

EMERY CROWLEY ET AL.

IBLA 80-857

Decided April 27, 1981

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring mining claims abandoned and void. OR MC 20822 through OR MC 20830.

Affirmed.

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

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

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

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1 and 3833.4, where the owner of unpatented mining claims located prior to Oct. 21, 1976, fails to file with the proper Bureau of Land Management Office 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, and the claimant's mistaken belief that he had effectively complied with the regulations cannot excuse noncompliance.

3. Notice: Generally--Regulations: Generally--Statutes

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

APPEARANCES: Donald D. Yokom, Esq., Pendleton, Oregon, for appellants.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is from a decision dated July 10, 1980, by the Oregon State Office, Bureau of Land Management (BLM), declaring the Lost Buck, Lost Buck North Extension, and Lost Buck Nos. 1 through 7 (OR MC 20822 through OR MC 20830) mining claims abandoned and void for failure to file either an affidavit of assessment work or a notice of intention to hold the claims by October 22, 1979.

The claims were located on October 8, 1976, and filed with BLM on September 19, 1979.

[1] Under section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and Departmental regulation 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before October 21, 1976, must 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 previous assessment year or a notice of intention to hold the mining claim. The applicable regulation, 43 CFR 3833.4, requires that where the owner of an unpatented mining claim located prior to October 21, 1976, fails to file timely an affidavit of annual assessment work or notice of intention to hold the claim, his claim is deemed conclusively to be abandoned and to be null and void. Lynn Keith, 53 IBLA 192, I.D. (1981); James V. Brady, 51 IBLA 361 (1980).

[2, 3] On appeal appellant states that he believed the filing of the location notices, legal descriptions, survey maps, and recording fees was equivalent to filing a notice of intention to hold the claims. Appellant states that in making his filings he relied on BLM publications providing filing information to mining claimants. While those publications specifically direct claimants to file the documents required by the regulations, appellant contends that his filing of the location notices, descriptions, maps, and fees was sufficient to comply with 43 CFR 3833.2-1(a), since the publications do not specifically state that evidence of assessment work had to be filed with BLM by October 21, 1979, but state that such filings were required by December 30 of the calendar year following the year of recording the claim with BLM.

Under FLPMA and the regulations the requirements for filing are fully expressed and 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). Appellant's reliance on the BLM publications cannot excuse noncompliance with mandatory filing requirements. See John Plutt, Jr., 53 IBLA 313, 316 (1981), and the concurring opinion by Judge Burski at page 319.

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.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

