1980).

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.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

James L. Burski
Administrative Judge