

TOM APPLGARTH

IBLA 81-963

Decided September 30, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 94407, CA MC 94408.

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

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

APPEARANCES: Mark D. Jordan, Esq., Santa Rosa, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Tom Applegarth has appealed the July 24, 1981, decision of the California State Office, Bureau of Land Management (BLM), which

declared the unpatented Dry Gulch and Klamath View placer mining claims, CA MC 94407 and CA MC 94408, abandoned and void because no recordation of the location notices or filing of a proof of labor was made with BLM on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The claims were located in 1940 and 1941 and duly recorded in Siskiyou County, California. They appear to be situated within the Klamath National Forest.

Appellant states that his father acquired the claims in 1946 and quitclaimed them to him in 1964. He avers that he has done the required mining on the claims. He also states that each claim has on it a structure described as a "simple cabin in the woods." He concedes that he did not comply with the requirements of FLPMA through inadvertence, because he was unaware of the procedural requirements of the Act. He expresses a willingness to deed title to both claims to the United States in return for a life estate in the cabin site on the Klamath View claim. He would not object to removal, by the Government, of the cabin on the Dry Gulch claim.

[1] Section 314, FLPMA, supra, requires the owner of an unpatented placer mining claim located prior to October 21, 1976, to file in the proper BLM office a copy of the official record of the notice of location of the mining claim and either an affidavit of assessment work performed on the unpatented mining claim or a notice of intention to hold the claim within the 3-year period following October 21, 1976, and either of the latter two prior to December 31 of each year thereafter. The section also provides that failure to file such instruments, i.e., notice of location and affidavit of assessment work or notice of intention to hold the claim, within the prescribed time periods, conclusively constitutes an abandonment of the mining claim by the owner. Corresponding Departmental regulations, 43 CFR 3833.1, 3833.2, and 3833.4, replicate the statutory requirements and state the same consequences. Additionally, the regulations specify that the California State Office, BLM, in Sacramento, is the proper office for recordation of mining claims located in California. 43 CFR 1821.2-1(d).

Inasmuch as no instruments relating to the unpatented Klamath View or Dry Gulch placer mining claims have ever been tendered to BLM for recordation, BLM correctly declared these claims to be abandoned and void. This Board has no authority to excuse a late filing of an instrument required by FLPMA, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] The fact that appellant may not have been aware of the recordation requirements of FLPMA, nor of the proper procedure for such recordation, while unfortunate, does not excuse him from compliance. Those who deal with the Government are presumed to have knowledge of the law and regulations duly promulgated pursuant thereto. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978); 44 U.S.C. §§ 1507, 1510 (1976). The responsibility for complying with the recordation requirements rested with appellant.

This Board has no authority to excuse lack of compliance. Lynn Keith, supra.

The proposal of appellant to convey title to these mining claims to the Government in return for a life estate in the cabin site on the Klamath View placer mining claim cannot be entertained. In the first place, appellant has no legal interest in these claims that can be transferred once the claims have been declared abandoned and void pursuant to FLPMA. In the second place, the statute providing for conveyances to occupants of unpatented mining claims for residential purposes, 30 U.S.C. § 701 (1976), expired June 30, 1971.

Appellant may wish to consult with BLM about the possibility of relocating these claims, and with the Supervisor of the Klamath National Forest about the possibility of maintaining the cabin on the site of the former Klamath View placer mining claims.

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.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

