

GEORGE D. HOOKER ET AL.

IBLA 80-921

Decided August 12, 1982

Appeal from decision of Utah State Office, Bureau of Land Management, declaring lode mining claims abandoned and void.

Affirmed.

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

Pursuant to 43 CFR 3833.1-1 and 36 CFR 9.5(a), an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 (Oct. 20, 1976)), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and shall be void.

APPEARANCES: John F. Sachs, Esq., San Luis Obispo, California, for appellants.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

George D. Hooker, Donald F. Crain, and L. W. Benson have appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated July 29, 1980, declaring the Circle C and Solitude Fraction lode mining claims abandoned and void for failure to record the claims timely pursuant to section 8 of the Act of September 28, 1976, 16 U.S.C. § 1907 (1976), and its implementing regulations, 36 CFR 9.5(a) and 43 CFR 3833.1-1.

Appellant's mining claims were located in October 1954. The lands embraced by the claims were included in the Capitol Reef National Park, pursuant to the Act of December 8, 1971, 16 U.S.C. § 273 (1976). The lands were originally designated a national monument by Presidential Proclamation No. 3888, dated January 20, 1969.

[1] Sections 43 CFR 3833.1-1 and 36 CFR 9.5(a) of the regulations provide that any unpatented mining claim located within any unit of the national park system in existence on September 28, 1976, which was not recorded on or before September 28, 1977, in accordance with the Federal Register notice of October 20, 1976 (41 FR 46357) is, pursuant to section 8 of the Act of September 28, 1976, supra, conclusively presumed to be abandoned and shall be void.

In their statement of reasons for appeal, appellants contend that the regulation cited by BLM in its July 1980 decision, 43 CFR 3833.1-1, does not apply either because their claims preceded promulgation of the regulation or because they have never been notified of the recordation requirement. In the alternative, appellants argue that a letter to appellant Crain from the Superintendent, Capitol Reef National Monument, National Park Service (NPS), dated November 17, 1969, was interpreted to prohibit them from recording their claims.

The recordation requirement imposed by section 8 of the Act of September 28, 1976, supra, applies by its terms to "[a]ll mining claims under the Mining Law of 1872 \* \* \* which lie within the boundaries of units of the National Park System," including claims located prior to passage of the Act. Moreover, all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

Finally, we have reviewed the NPS letter submitted by appellants. Nothing in the letter suggests that appellants were prohibited from recording under the statute. The letter states that mining claims filed after the date of designation of the land as a national monument are "invalid," whereas holders of claims filed prior to that date must obtain permission for access and must also have proof of validity. In any case, the letter could not waive the requirement imposed by the statute.

When appellants failed to file for recordation with the Superintendent of the park on or before September 28, 1977, their claims were automatically terminated as a matter of law and were properly held to be abandoned and void. Abram H. Kreider, 57 IBLA 68 (1981).

We are constrained to point out that the two claims involved herein, together with 10 other claims, were the subject of a mineral validity contest, U 10748. The complaint in that contest issued on December 13, 1976. An answer was duly filed on January 3, 1977. Unfortunately for appellants, they did not then submit a copy of the location notices, doubtless assuming that the existence of their claims was a matter known to NPS. The matter was scheduled for a hearing and a 2-day hearing was held before Administrative Law Judge Michael D. Morehouse on January 24 and September 6, 1978. Judge Morehouse subsequently decided the matter adversely to the claimants and they timely pursued an appeal to this Board. On May 27, 1980, this Board issued a decision styled United States v. Hooker, 48 IBLA 22 (1980), which in effect, reversed Judge Morehouse's finding of invalidity as to the two claims involved herein.

It was only after this entire process had run its course, with considerable expense both to the claimant as well as the Government, that NPS raised the issue of failing to record under the Mining in the Parks Act. Since this was a matter of record with them, the delay in raising this issue can only be deemed inexcusable. Cf. United States v. Gassaway, 43 IBLA 382, 388-89 (1979). However, despite the failure of NPS to timely inform the parties to the appeal of this deficiency, we have no authority to waive the statutory presumption of invalidity which arises from a failure to timely record the claim. See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (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.

James L. Burski  
Administrative Judge

We concur:

Douglas L. Henriques  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

