

HUGH D. GUTHRIE

IBLA 96-264

Decided August 5, 1998

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. MMC 8929 through MMC 8938.

Affirmed as modified.

1. Mining Claims: Abandonment–Mining Claims: Contests–Mining Claims: Patent–Mining Claims: Rental or Claim Maintenance Fees: Generally

The mere filing of a patent application is not sufficient to exempt a mining claimant from payment of the maintenance fees required by the Omnibus Budget Reconciliation Act of Aug. 10, 1993, for the claims covered by the application, when there is no evidence that the entry had been allowed by the authorized officer.

2. Board of Land Appeals–Estoppel

The Board of Land Appeals has well established rules governing consideration of estoppel issues. They are the elements of estoppel described in United States v. Georgia Pacific Co.; the rule that estoppel is an extraordinary remedy, especially as it relates to public lands; and the rule that estoppel against the Government must be based upon affirmative misconduct.

APPEARANCES: William L. MacBride, Jr., Esq., Helena, Montana, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Hugh D. Guthrie has appealed from a February 12, 1996, Decision of the Montana State Office, Bureau of Land Management (BLM), declaring the unpatented Sperry #1 through #10 mining claims (MMC 8929 through MMC 8938) abandoned and void for failure to pay the 1996 assessment year maintenance fees, or satisfy the requirements for the small

miner exemption, on or before August 31, 1995. The claims were located on September 17, 1977, in the SW¼ of sec. 8, T. 13 N., R. 3 W., Principal Meridian, Lewis and Clark County, Montana.

BLM's Decision references the Omnibus Budget Reconciliation Act of August 10, 1993 (Omnibus Act), 30 U.S.C. § 28f(a) (1994). Under 30 U.S.C. § 28f(a) (1994), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of \$100 per claim on or before August 31 of each year for the years 1994 through 1998. Under 30 U.S.C. § 28f(d)(1) (1994), the claim maintenance fee may be waived for claimants holding not more than 10 mining claims, mill sites, and/or tunnel sites on public lands who have performed the required assessment work.

Under 43 C.F.R. § 3833.1-7(b), a small miner claiming a maintenance fee waiver must file an affidavit of assessment work pursuant to 43 C.F.R. § 3833.2 and 43 C.F.R. § 3833.2-4. 1/

BLM's Decision also cited 43 C.F.R. § 3833.4(a)(2), under which failure to pay the claim maintenance fee, or meet the filing requirements for waiver of the fee is "deemed conclusively to constitute a forfeiture of the mining claim, mill site, or tunnel site." BLM declared the claims abandoned and void "for failure to pay the annual maintenance fee of \$100 per mining claim for the 1996 assessment year or meet the requirement of exemption from payment of maintenance fee." (Decision at 2.)

Guthrie on appeal argues that he is relieved of the maintenance fee requirement in the Omnibus Act based on Mineral Patent Application MTM 82032, which was filed for these claims on March 15, 1993. By Notice of August 24, 1993, BLM informed Guthrie that he must furnish additional information before BLM could continue processing his mineral patent application. BLM enumerated a list of items including: (1) a supplemental Certificate of Title; (2) a statement of two disinterested witnesses attesting to the value of the improvements; (3) a statement of the applicant's citizenship and date of birth; and (4) a statement, pursuant to 43 C.F.R. § 3863.1-3(b), indicating whether the claim locations were exclusively placer or whether they contained any lodes.

In October and November of 1993, Guthrie filed a certificate of improvements and expenditures, an abstract of birth, a supplemental certificate of title, and a statement that there were no known lodes on the site of his claims.

On July 28, 1994, BLM notified Guthrie that it had completed review of geological information he had provided in support of the mineral patent

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1/ Guthrie did timely file an affidavit of assessment work (Affidavit of Annual Representation of Mining Claim) with BLM for the 1995 filing period. BLM returned that document to Guthrie unprocessed with its Decision.

application. BLM stated, however, that additional information was needed on the "economic geology of the mineral deposit." To this end, BLM requested Guthrie to furnish data on anticipated annual mine production volume of recoverable ore, operating costs, mine life, costs, taxes, reclamation plan, brokers or purchasers of the product, access to the site, and other items.

An October 7, 1994, memorandum by a BLM geologist indicates that Guthrie, "through his lawyer Palmer Hoovestel, came in with answers to our questions on Monday Oct. 3, 1994. [Whether] or not this was sufficient information, the first half of the final certificate (FHFC) was not completed."

On October 13, 1994, BLM notified Guthrie of the moratorium on the processing of mineral patent applications. The Congressionally imposed moratorium on accepting and processing mineral patent applications was extended by section 314 of the Department of the Interior and Related Agencies Appropriations Act of 1998, Pub. L. No. 105-83, 111 Stat. 1543 (1997).

The record shows that on August 26, 1993, Guthrie filed certificates of exemption covering the subject claims as required by the Interior Department and Related Agencies Appropriations Act of 1993 (1992 Act), Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992), for the 1993 and 1994 assessment years, and that he filed affidavits of labor for the claims on December 23, 1993, and December 21, 1994.

In his Statement of Reasons (SOR), Guthrie admits that no maintenance fees nor waiver were filed. Guthrie argues that, as an applicant for a mineral patent, he is exempt "from the assessment requirements under law." (SOR at 8.) Guthrie cites 43 C.F.R. § 3833.1-6(f), which provides: "On mining claims for which an application for mineral patent has been filed, and the mineral entry has been allowed, the payment of the maintenance fee is excused for the assessment year during which assessment work is not required pursuant to § 3851.5 of this title."

43 C.F.R. § 3851.5 provides that "annual assessment work and payment of maintenance fees is not required after the date that the mineral entry has been allowed."

Guthrie asserts that his "filing further proofs" as requested by BLM, constituted a completion of the requirements for a mineral entry and excused him from maintenance fee requirements. (SOR at 10.) Guthrie alleges that the BLM file on his patent application "was complete but for the payment requirement, which would have been made had not the BLM work on the Patent Application been suspended." (SOR at 12.)

Guthrie further argues that BLM should be estopped to declare the claims abandoned and void because he was ignorant of the provisions of the Omnibus Act having received no notice thereof from the BLM. (SOR

at 13.) Guthrie alleges that BLM provided him with notice of the 1992 Act and should have provided notice of the Omnibus Act. This notice, Guthrie alleges, was provided in an official receipt dated November 19, 1993. See SOR, attachment to Guthrie affidavit. In that receipt, BLM tendered its approval of Guthrie's 1993 and 1994 certificates of exemption from rental fee payments under the 1992 Act. Paragraph 5 of BLM's receipt advised Guthrie that he must continue to hold 10 or fewer claims "until September 30, 1994, when the [1992 Act] expires." Guthrie alleges that BLM "made a crucial, erroneous misstatement of fact in an official written document" in that it failed to provide him notice of the Omnibus Act, successor to the 1992 Act. (SOR, 12-14.)

[1] The mere filing of a patent application is not sufficient to exempt Guthrie's claims from payment of the maintenance fee. Under the regulation, the "entry" has to be "allowed." Such an allowance is usually in the form of a decisional document by the authorized officer. Guthrie alternately argues that he met the requirements for an entry, that the entry was effectively allowed, or that it should have been allowed. However, there is no evidence in the record of allowance of an entry. See Jack Swain, Sr., 142 IBLA 122 (1998); Jerry D. Grover, 139 IBLA 178, 179-80 (1997); U.A. Small, 108 IBLA 102 (1989). The file shows that Guthrie supplied information in response to BLM's request, but that questions remained as to the sufficiency of the data provided. Counsel's position on appeal reflects a general assertion that information was furnished and the requirements for entry met. While the record indicates that information was furnished, it does not indicate that requirements for entry were met or that entry was allowed. Therefore, in the absence of allowance of an entry, Guthrie was required to meet the requirements of the Omnibus Act, and BLM properly declared the claims abandoned and void for failure to do so.

Guthrie complains, however, that BLM did not notify him of the requirements of the Omnibus Act. Even if Guthrie was ignorant of the obligations imposed by the Act, he is properly charged with constructive knowledge of the statute and implementing regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384-85 (1947); Mt. Gaines Consolidated, 144 IBLA 49, 52 (1998). BLM is under no duty to send a claimant personal notification of an enactment of new laws and regulations. Bart Cannon, 138 IBLA 194, 197 (1997); William Jenkins, 131 IBLA 166, 168 (1994); Dee W. Alexander Estate, 131 IBLA 39 (1994).

[2] Nor is this a case for the application of estoppel. The Board has well-established case precedent governing consideration of estoppel questions. See, e.g., Ptarmigan Co., 91 IBLA 113, 117 (1986), aff'd sub nom. Bolt v. United States, 944 F.2d 603 (9th Cir. 1991). First, we have adopted the elements of estoppel described by the Ninth Circuit Court of Appeals in United States v. Georgia Pacific Co., 421 F.2d 92, 96 (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 has a right to believe it is so intended; (3) the latter must be ignorant of the facts; and (4) he must rely on the former's conduct to his injury.

Second, we have adopted the rule of numerous courts that estoppel is an extraordinary remedy, especially as it relates to the public lands. Harold E. Woods, 61 IBLA 359, 361 (1982), State of Alaska, 46 IBLA 12, 21 (1980). Third, estoppel against the Government in matters concerning the public lands must be based upon affirmative misconduct, such as misrepresentation or concealment of material facts. United States v. Ruby Co., 588 F.2d 697, 703 (9th Cir. 1978); D.F. Colson, 63 IBLA 121 (1982). Finally, we have noted that while estoppel may lie where reliance on Governmental statements deprived an individual of a right which he could have acquired, estoppel does not lie where the effect of such action would be to grant an individual a right not authorized by law. See Edward L. Ellis, 42 IBLA 66 (1979).

As we further reiterated in James W. Bowling, 129 IBLA 52 (1994), for a misrepresentation to be affirmative misconduct sufficient to justify invocation of estoppel, it must be in the form of a crucial misstatement in an official written decision. In this case, Guthrie has alleged a crucial misstatement in BLM's receipt approving his waiver certifications. However, the receipt is not an official decision nor does it contain a misstatement. Therefore, estoppel does not lie.

Although BLM declared the claims abandoned and void "for failure to pay the annual maintenance fee of \$100 per mining claim for the 1996 assessment year or meet the requirement of exemption from payment of maintenance fee" (Decision at 2), failure to pay the claim maintenance fee, or meet the filing requirements for waiver of the fee is "deemed conclusively to constitute a forfeiture of the mining claim, mill site, or tunnel site" pursuant to 43 C.F.R. § 3833.4(a)(2). BLM's Decision is therefore modified to reflect that the mining claims are forfeited.

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 as modified.

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James P. Terry  
Administrative Judge

I concur.

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Gail M. Frazier  
Administrative Judge

