

MART I. GILMORE

IBLA 80-865

Decided June 3, 1981

Appeal from decision of the New Mexico State Office, Bureau of Land Management, declaring mining claim abandoned and void. NM MC 79006.

Affirmed.

1. 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 an unpatented mining claim 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.

2. Notice: Generally -- Regulations: Generally -- Statutes
All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Mart I. Gilmore, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from a decision dated July 21, 1980, by the New Mexico State Office, Bureau of Land Management (BLM), declaring appellant's Apache No. 1, a.k.a. Tract No. M-3, mining claim abandoned and void for failure to comply with filing requirements under 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), which provides:

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 claim was located in 1939 and recorded with BLM on October 16, 1979. The decision declared the claim abandoned and void because no affidavit of assessment work or notice of intent to hold was filed on or before October 22, 1979.

The file contains a notice of intention to hold the claim filed on November 26, 1979, by Roy S. Mimna, esq., on behalf of William and Gladys Notman, owners of a one-fourth interest in the claim. The notice lists two other persons besides Mart I. Gilmore as owners of the claim. On initially reviewing the case file, we noted that the parties other than Mart I. Gilmore had not been served with a copy of the BLM decision declaring the claim abandoned and void. We issued an order on March 12, 1981, returning the file to BLM so that these parties could be served with a copy of the decision and provided with an opportunity to file a notice of appeal. Since the appeal period has expired and the other parties have not appealed, the claim, as to their interest, is abandoned and void.

Appellant states on appeal that he was not aware of the filing requirements, and that he was hospitalized in October 1979, and could not comply with the requirements.

[1, 2] The notice of intention to hold the claim was received by BLM on November 26, 1979. 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. James V. Brady, 51 IBLA 361 (1980). The fact that appellant may not have been aware of the regulations cannot excuse noncompliance, since all persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). While we regret appellant's illness, we are constrained to point out that the recordation requirements are mandatory and cannot be waived. Thomas F. Byron, 52 IBLA 49 (1981).

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:

Bruce R. Harris
Administrative Judge

C. Randall Grant, Jr.
Acting Administrative Judge

