

JOHN PLUTT, JR., ET AL.

IBLA 80-884

Decided March 25, 1981

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void. M MC 47196 through M MC 47198.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Claim -- Mining Claims: Abandonment

Where the owners of unpatented mining claims located prior to Oct. 21, 1976, file notices of recordation for such claims with the Bureau of Land Management on Oct. 22, 1979, but fail to file evidence of annual assessment work until Dec. 28, 1979, pursuant to sec. 314(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a), the failure to file timely the evidence of annual assessment work constitutes conclusive abandonment of the claims and renders the claims void.

2. Notice: Generally -- Regulations: Generally -- Statutes

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

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

Reliance on erroneous information provided by a Bureau of Land Management

employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements.

APPEARANCES: John Plutt, Jr., pro se, and on behalf of the other mining claimants.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

John Plutt, Jr., Orlando Mast, George T. Mast, Connie Plutt, Katherine Plutt, Martin Plutt, and John Plutt, Sr., have appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated July 28, 1980, declaring the Birch Creek Lime Stone Quarry, the Birch Creek Lime Annex Association and the Birch Creek Lime Annex No. 2 Association mining claims, M MC 47196 through M MC 47198, abandoned and void for failure to file timely evidence of annual assessment work or a notice of intention to hold the mining claims, as required by section 314 of the Federal Land Policy Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the applicable regulation, 43 CFR 3833.2-1(a). All three claims were located prior to October 21, 1976, 1/ and recorded with BLM on October 22, 1979. Evidence of annual assessment work was not received by BLM until December 28, 1979. Accordingly, BLM held that appellants had failed to file the necessary documents on or before October 22, 1979, as required by 43 CFR 3833.2-1(a), 2/ and, as such, their claims were deemed to be abandoned and void pursuant to 43 CFR 3833.4. 3/

In their statement of reasons for appeal and subsequently filed documents appellants indicate that a BLM employee advised John Plutt, Jr., on October 19, 1979, that he did not need to file evidence of annual assessment work "until December 30th" and that the employee gave Mr. Plutt a BLM pamphlet, dated January 1977, entitled "Questions & Answers, Recording of Mining Claims," distributed by BLM's Office of

1/ The Birch Creek Lime Stone Quarry was located in 1898, the Birch Creek Lime Annex Association in 1969, and the Birch Creek Lime Annex No. 2 Association in 1970.

2/ 43 CFR 3833.2-1(a), provides that:

"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, which ever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim."

3/ 43 CFR 3833.4(a) provides: "The failure to file an instrument required by § * * * 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."

Public Affairs in Billings, Montana. ^{4/} The pamphlet contained a series of questions and answers. In response to the question, "How often do mining claim owners file this assessment work or notice of intent," the pamphlet stated: "Claimants whose claims or sites were located on or before October 21, 1976, must file evidence of assessment work or a notice of intent to hold the claim by December 31 of the calendar year following the date of recordation with BLM." Appellants argue that they acted in reliance on the foregoing instructions from BLM, having completed their assessment work by September 1, 1979.

The record indicates that appellant, John Plutt, Jr., visited a BLM geologist in the BLM Office, Dillon, Montana, on October 19, 1979. Appellant Plutt asserts that at that time he was given the advice and received the pamphlet. The record contains a copy of a letter signed by the BLM employee and addressed to Plutt. It states: "I do remember helping you, but unfortunately I do not remember the full details of our conversation. I do know that I provided you with the various BLM handouts dealing with recordation of mining claims and assessment work."

Appellants do not dispute the fact that their filing was not timely. Rather, their argument presents a question of estoppel.

On a number of occasions the Board has recognized the elements of estoppel set forth by the Ninth Circuit in United States v. Georgia-Pacific Company, 421 F.2d 92 (9th Cir. 1970), as the initial test for determining whether invocation of estoppel is appropriate. ^{5/} State of Alaska, 46 IBLA 12 (1980); Edward L. Ellis, 42 IBLA 66 (1979); United States v. Larsen, 36 IBLA 130 (1978). After reviewing the record, we are forced to conclude that estoppel does not lie in this case.

[1] Appellant Plutt consulted with a BLM employee knowledgeable in the minerals field. While the employee could not specifically remember, Plutt asserts that this employee informed him that evidence of assessment work for the claims in question did not need to be filed until December 30, 1979. The employee also gave Plutt various BLM handouts concerning the recordation of mining claims. One of the handouts contained misleading information. It indicated that evidence of assessment work was required to be filed "by December 31 of the calendar year following the date of recordation with BLM." This information, however, was in conflict with what he asserts the employee told him. The pamphlet language indicates that since appellants' claims were

^{4/} Subsequent to filing the appeal, John Plutt, Jr., submitted his affidavit and attached the pamphlet which he stated was given to him by the BLM employee.

^{5/} The elements of estoppel, as identified in Georgia-Pacific, are:

"(1) The party to be estopped must know the facts; (2) he must intend that this conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts; (4) he must rely on the former's conduct to his injury."

recorded in 1979, evidence of assessment work was not required to be filed until December 30, 1980 ("the calendar year following the date of recordation with BLM"). This inherent conflict in the information received from BLM, in both instances erroneous, should have put appellants on notice that further inquiry was necessary to resolve this conflict.

[2] The applicable regulation, 43 CFR 3833.2-1(a), states that the owner of an unpatented mining claim located on or before October 21, 1976, shall file evidence of annual assessment work 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 recording, "which ever date is sooner." (Emphasis added.) Reference to this regulation would have resolved the conflict. All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Edward W. Kramer, 51 IBLA 294 (1980).

[3] Appellants could not have reasonably relied on the pamphlet. They apparently relied on the statement attributed to the BLM employee. Even assuming the misrepresentation made by the employee did not conflict with that contained in the pamphlet, reliance on erroneous information provided by a BLM employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute or regulation, or create rights not authorized by law, or relieve the claimant of the consequences imposed by the statute for failure to comply with its requirements. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); Alice E. Deetz, 48 IBLA 59 (1980); Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (1978), aff'd, Northwest Citizens for Wilderness Mining Co., Inc. v. BLM, Civ. No. 78-46-M (D. Mont. June 19, 1979); Charles House, 33 IBLA 308 (1978); see Parker v. United States, 461 F.2d 806 (Ct. Cl. 1972); Atlantic Richfield Co. v. Hickel, 432 F.2d 587, 591 (10th Cir. 1970).

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. 6/

Bruce R. Harris
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

6/ The claims may be relocated subject to valid intervening rights of third parties or the United States, and based on the new location dates, the applicable instruments may be refiled within the time periods prescribed in the regulations.

ADMINISTRATIVE JUDGE BURSKI CONCURRING:

Hard cases, Justice Holmes noted, make bad law. ^{1/} There is a corollary to this observation with which this Board has, unfortunately, become increasingly familiar: hard law makes for bad cases. The instant appeal is but one of a growing number of such cases in which a mining claimant, through oversight, inadvertence, bad advice (at times provided by the Government) or simple confusion has failed to scrupulously observe the requirements of the recordation provisions of section 314 of FLPMA. The inevitable result is a finding that the claim or claims must conclusively be deemed to have been abandoned.

As this Board has had occasion to point out, most recently in Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981), the consequences which flow from failure to file the various instruments required, namely the conclusive presumption of abandonment, are imposed by the statute, itself, and would operate even without the regulations. It is particularly unfortunate, then, that the provisions of the Act are sufficiently obscure to make it a veritable mine field for the unwary claimant.

Though it seems clear that the obvious purpose of the Act's provisions relating to the annual filing of assessment work or notices of intention to hold was to require a claimant to show a continuing interest in the claim, the wording of the statute necessitates that, for certain post-FLPMA claims, a claimant must file both the location notice and a notice of intention to hold in the same year. If a claim is located on December 29, 1978, a claimant has 90 days to record the claim with BLM. Thus, in virtually all cases, the notice of location would be recorded in early 1979. Section 314(a), however, requires the filing of proof of assessment work or a notice of intention to hold prior to December 31, of the calendar year following the calendar year of location, not recordation. A claimant in the above situation would therefore be required to file proof of assessment work or a notice of intention to hold on or prior to December 30, 1979. This requirement becomes especially irksome when one remembers that the first assessment year for such a claim would begin on September 1, 1979. See 30 U.S.C. § 28 (1976). Numerous individuals have seen their claims invalidated because of this provision. See, e.g., Dale E. Henkins, 52 IBLA 9 (1981); Anna Schalkewicz, 48 IBLA 134 (1980); Ronald Foraker, 48 IBLA 132 (1980); Paul S. Coupey, 35 IBLA 112 (1978).

Even if a claimant is aware of the fact that he or she must file an annual notice of intention to hold or proof of assessment work with BLM, there is yet another requirement which has often proven to be a stumbling block for claimants. The statute expressly requires that any proof of assessment work or notice of intention to hold which is filed with BLM must be a copy of an instrument filed in the local office of the State where the claim was recorded. Thus, if a claimant merely

^{1/} Northern Securities Co. v. United States, 193 U.S. 197, 400 (1904).

files a notice of intention to hold with BLM and does not file this document in the local offices of the State, the statute requires that the claim be conclusively presumed to have been abandoned. See Pacific Coast Mining, Inc., 53 IBLA 200 (1981); B. B. Wadleigh, 44 IBLA 11 (1979).

In one notable, if not notorious, case, Robert W. Hansen, 46 IBLA 93 (1980), the mineral claimant performed the assessment work and filed proof in the local State offices, but filed with BLM a letter in which he noticed his intention to hold his claims. This letter, however, was not filed in the local State offices. Despite his clear efforts to comply with the recordation requirements, the Board was forced to hold his claims abandoned because the proof of assessment work, which he filed in the State offices, was not filed with BLM, while the notice of intention to hold, which he filed with BLM, was not filed in the local State offices.

Finally, for some totally inexplicable reason, the statute clearly requires the annual proof to be filed prior to December 31, rather than on or before December 31 of each year. It is inevitable that numerous claimants will file on December 31, believing, logically enough, that such a filing would be timely. Indeed, but for the explicit statutory language, there is no conceivable reason why such filings should not be considered timely.

I think that it is safe to say that dissatisfaction with certain results necessitated by the statutory language is universally shared on this Board. But regardless of our personal predilections and frustrations, we are obligated to enforce and apply the law as it exists. I agree with Judge Harris that, under the express provisions of the law, we must affirm the decision below.

Appellant, herein, does not really argue that he complied with the statutory mandates, rather he argues that he was misled by printed and oral advice which he received from BLM. Judge Harris correctly points out that the printed advice did not agree with the oral statements made to appellant and that this should have put appellant on notice to investigate further. I think there is some merit in this view. My concurrence, however, is premised primarily on slightly different grounds.

An essential element of estoppel is the requirement that the party asserting the estoppel must be ignorant of the true facts. See generally United States v. Georgia Pacific, 421 F.2d 92 (9th Cir. 1970). I do not doubt for a moment that appellant was actually ignorant of the requirement that he file his proof of assessment work or notice of intention to hold on or prior to October 22, 1979. Subjective ignorance, however, is insufficient, by itself, to establish this element of the estoppel test. What appellant must show is not only that he was ignorant, but also that he had a right to be ignorant. See United States v. Georgia Pacific, supra at 98.

Everyone is deemed to have constructive knowledge of duly promulgated statutes, and regulations issued thereunder. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Whatever other infirmities may infest the recordation statute, it clearly requires that, for pre-FLPMA claims, the proof of assessment work or notice of intention to hold must be filed no later than October 22, 1979. See section 314(a), FLPMA, 43 U.S.C. 1744(a) (1976). The Departmental regulations also make this requirement explicit. See 43 CFR 3833.2-1(a). In light of these express provisions, for which appellant is charged with constructive knowledge, I do not think it possible for appellant to show the elements necessary to invoke estoppel. Thus, I must reluctantly agree with the majority's disposition of this appeal.

James L. Burski
Administrative Judge

