

Editor's note: Reconsideration denied by order dated March 19, 1981

VERLA RHOADS
RENE MORGAN

IBLA 81-208

Decided February 24, 1981

Appeal from the decision of the Wyoming State Office, Bureau of Land Management, declaring various mining claims abandoned and void. W MC 132554-W MC 132566.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on Federal lands on or before Oct. 21, 1976, must file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. This requirement is mandatory, and failure to file conclusively constitutes abandonment of the claim by the owner.

2. Mining Claims: Abandonment--Mining Claims: Assessment Work

Where mining claimants assert on appeal that affidavits of annual assessment work were timely filed with BLM but present no evidence substantiating that assertion, the Board of Land Appeals will affirm a BLM decision declaring the claims abandoned pursuant to 43 CFR 3833.2-1(a).

APPEARANCES: John C. Brackley, Esq., Lander, Wyoming, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Verla Rhoads and Rene Morgan have appealed the decision of the Wyoming State Office, Bureau of Land Management (BLM), dated November 24, 1980, declaring the VIMR #1-#13 mining claims, W MC 132554-W MC 132566, abandoned and void for failure to file evidence of annual assessment work on the claims on or before October 22, 1979.

In their statement of reasons, appellants indicate that they were aware of the 1979 filing requirements and allege that in September 1979 they sent copies of annual assessment work affidavits for the claims at issue to BLM with a \$5 fee for each claim. They have attached copies of these affidavits, the canceled check, and a BLM receipt for the fees. Appellants argue that their intention to maintain the 13 claims was made evident by the September submissions. Appellants also note that they filed copies of the annual assessment affidavits with the proper State office and provide the Board with a copy of the acknowledgement of those filings.

[1] Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), requires the owner of an unpatented mining claim located prior to October 21, 1976, to file evidence of assessment work for the claim with BLM within the 3-year period following that date and prior to December 31 of each year thereafter. The corresponding Departmental regulation 43 CFR 3833.2-1(a) reads:

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Failure to so file is considered conclusively to constitute abandonment of a claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

[2] Examination of the case record for appellants' mining claims reveals that on September 26, 1979, BLM received a letter from appellant Verla Rhoads enclosing copies of the notices of location for the claims and a check for \$65 to cover filing fees. The record does not contain any copies of appellants' affidavits of annual assessment work other than those submitted in response to BLM's November 1980 decision.

Although appellants assert that the affidavits of 1979 assessment work were timely sent to BLM, they have provided no evidence substantiating that assertion. Accordingly, we must conclude that BLM properly declared appellants' mining claims abandoned and void. Milburn Downey, 50 IBLA 212 (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.

Douglas E. Henriques

Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Bruce R. Harris
Administrative Judge

