

DAVID E. BEST

IBLA 94-686

Decided September 25, 1997

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring six placer mining claims abandoned and void. MMC 33651-MMC 33655, MMC 35741.

Affirmed.

1. Administrative Authority: Estoppel–Estoppel

To invoke estoppel against the Government in matters concerning the public lands the existence of affirmative misconduct on the part of the Government must be shown. Affirmative misconduct evidenced by either a misrepresentation or critical omission of fact must be grounded in writing. Reliance on alleged erroneous advice of a U.S. Forest Service employee is insufficient.

2. Mining Claims: Abandonment–Mining Claims: Rental or Claim Maintenance Fees: Generally–Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

A mining claimant seeking a small miner exemption from payment of rental fees under the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992), was required to file a certified statement by Aug. 31, 1993, for each of the assessment years (ending Sept. 1, 1993, and Sept. 1, 1994) for which the exemption was claimed. In the absence of a small miner exemption from the rental fee requirement, failure to pay the fees in accordance with the Act and regulations resulted in a conclusive presumption of abandonment.

APPEARANCES: David E. Best, pro se.

## OPINION BY ADMINISTRATIVE JUDGE IRWIN

David E. Best has appealed the June 9, 1994, Decision of the Montana State Office, Bureau of Land Management (BLM), declaring his six placer mining claims abandoned and void. (MMC 33651-MMC 33655, MMC 35741.) <sup>1/</sup>

The BLM declared the six claims abandoned and void because Appellant neither paid the annual rental fee of \$100 for each mining claim, mill site, or tunnel site nor filed a Certification of Exemption from Payment of Rental Fee, for both the 1993 and 1994 assessment years on or before August 31, 1993, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), Pub. L. No. 102- 381, 106 Stat. 1374, 1378-79 (1992).

In its Decision, BLM acknowledges receipt of Appellant's "Affidavit of Annual Representation of Mining Claim" on October 7, 1993, but states it was unable to accept it "because you failed to meet the requirements to qualify your mining claims for the exemption from payment of the rental fee; i.e., you have not filed Certification of Exemption from Payment of Rental Fee and no rental fees were paid for the aforementioned mining claims." (Decision at 1.)

On appeal, Appellant states:

In August 1993 my son-in-law and myself met with Katie Bump at the Beaverhead National Forest Ranger Station in Dillon, MT. The purpose of this meeting was to file a Certification of Exemption From Payment of Rental Fee (Form 3830-1) for the 1993 and 1994 assessment years and to have a Plan of Operations approved. When I asked Ms. Bump to file the Certification of Exemption she assured me that I was already exempt from the rental fee because I held less than ten claims. Consequently, the Certificate of Exemption was not filed, which is the basis for your decision to declare my claims abandoned.

Appellant contends Ms. Bump did not understand the Act, and as result his claims have been unjustly taken. He insists that the "large number of Appeals filed with your office this year is evidence that the BLM did not do an effective job of making it's new policy understood by it's employees or the public." Id.

[1] Appellant essentially contends that BLM should be estopped from declaring his claims abandoned because he relied to his detriment on erroneous advice received from the U.S. Forest Service. The rules governing

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<sup>1/</sup> Appellant's claims include the Porphyry Dyke (MMC 33651), located in sec. 12, T. 6 S., R. 11 W., the French Creek (MMC 33652), located in sec. 11, T. 6 S., R. 11 W., the Kelly (MMC 33653) and the Trout Creek (MMC 33654), located in sec. 1, T. 6 S., R. 11 W., and the Old Crow (MMC 33655) and the Forrester (MMC 35741), located in sec. 36, T. 5 S., R. 11 W., Beaverhead County, Montana.

consideration of estoppel are well established. This Board has adopted the elements of estoppel described by the U.S. Court of Appeals for the Ninth Circuit in United States v. Georgia Pacific Co., 421 F.2d 92 (9th Cir. 1970), summarized by this Board in Ptamigan Co., 91 IBLA 113, 117 (1986), aff'd sub. nom. Bolt v. United States, 944 F.2d 603 (9th Cir. 1991):

Four elements must be present to establish the defense of estoppel: (1) the party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel had a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury.

We have recognized that estoppel in the case of public lands must be based on affirmative misconduct such as a misrepresentation or concealment of a material fact. United States v. Ruby Co., 588 F.2d 697, 703 (9th Cir. 1978); D. F. Colson, 63 IBLA 221, 224 (1982); Arpee Jones, 61 IBLA 149, 151 (1982). Erroneous advice upon which reliance is predicated must be in the form of a crucial misstatement in an official decision. See, e.g., Rudy S. Sutlovich, 139 IBLA 79, 82 (1997); Leitmotif Mining Co., 124 IBLA 344 (1992).

In Leitmotif Mining Co., we held that a letter from BLM to Leitmotif failing to explain that the Nevada State Office was not the proper place for filing a notice of location constituted an "official decision." In Rudy S. Sutlovich, we applied the doctrine of estoppel where a BLM form listed 12 items of information necessary to perfect the filing of a certificate of exemption for mining claim rental fees under the Act, BLM informed the claimant that only one such item needed to be filed and thereafter sought to void the claims because of claimant's failure to file other information which was also listed on the form letter. We held in Sutlovich that BLM's failure to disclose in the form letter all defects in the filing constituted a crucial misstatement in an official decision upon which Sutlovich relied to his detriment. Rudy S. Sutlovich, 139 IBLA at 82. In both Leitmotif and Sutlovich, ample time existed for compliance had BLM provided accurate information.

Our adherence to the requirement that the erroneous advice be in writing recognizes the inherent unreliability of oral advice as a foundation on which to base future action. More importantly, as noted by the United States Supreme Court in Heckler v. Community Health Services, Inc., 467 U.S. 51, 65 (1984), "[w]ritten advice, like a written judicial opinion, requires its author to reflect upon the nature of the advice that is given to the citizen, and subjects that advice to the possibility of review, criticism and reexamination." Thus, we have declined and decline here to invoke the doctrine of estoppel based on oral advice allegedly given by a U.S. Forest Service employee.

[2] The Act, Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992), provided, in relevant part:

[F]or each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)) each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 \* \* \*.

106 Stat. 1378. The Act contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of a \$100 rental fee on or before August 31, 1993. 106 Stat. 1378-79.

The Act provided, subject to various conditions, for an exemption from the payment of rental fees for claimants holding 10 or fewer mining claims, mill sites, or tunnel sites. Id.

Additionally, the Act provided "that failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant." 106 Stat. 1379. Similar language was held to be self-operative in United States v. Locke, 471 U.S. 84 (1985). Lee H. and Goldie E. Rice, 128 IBLA 137, 141 (1994). In Locke, the U.S. Supreme Court upheld the constitutionality of section 314(c) of FLPMA, 43 U.S.C. § 1744(c), concluding that a mining claim for which timely filings are not made is extinguished by operation of law notwithstanding the claimant's intent to hold the claim. United States v. Locke, 471 U.S. at 97. In Rice, we stated that we "must assume that Congress was aware of the interpretation that this Department and the courts had given to section 314 of FLPMA and intended the language [in the Act here at issue] to be given the same construction." 128 IBLA at 141. We held that the Department here, as in the case of section 314 of FLPMA, was "without authority to excuse lack of compliance with the rental fee requirement, to extend the time for compliance, or to afford any relief from the statutory consequences." Id.

The only exemption in the Act from the rental fee requirement was the so-called "small miner" exemption. Under the Act claimants holding 10 or fewer mining claims, millsites, and/or tunnel sites were afforded the opportunity to seek such an exception. 106 Stat. 1378-79; 43 C.F.R. §§ 3833.1-5(d), 3833.1-6, 3833.1-7 (1993); see William B. Wray, 129 IBLA 173 (1994). A claimant could either elect to pay the rental fee or, alternatively, if a claimant sought to avail himself of the small miner

exemption, perform the assessment work, certify by August 31, 1993, the performance of such work (prospectively in the case of work for the assessment year ending September 1, 1994), and meet the filing requirements of section 314 of FLPMA, 43 U.S.C. § 1744 (1994). See 106 Stat. 1378, 1379; 43 C.F.R. § 3833.1-7 (1993).

To avail himself of the exemption Appellant was required to file a separate request by August 31, 1993, for each of the assessment years for which he was seeking an exemption. 43 C.F.R. § 3833.1-7(d) (1993). We have consistently held that where a mining claimant fails to timely pay the rental fees or timely file certificates of exemption for the 1993 and 1994 assessment years, the claims are properly deemed abandoned and void. 43 C.F.R. § 3833.4(a)(2) (1993); Jerry L. Fabrizio, 138 IBLA 116, 121 (1997); Nannie Edwards, 130 IBLA 59, 60 (1994); Lee H. and Goldie E. Rice, supra. That Appellant did not satisfy the statutory and regulatory requirements for qualifying for a small miner exemption is not disputed. The BLM properly declared Appellant's mining claims abandoned and void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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Will A. Irwin  
Administrative Judge

I concur.

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James P. Terry  
Administrative Judge

