

ROBERT F. WILKINSON

IBLA 78-309

Decided March 4, 1981

Appeal from decision of the Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void. M MC 770 et al.

Affirmed.

1. 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

Where the owner of an unpatented mining claim located after Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim prior to Dec. 31 of the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

APPEARANCES: Robert F. Wilkinson, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Robert F. Wilkinson has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), declaring his mining claims, M MC 770 et al. (see Appendix), abandoned and void for failure to file evidence of annual assessment work or notices of intention to hold the claims pursuant to section 314, Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and its implementing regulations, 43 CFR 3833.2-1(c) and 3833.4.

Appellant's mining claims were located in November 1976 and filed for recordation with BLM on February 14, 1977. No evidence of annual assessment work or notices of intention to hold were filed with BLM prior to December 31, 1977, or at any time thereafter. Accordingly, BLM declared the claims abandoned and void.

In his statement of reasons for appeal, appellant contends that payment of the service fee for each claim and submission of appropriate maps covering the claims in May and June 1977 constituted "ample proof of intent to keep" and, in any case, "proof of assessment work [was] not necessary on the claims until Sept. 1, 1978." In addition, appellant points out that he "did file some in the court house in Rapid City, South Dakota."

[1] Section 314(a)(1) and (2) of FLPMA, 43 U.S.C. § 1744(a)(1) and (2) (1976), 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 BLM 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 under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). These claims were located after October 21, 1976, in calendar year 1976. Thus, one or the other of the documents had to be filed prior to December 31, 1977, the year following the calendar year in which the claims were located, in order to meet the requirements of the law.

When appellant failed to timely file either an affidavit of assessment work or notice of intention to hold, BLM properly held the claims to have been abandoned and declared them void. See Robert R. Eisenman, 50 IBLA 145 (1980), and cases cited therein. The fact that the legal obligation to perform annual assessment work under the mining law commences with the assessment year beginning September 1 after the date of location of the claims, and thus appellant had until August 31, 1978, to complete the first year's assessment work, 30 U.S.C. § 28 (1976), does not alter the obligation under section 314 of FLPMA to file notice of intention to hold the claim with BLM in the year following location of the claim. 43 U.S.C. § 1744(a) (1976); Silvertip Exploration & Mining, 43 IBLA 250, 252 (1979).

Payment of the service fee for each claim and submission of appropriate maps covering the claims, in satisfaction of the requirements for recordation of mining claims (see 43 CFR 3833.1-2), does not constitute compliance with the requirement for filing evidence of annual assessment work or a notice of intention to hold. The information required in a notice of intention to hold is set forth in 43 CFR 3833.2-3. Appellant failed to submit the necessary information.

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.

Bruce R. Harris  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

C. Randall Grant, Jr.  
Acting Administrative Judge

## APPENDIX

<u>Serial No.</u>	<u>Claim No.</u>	<u>Date of Location</u>
M MC 770(SD)	MOT-96	November 15, 1976
M MC 771(SD)	MOT-97	" " "
M MC 772(SD)	MOT-98	" " "
M MC 774(SD)	MOT-101	" " "
M MC 775(SD)	MOT-102	" " "
M MC 776(SD)	MOT-103	" " "
M MC 779(SD)	MOT-106	" " "
M MC 780(SD)	MOT-107	" " "
M MC 781(SD)	MOT-108	" " "
M MC 782(SD)	MOT-109	" " "
M MC 783(SD)	MOT-110	" " "
M MC 784(SD)	MOT-111	" " "
M MC 785(SD)	MOT-112	" " "
M MC 786(SD)	MOT-120	November 17, 1976
M MC 787(SD)	MOT-121	" " "
M MC 788(SD)	MOT-122	" " "
M MC 789(SD)	MOT-123	" " "
M MC 790(SD)	MOT-124	" " "
M MC 791(SD)	MOT-125	" " "
M MC 792(SD)	MOT-126	" " "
M MC 793(SD)	MOT-127	" " "
M MC 794(SD)	MOT-128	" " "
M MC 795(SD)	MOT-129	" " "
M MC 796(SD)	MOT-130	" " "
M MC 797(SD)	MOT-131	" " "
M MC 798(SD)	MOT-132	" " "
M MC 799(SD)	MOT-133	" " "
M MC 800(SD)	MOT-134	" " "
M MC 801(SD)	MOT-135	" " "
M MC 802(SD)	MOT-136	" " "
M MC 803(SD)	MOT-137	" " "
M MC 804(SD)	MOT-138	" " "
M MC 805(SD)	MOT-139	" " "
M MC 806(SD)	MOT-140	" " "
M MC 807(SD)	MOT-141	" " "
M MC 808(SD)	MOT-142	" " "
M MC 809(SD)	MOT-143	" " "
M MC 810(SD)	MOT-144	" " "
M MC 811(SD)	MOT-145	" " "
M MC 812(SD)	MOT-146	" " "
M MC 813(SD)	MOT-147	November 16, 1976
M MC 814(SD)	MOT-148	" " "
M MC 815(SD)	MOT-149	" " "
M MC 816(SD)	MOT-150	" " "
M MC 817(SD)	MOT-151	" " "
M MC 818(SD)	MOT-152	" " "
M MC 819(SD)	MOT-153	" " "

M MC 820(SD)	MOT-154	November 16, 1976
M MC 821(SD)	MOT-155	" " "
M MC 823(SD)	MOT-157	" " "
M MC 824(SD)	MOT-158	" " "
M MC 825(SD)	MOT-174	November 17, 1976
M MC 826(SD)	MOT-175	" " "
M MC 827(SD)	MOT-176	" " "
M MC 828(SD)	MOT-177	" " "
M MC 829(SD)	MOT-178	" " "
M MC 830(SD)	MOT-179	" " "
M MC 831(SD)	MOT-180	" " "
M MC 832(SD)	MOT-181	" " "
M MC 833(SD)	MOT-182	" " "
M MC 834(SD)	MOT-183	" " "
M MC 835(SD)	MOT-184	" " "
M MC 836(SD)	MOT-185	" " "
M MC 837(SD)	MOT-186	" " "
M MC 838(SD)	MOT-187	" " "
M MC 839(SD)	MOT-188	" " "
M MC 840(SD)	MOT-189	" " "
M MC 841(SD)	MOT-190	" " "
M MC 842(SD)	MOT-191	" " "
M MC 843(SD)	MOT-192	" " "
M MC 844(SD)	MOT-193	" " "
M MC 845(SD)	MOT-194	" " "
M MC 846(SD)	MOT-195	" " "
M MC 847(SD)	MOT-196	" " "
M MC 848(SD)	MOT-197	" " "
M MC 849(SD)	MOT-198	" " "
M MC 850(SD)	MOT-199	" " "
M MC 851(SD)	MOT-200	" " "
M MC 852(SD)	MOT-201	" " "
M MC 853(SD)	MOT-202	" " "
M MC 854(SD)	MOT-203	" " "
M MC 855(SD)	MOT-204	" " "
M MC 856(SD)	MOT-205	" " "
M MC 857(SD)	MOT-206	" " "
M MC 858(SD)	MOT-207	" " "
M MC 862(SD)	MOT-211	November 16, 1976
M MC 863(SD)	MOT-212	" " "
M MC 870(SD)	MOT-219	" " "
M MC 871(SD)	MOT-220	" " "
M MC 878(SD)	MOT-227	" " "
M MC 879(SD)	MOT-228	November 17, 1976
M MC 886(SD)	MOT-235	" " "
M MC 887(SD)	MOT-236	" " "
M MC 888(SD)	MOT-237	" " "
M MC 889(SD)	MOT-238	" " "
M MC 890(SD)	MOT-239	" " "

M MC 891(SD)	MOT-240	November 16, 1976
M MC 892(SD)	MOT-241	" " "
M MC 893(SD)	MOT-243	" " "
M MC 894(SD)	MOT-244	" " "
M MC 895(SD)	MOT-245	" " "
M MC 896(SD)	MOT-246	" " "
M MC 897(SD)	MOT-247	" " "
M MC 898(SD)	MOT-248	" " "
M MC 899(SD)	MOT-249	" " "
M MC 901(SD)	MOT-251	November 18, 1976
M MC 902(SD)	MOT-252	" " "
M MC 905(SD)	MOT-255	" " "
M MC 913(SD)	MOT-263	" " "
M MC 918(SD)	MOT-268	" " "

