

KENNETH K. PARKER

IBLA 80-157

Decided May 30, 1980

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring void lode mining claims I MC 45203 and I MC 45204.

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 Claim -- Mining Claims: Abandonment -- Mining Claims: Assessment Work

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of annual assessment work or notice of intention to hold on or before Oct. 22, 1979, his claim is deemed conclusively to be abandoned and to be null and void.

2. Notice: Generally -- Regulations: Generally

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

APPEARANCES: Kenneth K. Parker, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Kenneth K. Parker appeals from the December 3, 1979, decision of the Idaho State Office, Bureau of Land Management (BLM), returning appellant's certificates of mining claim location. 1/

The claims were located by appellant and Charlie M. Wallace on June 22, 1957. The location notices were filed with BLM on October 18, 1979. No affidavit of annual assessment work or notice of intention to hold was received by BLM by October 22, 1979, as required by 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1. Therefore, BLM notified appellants that a failure to file the assessment or notice of intention to hold instruments within the prescribed time period, constitutes an abandonment of mining claims.

Appellant filed a timely appeal indicating that he "did not fully understand the requirements of this law."

[1] Section 1744 requires in part:

(a) The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, 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 section 28-1 of Title 30, 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.

The applicable regulation, 43 CFR 3833.2-1(a), states:

1/ Appellants mining claims which were declared abandoned and void were the Silver Bell #1, I MC 45203; and the Silver Bell #2, I MC 45204.

§ 3833.2-1 When filing required.

(a) The owner of an unpatented mining claim located on Federal lands on or 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, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

The statute and regulation clearly require that evidence of annual assessment work or a notice of intention to hold be filed on or before October 22, 1979. The effect of failure to file is set forth in 43 CFR 3833.4(a):

(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.

[2] Appellant does not deny that he failed to submit the required information, but asserts that he did not fully understand the regulatory requirements. All persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations. Fred S. Ghelarducci, 41 IBLA 277 (1979); John A. Steele, Jr., 41 IBLA 49 (1979); Juan Munoz, 40 IBLA 74 (1979). Neither the Federal Land Policy and Management Act of 1976 nor the regulations provide for any leeway in the application of the penalty for failure to file this information. William L. Rucinski, 42 IBLA 56 (1979). Under section 3833.4, the claims are deemed abandoned and void.

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.

Joseph W. Goss
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge