

JANICE FAY ONDREAKO  
I.D. MONAGHAN

IBLA 80-831  
80-876

Decided March 5, 1981

Appeals from decisions of the Oregon State Office, Bureau of Land Management, declaring mining claims abandoned and void. OR MC 18580, OR MC 18581, and OR MC 18579.

Affirmed.

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

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file conclusively constitutes abandonment of the claim and renders it void.

APPEARANCES: I.D. Monaghan, pro se and for his daughter, Janice Fay Ondreako.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

These appeals are taken from decisions dated July 8 and July 10, 1980, by the Oregon State Office, Bureau of Land Management (BLM), declaring appellant's two Chromium Lode (a.k.a. Thunder Mt. Mine and Crater Mt. Mine) and Janice #1 lode mining claims abandoned and void for failure to comply with the filing requirements under the Federal

Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and Departmental regulation 43 CFR 3833.2-1(a), which provides:

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.

The claims were located in 1939 and 1963. They were recorded with BLM on August 23, 1979. The decision declared the claims abandoned and void because no affidavit of assessment work or notice of intention to hold the claims was filed by October 22, 1979. Appellants suggest on appeal that the proofs of labor were either misplaced or lost in the mails.

[1] Appellants' proof of labor on Janice #1 for assessment year ending 1979 was received by BLM on August 1, 1980. The record does not show that proof of labor on the two Chromium lode claims was ever submitted to BLM for the 1978-79 assessment year. 43 CFR 3833.4 requires that where the owner of an unpatented mining claim located prior to October 21, 1976, fails to file timely with BLM an affidavit of annual assessment work or notice of intention to hold the claim, his claim is deemed conclusively to be abandoned and to be null and void. James V. Brady, 51 IBLA 361 (1980).

There is no provision in the statute authorizing the Department to waive compliance and accept late filings or to reinstate claims which were not timely filed. Cleo May Fresh, 50 IBLA 363 (1980).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Gail M. Frazier  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Bruce R. Harris  
Administrative Judge

