

JOHN ROBERT MAYTAG

IBLA 85-918

Decided January 6, 1987

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring lode mining claim abandoned and void. C MC-5451.

Affirmed.

1. Estoppel -- Federal Land Policy and Management Act of 1976:  
Recordation of Affidavit of Assessment Work or Notice of Intention  
to Hold Mining Claim -- Mining Claims: Recordation

BLM is not estopped from declaring an unpatented mining claim located prior to Oct. 21, 1976, abandoned and void for failure to file a copy of an affidavit of assessment work or a notice of intention to hold the claim with BLM on or before Oct. 22, 1979, because BLM has delayed issuing such a declaration for a number of years.

APPEARANCES: Richard J. Bernick, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

John Robert Maytag has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated August 14, 1985, declaring the Black Cloud lode mining claim, C MC-5451, abandoned and void for failure to file either an affidavit of assessment work or a notice of intention to hold the claim "on or before October 22, 1979," pursuant to section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982).

Appellant's mining claim was originally located on August 18, 1965, in secs. 3, 9, and 10, T. 13 S., R. 70 W., sixth principal meridian, Teller County, Colorado, by appellant's predecessor in interest. A copy of the location notice was filed for recordation with BLM on May 23, 1977, pursuant to section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1982). The record contains affidavits of annual labor filed by appellant for the assessment years 1980 through 1985. In its August 1985 decision, BLM declared appellant's mining claim abandoned and void because a "[r]eview of our records for this claim indicates that no assessment affidavit or notice of intent to hold was timely filed with [BLM] on or before October 22, 1979."

In his statement of reasons for appeal, appellant contends that a notice of intention to hold was filed with BLM "prior to October 22, 1979," referring to an April 27, 1979, letter addressed to the District Manager, Canon City District Office, in which appellant objected to a proposed land fill because it would "render useless the Black Cloud mining claim, located on the property, which I own. (C MC 5451)." Appellant also argues, in the alternative, that BLM is estopped to declare his mining claim abandoned and void because appellant relied to his detriment (in view of an intervening adverse location) on BLM's delay in its adjudication. Appellant states that BLM's "failure to take action \* \* \* led [him] to rely on the validity of the claim and in such reliance, he lost the ability to relocate the claim."

[1] The owner of an unpatented mining claim located prior to October 21, 1976, is required by section 314(a) of FLPMA to file, "within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter," either an "affidavit of assessment work," a "notice of intention to hold the mining claim," or the detailed report described in 30 U.S.C. § 28-1 (1982) with the local recording office and BLM. 43 U.S.C. § 1744(a) (1982). The initial filing deadline was, thus, October 22, 1979. 43 CFR 3833.2-1(a) (1979).

Section 314(a) does not specify the form and contents of either an affidavit of assessment work or a notice of intention to hold a claim to be filed with BLM, except to say that the owner of the claim should file "a copy of the official record of the instrument filed or recorded [with the local recording office] \* \* \* including a description of the location of the mining claim sufficient to locate the claimed lands on the ground." 43 U.S.C. § 1744(a) (1982). The regulation applicable at the time appellant was required to make his first filing set forth the acceptable form and contents of the required document. In the case of a notice of intention to hold a claim, 43 CFR 3833.2-3(a) (1979) stated that it should be in the form of either "an exact legible reproduction or duplicate, except microfilm, of a letter signed by the owner of a claim or his agent filed for record [with the local recording office]," a decision on file with BLM granting a deferment of annual assessment work, or a "petition for deferment, a copy of which has been recorded with the appropriate local office."

Based upon the evidence before us, we find the April 1979 letter, which tangentially refers to the "Black Cloud mining claim," cannot be considered a "notice of intention to hold the claim," as defined by either the applicable statute or Departmental regulation. There is no evidence it is a "copy" of a document filed with the local recording office, as required by section 314(a) of FLPMA and 43 CFR 3833.2-3(a) (1979). Donald Klein, 66 IBLA 212 (1982); Pacific Coast Mines, Inc., 53 IBLA 200 (1981); Don Sagmoen, 50 IBLA 84 (1980); Harry J. Phillips, 47 IBLA 252 (1980). In addition, there is no evidence appellant petitioned for or was granted a deferment of annual assessment work. Appellant failed to file either an affidavit of assessment work

or a notice of intention to hold the Black Cloud mining claim on or before the statutory filing deadline. 1/ Id.

Under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1982), and 43 CFR 3833.4, failure to file an instrument required by section 314(a) of FLPMA is deemed "conclusively to constitute an abandonment of the mining claim \* \* \* by the owner" and the claim is thereby rendered void. Nevertheless, appellant argues that BLM is estopped to declare appellant's mining claim abandoned and void.

We have no reason to doubt that appellant assumed BLM regarded the Black Cloud mining claim to be valid when BLM did not declare the claim abandoned and void shortly after the filing deadline. This may have caused appellant's failure to relocate the claim and, thus, was to his detriment at the time of the intervening adverse location. However, a claim of equitable estoppel against the Government must depend on an affirmative misrepresentation or concealment of a material fact by the Government, which was then relied upon by the claimant to his detriment. United States v. Ruby Co., 588 F.2d 697, 703-04 (9th Cir. 1978), cert. denied, 442 U.S. 917 (1979); United States v. Fleming, 20 IBLA 83, 97 (1975), and cases cited therein. In the present case, appellant asserts he relied on BLM's "failure to take action." This reliance cannot form the basis for a claim of equitable estoppel, because BLM has no affirmative duty to inform appellant that his mining claim had been rendered abandoned and void by operation of section 314 of FLPMA. United States v. Georgia-Pacific Co., 421 F.2d 92, 97 (9th Cir. 1970); see Ptarmigan Co., 91 IBLA 113, 117 (1986); Paul Vaillant, 90 IBLA 249, 251 (1986), appeal filed, Vaillant v. United States, Civ. No. R-86-202-ECR (D. Nev. Apr. 25, 1986).

On the other hand, appellant argues BLM also led him to believe that his mining claim was valid. This assertion suggests BLM affirmatively misrepresented the fact of the validity of his claim. Appellant, however, does not allude to any statement made by a BLM employee and offers no proof that any such statement was ever made. Rather, appellant refers to the fact that BLM "never advised of any contention by the BLM that he had

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1/ Appellant contends that, at the time of the filing deadline, BLM already "knew that [appellant] intended to hold the Black Cloud mining claim." As proof of this, appellant points to the April 1979 letter which was allegedly received by BLM, as well as a newspaper account of the proposed land fill in which a BLM employee acknowledged appellant's mining claim (Appendix 2) and a May 14, 1979, letter from BLM to the Teller County Health Service regarding the proposed land fill which refers to a "20.66-acre mining claim" (Appendix 3). Even assuming that BLM knew that appellant did not intend to abandon the claim, this does not avail appellant. The statute is self-operative and, in the absence of the filing of a required document in accordance with section 314(a) of FLPMA, the statute itself renders a mining claim abandoned and void regardless of the subjective intent of the claimant or BLM's awareness of that intent. United States v. Locke, 471 U.S. 84 (1985); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1982).

omitted a filing or that his claim was in jeopardy." Appellant also refers to statements in the case file by BLM employees in early 1983 which recognized that the October 1979 affidavit of assessment work or notice of intention to hold the claim was "missing," but noted that "no action [was] being taken at this time" (Appendix 4). <sup>2/</sup> There is no suggestion BLM at any time regarded the claim as valid or deemed the FLPMA filing as unnecessary. More importantly, there is no suggestion that an opinion that it was valid was communicated to appellant. We cannot construe any of this evidence as establishing an affirmative misrepresentation of the fact of the validity of appellant's claim. <sup>3/</sup> Moreover, the consequences of a failure to comply with a Federal law, such as section 314 of FLPMA, are deemed to have been known to appellant as they are a matter of statute and duly promulgated regulation. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). There could be no affirmative concealment of the fact of the validity of appellant's claim resulting from appellant's failure to file. Accordingly, BLM is not estopped from declaring appellant's mining claim abandoned and void. Ptarmigan Co., *supra*.

In the absence of the timely filing of either an affidavit of assessment work or a notice of intention to hold the claim on or before October 22, 1979, we conclude BLM properly declared the Black Cloud mining claim abandoned and void. Buck Wilson, 89 IBLA 143 (1985).

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.

R. W. Mullen  
Administrative Judge

We concur:

Franklin D. Arness  
Administrative Judge

Will A. Irwin  
Administrative Judge

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<sup>2/</sup> The BLM policy at the time was to not issue decisions declaring mining claims abandoned and void because of the pendency of United States v. Locke, *supra*. See, e.g., Instruction Memorandum No. 84-248 (Jan. 31, 1984).

<sup>3/</sup> Appellant points out that Justice O'Connor in her concurring opinion in United States v. Locke, *supra* at 110, suggests that estoppel may be invoked against the Government in the case of failure to satisfy section 314(a) of FLPMA, especially where the claimants "relied on advice from agency personnel concerning a poorly-worded statutory deadline." The present case is inapposite. We can find no evidence of any "advice" by BLM personnel which was relied upon by appellant. Moreover, Locke involved advice which purportedly was given prior to the statutory deadline and dissuaded the claimants from filing timely. Appellant is only concerned that he was not properly notified that his claim was invalid after the statutory deadline had passed.

