

ROBERT W. HANSEN
FEDERAL BENTONITE CO.

IBLA 79-394

Decided February 28, 1980

Appeal from a decision of the Montana State Office, Bureau of Land Management, holding H.B. Nos. 1-20 placer mining claims abandoned and void. M MC 5874 to M MC 5893.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Assessment Work -- Mining Claims: Abandonment -- Mining Claims: Assessment Work

Under 43 CFR 3833.2-1(b) (1978), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, shall, prior to Dec. 31 of each calendar year following the calendar year in which such claim was located, 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 mining claim.

2. Notice: Generally -- Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

APPEARANCES: Edward G. Morrow, Raw Materials Manager, Federal Bentonite Division, Aurora Industries, for appellants.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Federal Bentonite Co. on behalf of Robert W. Hansen ^{1/} has appealed from a decision dated April 17, 1979, of the Montana State Office, Bureau of Land Management (BLM), holding each of the H.B. Nos. 1-20 placer mining claims abandoned and void. The mining claims were located in June and July 1977 and were recorded in 1977. The State Office decision was based on the failure to file an affidavit of assessment work or a notice of intention to hold each such claim for calendar year 1978 as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The pertinent regulation is 43 CFR 3833.2-1(b)(1) (1978). ^{2/}

On appeal, appellant contends that work on the H.B. mining claims was performed and duly filed with the Valley County Montana Recorder. Filing with the Valley County Montana Recorder may meet certain State requirements, but it fails to meet the requirements established by FLPMA, for reasons discussed, infra.

[1] Appellant contends that the intent to hold and maintain the claims was obvious by virtue of his filing the assessment with Valley County Montana Recorder. However, the holding of a mining claim, the diligent pursuance of mining activities on it, and the filing of assessment work on the H.B. claims with the Valley County Montana Recorder does not relieve its owner of the affirmative obligation imposed by statute to timely file a copy of an affidavit of assessment work or a copy of a notice of intention to hold a mining claim with the BLM State Office. Under the clear terms of the statute, failure to file the required instruments in the proper office within the prescribed time is deemed conclusively to constitute an abandonment of the mining claims. 43 U.S.C. § 1744(c) (1976); see also 43 CFR 3833.4(a) (1978).

The record indicates that on February 13, 1978, the Montana State Office received a letter from appellant Hansen. The letter states:

This is to notify you that H.B. Claims 1 thru 20 or (BLM # Claims M MC 5874 thru 5893) will be held for the calendar year as the assessment work has been completed last fall and they look very favorable. This letter I hope serves notice on you of my intention to hold these claims.

^{1/} Edwin G. Morrow states that Federal Bentonite, of which he is the Raw Materials Manager, has an option on the claims, and was required to perform and file the assessment work.

^{2/} The BLM decision miscited the regulation as 43 CFR 3833.2-1(a)(1).

Please let me know what else needs to be done to comply with your new regulations.

Yours Truly,

Robert W. Hansen

Hansen has apparently confused the filing of a notice of intention to hold with the filing of annual assessment work. Unfortunately, the document, as submitted, is insufficient to constitute either. The applicable regulations require that if an individual fails to perform assessment work within the proper calendar year, he or she must file a notice of intention to hold. 43 CFR 3833.2-1(b) (1978). Inasmuch as appellant avers that he had performed assessment work, he should have complied with the regulations found at 43 CFR 3833.2-2 (1978).

The applicable regulations, 43 CFR 3833.2-2(a) and (b) (1978), required that the mining claimant file either "[a]n official copy of the affidavit of assessment work performed filed in the local jurisdiction of the State where the claim or group of contiguous claims are located" or "[a]n official copy of the detailed report concerning geological, geochemical and geophysical surveys filed in the office of the local jurisdiction in which the claim is located." Appellant clearly did not provide the required documents to the Montana State Office.

Then, too, in order to comply with the filing requirements for notices of intention to hold, a mining claimant must file a notice of intention to hold setting forth, inter alia:

(e) The reasons that physical, legal, or other impediments, beyond the control of the owner(s) have prevented his filing an affidavit of assessment work performed * * * (such impediments may include, but are not limited to, deferment of annual assessment work, in which case the notice must be accompanied by a copy of the petition for deferment and the order or decision disposing of such petition); and

(f) As required by section 314(a)(1) of the Act, the date on which a copy of the notice of intention to hold the mining claim was filed in the office of the local jurisdiction in which the claim was located.

43 CFR 3833.2-3(e) and (f) (1978). It is clear, inasmuch as appellant avers that the assessment work was actually performed and filed in the local office, that there was no deferment of annual assessment work herein. Moreover, inasmuch as appellant states that he filed the

assessment work with the State, no document exists purporting to justify the failure to perform assessment work, and it is clear that no such explanatory document was filed with the State.

We realize that appellant has attempted, albeit unsuccessfully, to comply with the recordation provisions of FLPMA. We are also aware that, in promulgating the February 1979 amendments to the recordation regulations, the Assistant Secretary, Energy and Minerals, noted:

The Bureau of Land Management will continue to check recordation filings to determine if they meet the minimum requirements of the law and the regulations. If the filing fails to meet the minimum requirements of the law and the regulations and there is sufficient time before the filing deadline to allow correction, the claimant will be notified of the deficiencies and requested to correct the deficiencies. If, however, a recordation filing fails to meet the requirements of the law and the regulations and there is insufficient time to allow correction of the deficiencies, the recording will be rejected. The Bureau of Land Management will, in those instances where it finds a recordation filing meets the minimum requirements of the law and regulations, accept the filing for recording and contact the claimant for any additional information that might be desired. [Emphasis supplied.]

44 FR 9721-22 (Feb. 14, 1979).

The immediate question before us is whether the filings of the appellant comply with the "minimum requirements of the law and regulations."

The applicable provisions of the statute, 43 U.S.C. §§ 1744(a)(1) and (a)(2) (1976), require that the mining claimant "file for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim[,] * * * an affidavit of assessment work performed thereon, on [sic] a detailed report provided by section 28-1 of Title 30, relating thereto" and "file in the office of the Bureau * * * a copy of the official record of the instrument filed or recorded." Thus, the regulatory requirements applicable to the instant appeal were mere replications of the statutory provisions, and appellant was required to timely comply therewith. 3/

3/ In James E. Strong, 45 IBLA 386 (1980), this Board adverted to the 1979 amendments to these regulations and held that "[i]n the absence of countervailing public policy reasons or intervening rights, it may be appropriate to apply the amended version of a regulation to a pending matter where it benefits the affected party to do so." Id. at

When appellant failed to file either a copy of the evidence of annual assessment work performed in the BLM State Office, or a notice of intention to hold in the local jurisdiction where the claims were located, the State Office properly held the claims to have been abandoned and declared them void. See Donald H. Little, 37 IBLA 1 (1978); Ronald L. Nordwick, 36 IBLA 238 (1978); Paul S. Coupey, 35 IBLA 112 (1978).

[2] Appellant admits in his notice of appeal that the failure to file assessment affidavits with the BLM was an oversight, due primarily to the fact that the 20 claims were the only properties controlled by Federal Bentonite which were subject to filing with BLM. This is not a sufficient basis to prevent the voiding of these claims as required by 43 CFR 3833.4(a) (1978). All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Appellant's excuse provides no exception to this rule.

We note in closing that appellant may relocate these claims and file notice of this as provided in 43 CFR 3833.1, subject to any intervening rights of third parties, and assuming no intervening closure of the land to mining location.

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 as modified.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge

fn. 3 (continued)

388. While the amendments changed in certain details the requirements for filing herein, the present regulations still require, as does the statute, that the mining claimant file with BLM a copy of either the assessment work or notice of intention to hold which the mining claimant filed with the local jurisdiction. Thus, even under the amended regulations, appellant's filings are still deficient.

