

FRANK OTEGUI

IBLA 80-383

Decided July 21, 1980

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring abandoned and void mining claims Gale and Gale #1 through #3. N MC 139492, 139493, 139494, and 139495.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment – Mining Claims: Abandonment – Mining Claims: Location – Mining Claims: Recordation

Under 43 U.S.C. § 1744 (1976) if the owner of a mining claim located on or before Oct. 21, 1976, does not file a copy of the recorded notice or certificate of location by Oct. 22, 1979, the claim must be deemed abandoned and void.

APPEARANCES: Frank Otegui, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Frank Otegui appeals from a decision of the Nevada State Office, Bureau of Land Management (BLM), declaring appellant's mining claims abandoned and void. 43 U.S.C. § 1744 (1976). The claims were located by appellant and Mrs. J. H. Wall on September 1, 1966. On January 25, 1967, appellant acquired full ownership by quitclaim deed. Appellant alleges in his statement of reasons that he inherited the claims and that he received erroneous information from the Salt Lake Office, as to filing requirements for inherited claims. Relying upon that erroneous information, he says, he made an insufficient submission to BLM. Copies of the required certificates of location and service fees were not received by BLM until February 4, 1980. Appellant states he was told to file the deeds showing proof of ownership and file evidence of annual assessment work. He does not state that he was told he need not file the location certificate. Appellant alleges that he was told

there would be no service fee because he had inherited the mining claim.

[1] Appellant apparently misunderstood that recording with BLM was necessary as well as recording with the County Recorder. From the record, it appears the location certificates and service fees were not timely filed with BLM. 43 U.S.C. § 1744 (1976) requires: "(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 * * *." In implementation thereof, regulation 43 CFR 3833.1-2 was promulgated, providing as follows:

[§] 3833.1-2 Manner of recordation – Federal lands.

(a) The owner of an unpatented mining claim, * * * located on or before October 21, 1976, on Federal lands, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law.

The claims were located before October 21, 1976; hence the requirements of 43 CFR 3833.1-2(a) and 3833.2-1 apply. Appellants had until October 22, 1979, to record with BLM the copies of location certificates, pay the service fees, and record a copy of the evidence of assessment work or notice of intention to hold.

43 CFR 3833.4(a) provides: "(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 * * * and it shall be void."

Under the statute and regulations, the claims must be deemed abandoned and void. Topaz Beryllium Company v. United States, 479 F. Supp. 309 (D. Utah 1979); Jean C. Lepper, 48 IBLA 103 (1980); Nuclear Power and Energy Co., 41 IBLA 142 (1979). Appellant acquired his rights as an original locator and by quitclaim deed. ^{1/} Any erroneous information he may have received as to the requirements for one who inherits a mining claim is not relevant. He is presumed to have

^{1/} If appellant had inherited the claims, and if copies of location notices had been properly filed with BLM previously, then under 43 CFR 3833.1-2(d) and 3833.3(b) he would not be required to make duplicate recordings of the location notice or pay additional service fees in connection therewith.

knowledge of the statute and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); 44 U.S.C. §§ 1507, 1510 (1976). The statute does not permit any leeway for the Department where the filing requirements have not been met.

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.

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

