

EDWARD KELLEY

IBLA 81-1101

Decided October 29, 1981

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims to be abandoned and void. N MC 99978 and N MC 99979.

Affirmed.

1. 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

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of unpatented mining claims located on or before Oct. 21, 1976, must file affidavit of assessment work or a notice of intention to hold the claims on or before Oct. 22, 1979, or the claims will be conclusively deemed to have been abandoned.

APPEARANCES: Keith Edwards, Esq., Las Vegas, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Edward Kelley appeals from the August 14, 1981, decision of the Nevada State Office, Bureau of Land Management (BLM), which declared the Kelley #1 and Kelley #2 lode mining claims, N MC 99978 and N MC 99979, abandoned and void because the annual evidence of assessment work or notice of intent to hold the claims had not been filed with BLM by October 22, 1979, or by December 30, 1980, as required by the regulation 43 CFR 3833.2.

Appellant states that the notices of location for the claims were sent to the BLM District Office in Las Vegas, Nevada, in August 1979, with a request that if additional information was required to correct any deficiency, to so advise him. The District Office personnel advised

only that the notices of location had to be filed with the BLM State Office in Reno, and no mention was made of the need to file evidence of assessment work. The claims were located in May 1962.

[1] Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), requires the owner of unpatented mining claims located on or before October 21, 1976, to file a copy of the official record of the notice of location of the mining claim and evidence of assessment work with the proper office of BLM within 3 years after October 21, 1976, and further provides that failure to file any instrument thus required within the prescribed time period shall be deemed conclusively to constitute an abandonment of the mining claim. The regulations in 43 CFR 3833.1, 3833.2, and 3833.4 replicate the statutory requirements and consequences. This Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

It is unfortunate that appellant was not fully advised of the recordation requirements of FLPMA. However, every person who deals with the Government is presumed to have knowledge of relevant statutes and duly promulgated regulations thereunder. 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). Erroneous or incomplete information provided by BLM employees cannot create any rights not sanctioned by law. 43 CFR 1810.3(c).

Appellant may wish to consult with BLM about the possibility of relocating these 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

Edward W. Stuebing
Administrative Judge

