

Editor's note: Overruled to the extent inconsistent with Harvey A. Clifton, 60 IBLA 29 (Nov. 16, 1981)

JERRY CUPPER

IBLA 79-327

Decided January 30, 1980

Appeal from notice of the Oregon State Office, Bureau of Land Management, declaring mining claims Old Blue #1, #2, and #3 abandoned and void. OR MC 4398, OR MC 4399, and OR MC 4400.

Affirmed.

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

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if an unpatented mining claim located before Oct. 21, 1976, is not supported annually on or before Dec. 31, of the calendar year following the calendar year he recorded the claim in the BLM office by either an affidavit of assessment work or notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement that there was no intention to abandon and that the failure to file the required statements with BLM was an oversight.

APPEARANCES: Jerry Cupper, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Jerry Cupper, hereinafter appellant, has appealed from a notice dated April 4, 1979, of the Oregon State Office, Bureau of Land Management (BLM), which declared void and abandoned mining claims Old

Blue #1 (OR MC 4398), Old Blue #2 (OR MC 4399), and Old Blue #3 (OR MC 4400). This notice declared these mining claims void and abandoned for appellant's failure to file an affidavit of assessment work or notice of intention to hold each claim, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the corresponding regulations, 43 CFR 3833.2-1(a) and 43 CFR 3833.4(a).

The applicable statute provides, inter alia:

Section 314(a) * * * The owner of an unpatented lode or placer mining claim located before [October 21, 1976] shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by * * * (30 U.S.C. § 28-1), relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

* * * * *

(c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner.

90 Stat. 2769 (1976).

The applicable regulations, 43 CFR 3833.2-1, and 3833.4, provide:

The owner of an unpatented mining claim located on Federal lands 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 which ever date is sooner, evidence of annual assessment work performed during the preceding

assessment year or a notice of intention to hold the mining claim.

(43 CFR 3833.2-1(a)).

The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void.

(43 CFR 3833.4(a)).

Appellant located these mining claims on July 8, 1975. The notice of location for these claims was filed with BLM on December 30, 1977. Pursuant to the statutory provisions appellant should have filed affidavits of assessment work or notices of intention to hold prior to December 31, 1978. The consequences of failure to file the required documents are mandated by the statute and the regulations. Although FLPMA allows 3 years until 1979 for filing for claims located before October 21, 1976, where the owner has recorded his claim with BLM, 43 CFR 3833.2-1(a)(1) specifically requires an assessment notice or a notice of intention to hold to be filed in the calendar year following the calendar year of recording. Clair R. Caldwell, 42 IBLA 139 (1979).

The only reason which appellant offers for not filing the appropriate documents with BLM is that he is new to the mining field and therefore was unaware of the necessity of filing these documents with BLM. The Board has held on several occasions that ignorance of the requirements of FLPMA does not excuse a failure to make a timely filing. Charles Caress, 41 IBLA 302 (1979); Nuclear Power and Energy Co., 41 IBLA 142 (1979); Blackburn Enterprises, 41 IBLA 115 (1979); Lawrence A. Landry, 40 IBLA 212 (1979); Juan Munoz, 39 IBLA 72 (1979); John R. Carruthers, 38 IBLA 77 (1978). All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Charles Caress, *supra*; Nuclear Power and Energy Co., *supra*; Blackburn Enterprises, *supra*; Juan Munoz, *supra*. All regulations herein cited were originally promulgated in the Federal Register at 42 FR 5300-5302 (Jan. 27, 1977). Blackburn Enterprises, *supra*.

BLM properly held appellant's mining claims abandoned and void when no affidavit of assessment work or notice of intention to hold was filed at its office prior to December 31, 1978. 43 CFR 3833.4. Dennis J. Mertz, 43 IBLA 302 (1979); James V. Joyce, 42 IBLA 383 (1979); Clair R. Caldwell, *supra*. Appellant may relocate these claims and file the notice required by 43 CFR 3833.1, subject to any intervening rights of third parties and assuming no intervening closure of the land to mining location.

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.

James L. Burski
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Joan B. Thompson
Administrative Judge

