

ROBERT C. CLUZEN

IBLA 81-69

Decided May 26, 1981

Appeal from decision of the Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void. M MC 46747 through M MC 46756.

Affirmed.

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

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: Robert C. Cluzen, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from a decision dated September 29, 1980, of the Montana State Office, Bureau of Land Management (BLM), declaring appellant's Mary Ann Nos. 1 through 10 lode mining claims abandoned and void for failure to file timely either evidence of annual assessment work performed on the claims or a notice of intention to hold the claims as required by section 314(a) the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a).

All of the claims were located in 1970 and were recorded with BLM on October 10, 1979.

[1] The pertinent regulation, 43 CFR 3833.2-1(a) 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.

Failure to file the necessary information within the time period prescribed conclusively constitutes abandonment of the claim or claims. 43 CFR 3833.4.

Appellant asserts that he enclosed the 1979 affidavit of assessment work in his letter of October 1, 1979, to BLM which contained his certificates of location. The only affidavit of assessment work in the file (covering the year from September 1978 through August 1979) bears a BLM date stamp of October 16, 1980.

Appellant's letter of October 1, 1979, which included the certificates of location and filing fee makes no reference to the 1979 affidavit of assessment, and there is no evidence in the case file to indicate that the required document was included with the documents which were timely filed, other than appellant's assertion that he had timely filed the required document. Accordingly, we are constrained to find that the document was not, in fact, timely filed. Kerry and Ingrid Douglas, 53 IBLA 18 (1981). BLM properly declared the claims abandoned and void. St. Francis Mining Co., 53 IBLA 133 (1981).

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.

Gail M. Frazier  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

