

AOS CO.

IBLA 81-596, 81-597

81-598

Decided October 26, 1981

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring mining claims abandoned and void. AMC 21359 through AMC 21367, AMC 18794 through AMC 18887, AMC 16827 through AMC 16925.

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.

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

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in

which the claim was located. There is no provision for waiver of this mandatory requirement.

APPEARANCES: Dorman S. O'Leary, on behalf of AOS Company.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

AOS Company appeals a decision of the Arizona State Office, Bureau of Land Management (BLM), dated April 7, 1981, which declared the Goat and Fox lode mining claims AMC 21359 AMC through 21367, AMC 18794 through AMC 18887, AMC 16827 through AMC 16925, abandoned and void for failure to file timely evidence of annual assessment work or notices of intention to hold the mining claims for the 1978 assessment year pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR Subpart 3833.

In the statement of reasons for appeal, appellant alleges that 43 CFR 3833.2-1 applies only to claims located on or before October 21, 1976, and that since appellant's claims were all located in 1977 the regulation does not apply to appellant.

[1, 2] Appellant, however, misreads the regulation.

Although 43 CFR 3833.2-1(a) refers to mining claims located on Federal lands on or before October 21, 1976, 43 CFR 3833.2-1(c) requires the owner of an unpatented mining claim located on Federal lands after October 21, 1976, to file in the proper BLM office evidence of annual assessment work performed during the previous assessment year, or a notice of intention to hold the claim, on or before December 30 of each year following the calendar year in which the claim was located. See 43 U.S.C. § 1744(a) (1976). The claims having been located in 1977, evidence of assessment work or a notice of intention to hold should have been filed with BLM on or before December 30, 1978.

Failure to file an instrument required by 43 CFR 3833.2-1 within the prescribed time period conclusively constitutes an abandonment of the claim. 43 CFR 3833.4(a); see 43 U.S.C. § 1744(c) (1976).

When appellant failed to file timely either evidence of assessment work or notices of intention to hold the claims, BLM properly held the claims to have been abandoned and void. John Richard Bodie, 54 IBLA 93 (1981); Robert R. Eisenman, 50 IBLA 145 (1980).

In enacting the filing requirements of FLPMA, supra, Congress did not invest the Secretary of the Interior with authority either to waive or excuse compliance with the statute or to afford mining claimants any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Accordingly, 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.

Edward W. Stuebing
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

