

ROY ROWE ET AL.

IBLA 81-430

Decided August 25, 1981

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CA MC 61782 through CA MC 61785.

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: Larry D. Rowe, for appellants.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is from a decision dated February 27, 1981, by the California State Office, Bureau of Land Management (BLM), declaring CA MC 61782 through CA MC 61785 mining claims abandoned and void for failure to file timely evidence of assessment work as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744, and 43 CFR 3833.2-1. The claims were located prior to October 22, 1976, and the decision states that no evidence of assessment work or notice of intention to hold was filed during calendar year 1980.

On December 29, 1980, appellants filed with BLM a note stating: "This is to rerecord our mining claims." The note also advised BLM of name changes for three of the four claims, as follows:

	<u>Old Name</u>	<u>New Name</u>
CA MC 61782	King	Almyra
CA MC 61783	Etzel	Lavina
CA MC 61784	Gold Dipper	Calmont
CA MC 61785	Geneva	Geneva

Appellants assert on appeal that they mailed evidence of assessment work to BLM on or about December 15, 1980. They point out that the new names of the claims were those used by the Plumas County recorder when he recorded appellants' affidavit of assessment work on October 2, 1980. Appellants say that the above note was a cover letter for their affidavit of assessment work, and that BLM must have received it, since it refers to the claims by their new names in its decision. The only copy of the affidavit of assessment work referred to, however, is BLM date stamped March 16, 1981, having apparently been tendered with the notice of appeal.

[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.

Appellants' note, asserted to be a cover letter for evidence of assessment work, makes no reference to the affidavit of assessment work and there is no evidence in the case file to indicate that the document was timely filed. Accordingly, we are constrained to find that the document was not, in fact, timely filed. Kerry and Ingrid Douglas, 53 IBLA 18 (1981). Under the regulation 43 CFR 3833.2-1(a), evidence of annual assessment work or a notice of intention to hold the mining claims was due by December 30, 1980. As no such documents were timely filed, 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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

