

CLIFFORD J. KELCH

IBLA 80-385

Decided September 24, 1980

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring mining claim abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally--Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim.

APPEARANCES: Clifford J. Kelch, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Clifford J. Kelch appeals from a letter decision of the Oregon State Office, Bureau of Land Management (BLM), dated January 15, 1980, declaring his mining claim abandoned and void because the service fee of \$5 which appellant submitted was insufficient for recording two claims. Appellant's mining claims, Yellow Jacket No. 1 1/ and Lone

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1/ A notation in the case file states that Kelch informed BLM that the Yellow Jacket No. 1 is now the Lone Pine No. 1.

Pine No. 2 were both located prior to October 22, 1976. Kelch filed for the recordation of these claims with BLM on October 22, 1979, and submitted \$5 in service fees.

On January 15, 1980, BLM issued its decision in which it stated in pertinent part:

Your service fee for recording the above described mining claims with the Bureau of Land Management was insufficient to cover recordation of all claims received by this office.

Section 3833.1-2(d) requires a \$5.00 service fee for recordation of each mining claim or site filed under section 314 of the Federal Land Policy and Management Act of 1976 (43 USC 1744) and section 3833 of Title 43 of the Code of Federal Regulations. Your payment in the amount of \$5.00 was insufficient to cover recordation of 2 claims filed.

Since your claims were located prior to October 22, 1976, and the 3-year period for recording claims with BLM has expired, there is no opportunity to submit any additional fee payment. For this reason, you must decide which claim is to be deemed abandoned and void for failure to provide adequate service fees.

Please notify this office by written statement within 10 days from the date of receipt of this letter as to your selection. If you fail to notify this office of your selection within the time allowed, all claim filings will be returned to you, and all claims will be deemed to be abandoned and void.

Appellant informed BLM that he wished to keep the Lone Pine No. 2 claim.

In his statement of reasons, appellant comments that BLM is "coming down" on the miners with the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the rules and regulations issued pursuant to that statute. Appellant says BLM is making a farce of the Constitution of the United States and of his civil rights. He explains that the small miners cannot afford an attorney to decode or decipher the regulations. Appellant also requests a hearing.

[1, 2] The applicable regulation, 43 CFR 3833.1-2, requires that, for mining claims located on or before October 21, 1976, a copy of the official record of the notice or certificate of location must be recorded with the proper office of BLM within 3 years, on or before October 22, 1979. Pursuant to the provisions of 43 CFR 3833.1-2(d),

each claim or site filed with BLM shall be accompanied by a \$5 service fee. This is a mandatory requirement. Without payment of the filing fee, there is no recordation. Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979) (appeal pending); Wilbur Martin, 47 IBLA 370 (1980); W. Verne Kight, 47 IBLA 351 (1980); Roy Tremayne, 47 IBLA 289 (1980); Phyllis Wood, 46 IBLA 309 (1980); Joe B. Cashman, 43 IBLA 239 (1979). Under 43 CFR 3833.4(a), the failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time prescribed must be deemed conclusively to constitute an abandonment of the mining claim.

The Federal Land Policy and Management Act of 1976 (FLPMA), is codified at 43 U.S.C. § 1701 (1976). Section 1733 of the Act provides that the Secretary shall issue regulations necessary to implement the provisions of this Act with respect to the management, use, and protection of the public lands, including the property located thereon.

Congress directed that the broad outlines of FLPMA, including 43 U.S.C. § 1744 (1976), be "filled in" by regulations to be promulgated by the Secretary. See 43 U.S.C. §§ 1701(a)(5), 1733(a), and 1740 (1976). Section 310 of FLPMA, 43 U.S.C. § 1740, states, "the Secretary, with respect to the public lands shall promulgate rules and regulations to carry out the purposes of this Act and other laws applicable to the public lands \* \* \*." (Emphasis added.) The filing fee regulation was expressly found to be reasonable in Topaz Beryllium Co. v. United States, supra; L. Leon Jennings, 47 IBLA 47, 51 (1980).

Appellant seems to imply that the regulations discriminate against small miners because they cannot afford attorneys to "decode" them. The regulation, 43 CFR 3833.1-2(d), clearly states: "(d) Each claim or site filed shall be accompanied by a one time \$5 service fee which is not returnable. A notice or certificate of location shall not be accepted if it is not accompanied by the service fee and shall be returned to the owner." Furthermore, 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); Roy Tremayne, supra at 292.

A hearing will be granted only when specific facts are in dispute. See The Heirs of M. K. Harris, 42 IBLA 44 (1979). Since there is no question of fact to be resolved in this case, the request for a hearing is denied.

Therefore, we find that BLM properly declared one of the two mining claims abandoned and void for failure to pay the service fee. Since appellant chose to apply the \$5 fee which he did pay for the Lone Pine No. 2 claim, that claim is properly recorded, assuming all else is in compliance with the regulations. The Yellow Jacket No. 1, now the Lone Pine No. 1, is declared abandoned and void.

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.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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James L. Burski  
Administrative Judge

