

ROBERT W. MILLER
MARJORIE EIPPER MILLER

IBLA 80-461

Decided December 29, 1980

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

Affirmed.

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

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a claimant files for recordation on Oct. 19, 1979, but the filing fee is not paid to BLM until after the deadline for filing, Oct. 22, 1979, the mining claim must be deemed abandoned and void.

2. Notice: Generally -- Regulations: Generally

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

3. Estoppel -- Federal Employees and Officers: Authority to Bind Government

Reliance on erroneous information provided by Federal employees cannot create any rights not authorized by law.

APPEARANCES: Ralph E. Miller, Esq., Brooks, Miller & Brooks, Montrose, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Robert W. Miller and Marjorie Eipper Miller appeal from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated February 1, 1980, declaring the Robin Red Breast, Governor, Senator, President, and Boulder mining claims abandoned and void.

Pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), appellants submitted for recordation certificates of location, a deed, and a statement of expenditures on work or improvements on October 19, 1979, but did not submit the filing fee required by 43 CFR 3833.1-2(d). ^{1/}

In its decision BLM stated that its office was returning the documents pertaining to the unpatented mining claim locations filed for recordation. BLM held that in accordance with the FLPMA, 43 U.S.C. § 1744 (1976), and the regulations under 43 CFR 3833, appellants' documents could not be accepted for recordation because a \$5 nonreturnable service fee for each claim or site filed was not included (see 43 CFR 3833.1-2(d)). BLM stated that under 43 CFR 3833.4(a) failure to file such instruments as required by 43 CFR 3833.1-2(a), (b), (c), and (d) and 3833.2-1 within the time periods prescribed shall be deemed conclusively to constitute an abandonment of the mining claim and it shall be void.

Appellants stated their reason for appealing as follows:

Although a payment of Five Dollars (\$5.00) nonreturnable service fee per claims filed was not submitted with the other documents, Mr. and Mrs. Miller were ready, willing and able to pay such fee at all times if they had known it was required. The only reason for not paying such fee is that they did not know it was required.

A check for \$30 as payment of the service fee for the six claims was submitted with the notice of appeal.

Appellants filed a supplemental statement of reasons in which they question the fairness and equity of a regulatory scheme which does

^{1/} 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 require that the claimant file with BLM a copy of the official record of the notice or certificate of location of the claim. There is no evidence to indicate that the certificates, except the Boulder Lode, had been filed, in fact, in the appropriate county office.

not provide adequate notice of each of the requirements. Appellants contend that they first learned of the requirements for recordation in a notice found in a local newspaper, which notice contained no mention of a service fee; that prior to October 22, 1979, they visited the District Office in Montrose, Colorado, to inquire what was necessary to comply with FLPMA; that they were not informed of the service fee requirement during this inquiry; that appellants made every reasonable effort to determine the requirements of FLPMA; that where the agency charged with the administration of a statute and regulation fails to properly respond and provide complete information, it is patently unjust for the governmental body responsible for the error to claim an abandonment and take appellants' property that appellants have worked these claims for 40 years; that they have substantially complied with the purpose of the Act and the regulations.

[1] The applicable regulation, 43 CFR 3833.1-2(d), specifically provides: "Each claim or site filed shall be accompanied by a \$5 service fee which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner." 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 filed Civ. No. 79-2255 (10th Cir. Nov. 21, 1979); R. L. Durrant, 47 IBLA 208 (1980); L. Leon Jennings, 47 IBLA 47 (1980); Phyllis Wood, 46 IBLA 309 (1980); Joe B. Cashman, 43 IBLA 239 (1979).

The recordation date in the case before us is the date the service fee was tendered, March 4, 1980, which was after the deadline for filing, October 22, 1979, had passed. 43 CFR 3833.4(a) states: "The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site and it shall be void." As a result of appellants' failure to submit the appropriate filing fees, in a timely fashion, BLM properly declared their mining claims abandoned and void pursuant to the regulation cited above. R. L. Durrant, *supra*; L. Leon Jennings, *supra*; Phyllis Wood, *supra*.

[2] Appellants contend that they would have paid the fees if they had known such was required. The Board has held that all persons dealing with the Government are presumed to have knowledge of duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp., v. Merrill, 332 U.S. 380 (1947); Phyllis Wood; *supra*; Bernard P. Gencorelli, 43 IBLA 7 (1979); Juan Munoz, 39 IBLA 72 (1979).

[3] Appellants' argument that they inquired of BLM as to the requirements of FLPMA and were given incomplete information is without merit. Reliance upon information or opinion of any officer, agent, or

employee cannot operate to vest any right not authorized by law. 43 CFR 1810.3; Timm Anderson, 47 IBLA 348 (1980); Nevada Pacific Co., Inc., 46 IBLA 208 (1980). The courts are particularly reluctant to apply estoppel against the Government in public land matters. (See INS v. Hibi, 414 U.S. 5, 8 (1973)).

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

