

HAROLD E. WOODS

IBLA 82-134

Decided February 16, 1982

Appeal from a decision of the Fairbanks District Office of the Bureau of Land Management declaring mining claims abandoned and void. F-32397 and F-32398.

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. Estoppel--Laches--Notice: Generally--Regulations: Generally--Statutes

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

APPEARANCES: Gerard R. LaParle, Esq., Fairbanks, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Harold E. Woods appeals the October 27, 1981, decision of the Fairbanks District Office of the Bureau of Land Management (BLM) that declared his "Marton" and "Squirt" mining claims, F-32397 and F-32398, abandoned and void for noncompliance with the recordation requirements of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations. Both claims were located in September 1977.

[1] Woods admits that he failed to file the certificates of location for his claims with BLM within the 90-day time limitation established by section 314(b) of FLPMA, which failure was the basis for BLM's decision. ^{1/} However, Woods contends the facts of his case give rise to an estoppel of the Department of the Interior which overcomes the section 314(c) conclusive presumption of the claims' abandonment, that attaches upon the violation of section 314(b).

After his location of the claims, on September 1 and 9, 1977, Woods filed copies of the location notices with BLM on December 16, 1977. He complains that at that time BLM failed to indicate to him the tardiness of his filing, even though "[a] cursory examination of the location notice would have revealed that more than 90 days had passed." On December 1, 1978, President Jimmy Carter issued proclamation 4627, which "set apart and reserved as the Yukon Flats National Monument" certain lands in Alaska, including the area embracing the two mining claims here in question. ^{2/} That proclamation caused the affected land to be "appropriated and withdrawn from entry, location, selection, sale or other disposition under the public land laws," although it preserved valid existing rights. Woods was subsequently notified by BLM that he would annually have to obtain a special use permit from the Fish and Wildlife Service (FWS) in order to mine his claims, which he obtained for 1979 and 1980. For those years, Woods filed affidavits of annual labor performed on his claims, which indicated a total value of \$2,700 for the labor performed.

On December 2, 1980, the Alaska National Interest Lands Conservation Act, P.L. 96-487, § 403, 16 U.S.C. § 460mm-2 (1976), established the White

^{1/} Departmental regulation 43 CFR 3833.1-2(b) reiterates the requirement of filing in the proper BLM office a copy of the official record of the notice or certificate of location within 90 days of the claim's location. The failure to so file conclusively constitutes an abandonment of the claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c), and voids the claim. 43 CFR 3833.4(a).

^{2/} 43 FR 57119, 57128, 57129 (Dec. 5, 1978). The Marton claim, F-32397, is situated in T. 7 N., R. 3 N., and the Squirt, F-32398, in T. 6 N., R. 4 E., Fairbanks meridian.

Mountains National Recreation Area, containing approximately 1 million acres of public lands, including the sites of the two mining claims. The lands within that recreation area were withdrawn, subject to valid existing rights, from, inter alia, "location, entry, and patent under the United States mining laws." P.L. 96-487, § 1312(b), 16 U.S.C. § 460mm-4(b) (1976). In anticipation of the 1981 mining year, Woods contacted FWS to inquire about a special use permit, and was informed that such special use permit was no longer required. Woods then continued to work the claims, and in October 1981 filed with BLM affidavits of annual labor. The BLM decision then issued, noting that the mining claim sites were included in the area previously withdrawn.

Woods correctly asserts that because the land is no longer open to mining location, he cannot overcome the initial filing defect by relocating his claims, and is therefore without remedy, unless the Government is estopped from voiding his claims. He argues that for more than 4 years BLM affirmatively represented, through its conduct, that the claims were valid, and that the elements of estoppel indicated in United States v. Georgia-Pacific Co., 421 F.2d 92 (9th Cir. 1970), are present in the facts of his case. He asserts:

[T]he Government clearly had the information available to it which, if known by Woods, would have caused him to protect his rights, rather than expend a goodly sum of money under the assumption that his claims were valid. Clearly, given the affirmative activity by the Bureau of Land Management and the United States Fish and Wildlife Service, it was both natural and probable that Woods would rely and act upon it to his detriment.

Woods further asserts that the Georgia-Pacific opinion was not particularly concerned about whether or not the Government or its agents had intended that the other party act in reliance on the Government's actions or inactions. Rather, he argues, the court focused upon the fact that "Georgia-Pacific had a reasonable right to act in reliance thereon." Georgia-Pacific, supra at 98. Finally, Woods calls to our attention Brandt v. Hickel, 427 F.2d 53 (9th Cir. 1970), wherein the court applied equitable estoppel against the United States because of certain action taken by BLM. Woods quotes certain language from that opinion that he apparently considers to be controlling in this case: "Some forms of erroneous advice are so closely connected to the basic fairness of the administrative decision making process that the Government may be estopped from disavowing the misstatement." Id. at 56.

[2] This Board has had several occasions to address issues of estoppel, and we have consistently noted that estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. James N. Tibbals, 58 IBLA 42, 44 (1981); Coronado Oil Co., 52 IBLA 308 (1981). In John Murphy, 58 IBLA 75 (1981), the appellants had based their understanding of the FLPMA recordation requirements on published BLM materials containing erroneous information. The Board said:

One of the essential elements of an estoppel situation is that the party asserting estoppel must be ignorant of the material facts. In this case, the facts about which appellants claimed they were misled were the applicable statutory and regulatory rules of recordation. But it is an established rule of law that "[a]ll persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance v. Merrill, 332 U.S. 380 (1947); Edward W. Kramer, 51 IBLA 294 (1980)." John Plutt, Jr., [53 IBLA 313, 316 1981]. Thus, this presumption precludes appellants' argument that estoppel lies, because they cannot claim ignorance of the true facts.

58 IBLA at 80-81. The same must be said of Woods' claims.

Moreover, aside from the established presumption that Woods had knowledge of the relevant law, he did not have, to use the terms of his argument, a "reasonable right to act in reliance" on BLM's recording of labor affidavits or FWS's issuance of special use permits. Reliance thereon, in order to be reasonable, would have to be grounded on the objective supposition that by their actions BLM and FWS were affirming the claims' validity. That is not a reasonable inference to draw from the actions of those agencies. They continued to process Woods' requests, but the objective viewer would not think that they had thereby assumed or preempted Woods' responsibility for his claims, or that they had misrepresented the status of the claims. In fact, FWS expressly indicated that its actions were not to be understood as a comment on the claims themselves. The special use permit issued June 26, 1979 (Woods' Exh. E), plainly states under "Special Conditions": "The issuance of this permit does not by itself render valid any claim which is otherwise invalid." We regret that BLM did not immediately notice that the location notices were untimely, but that unfortunate omission is no ground for estopping the Government where the rights claimed by appellant derive from a statute whose requirements were not met. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). "[T]he authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties. 43 CFR 1810.3(a) * * *." James N. Tibbals, supra at 45. Therefore, we find appellant's claim of estoppel to lack legal merit, 3/ and we hold that BLM properly declared these mining claims abandoned and void.

3/ Woods also raised claims against the constitutionality of FLPMA's recordation provisions as applied, but we think the Federal courts have already established the validity of FLPMA, including section 314, and we are powerless, as well as unwilling, to disagree. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981), cert. denied, 50 U.S.L.W. 3369 (Nov. 10, 1981).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

61 IBLA 363

