

LLOYD M. BUTTGEREIT

IBLA 80-742

Decided February 19, 1981

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring the Kennedy Fraction placer mining claim abandoned and void. AA-31207.

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 on or before Oct. 22, 1979, an affidavit of annual assessment work or notice of intention to hold, the 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.

APPEARANCES: Lloyd M. Buttgereit, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Lloyd M. Buttgereit has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), which declared the Kennedy Fraction placer mining claim abandoned and void. The decision

was based on appellant's failure to file an affidavit of annual assessment work or notice of intention to hold the claim by October 22, 1979. The claim had been located February 1, 1974, and recorded with BLM on October 5, 1979. These filings are required by section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR 3833.2-1(a) and 43 CFR 3833.4(a).

Appellant states with his appeal, "I am enclosing a copy of the affidavit of annual labor I presented to the Bureau of Land Management when I filed my claim on October 5, 1979."

The copy of the affidavit of annual labor is date stamped and notarized October 4, 1979, as filed in the Palmer Recording District of Alaska. It appears that appellant had timely filed this affidavit with the appropriate recording office of the State of Alaska and could have had this document in his possession when he recorded his location with the BLM on October 5. However, there is no verification that he actually attempted to file this document with the BLM or any supporting evidence of record other than appellant's own statement.

[1] Accordingly, this claim must be declared abandoned and void in accordance with 43 CFR 3833.2-1(a), which specifically provides:

§ 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 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."

The requirements of the statute and regulations are specific. The Board has no authority to change provisions of the law promulgated by Congress. James Brady, 51 IBLA 361 (1980); Pearl Kelly, 51 IBLA 185 (1980); Kenneth K. Parker, 48 IBLA 129 (1980).

[2] If, in fact, appellant had his required affidavit of annual assessment work available for filing when he recorded his claim October 5, it is indeed unfortunate the document was not filed on that same date. However, all persons dealing with the Government are presumed to have knowledge of duly promulgated regulations. Robert W. Hansen, 46 IBLA 93 (1980); Dermot S. McGlinchey, 39 IBLA 211 (1978). It was his responsibility to apprise himself of the pertinent legal requirements and to make sure these requirements were 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.

Anne Poindexter Lewis

Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

