

ENFIELD RESOURCES

IBLA 86-602

Decided February 8, 1988

Appeal from decision of the Fairbanks District Office, Bureau of Land Management, declaring mining claims abandoned and void. (F-57858 through F-57864).

Affirmed.

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

Sec. 314 (a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1982), and the applicable Departmental regulations (43 CFR Subpart 3833), require that the owner of an unpatented mining claim, located on public land prior to Oct. 21, 1976, must file, with the local recording office where the claim is recorded and with the proper BLM office, on or before Dec. 30 in each calendar year following the first filing of either evidence of annual assessment work or a notice of intention to hold the claim, one of those documents. Failure to file the necessary document timely in either office results in a conclusive presumption that the claim has been abandoned and renders the claim void. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4(a).

2. Board of Land Appeals--Estoppel

The Board of Land Appeals has well established rules governing consideration of estoppel issues. They are the elements of estoppel described in *United States v. Georgia-Pacific Co.*, 421 F.2d 92 (9th Cir. 1970); the rule that estoppel is an extraordinary remedy, especially as it relates to public lands; and the rule that estoppel against the Government must be based upon affirmative misconduct.

3. Board of Land Appeals--Estoppel

The Board of Land Appeals has expressly ruled that, as a precondition for evoking the defense of estoppel, the erroneous advice upon which reliance is predicated must be in the form of a crucial misstatement in an official decision.

APPEARANCES: Gary R. Letcher, Esq., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Enfield Resources has appealed from a decision of the Fairbanks District office, Bureau of Land Management (BLM), dated February 10, 1986, declaring the Riffle Association #2 through #8 mining claims (F-57858 through F-57864) abandoned and void. ^{1/} As a basis for its decision BLM found that appellant had failed to timely file either evidence of annual assessment work or a notice of intention to hold the claims for the calendar year 1983 as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982). BLM also stated that on September 14, 1972, Public Land order No. (PLO) 5250 withdrew the lands encompassed by the mining claims for possible addition to or creation as units of the National Parks, Forest, Wildlife Refuge, or Wild and Scenic Rivers System and that on December 2, 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA) (P.L. 96-487), which incorporated the lands into the Wild and Scenic Rivers System.

The Riffle Association #2 claim was originally located by R.S. and Muriel J. McCombe and the Riffle Association #3 through #8 were originally located by Philip and Sherrie Schmitt. In June 1984 the claims were transferred to Forty Mile Mines. In February 1985, Forty Mile Mines transferred the claims to appellant.

Appellant's mining claims were located prior to October 21, 1976. Pursuant to section 314 of FLPMA, a copy of the notice of location and either evidence of annual assessment work or notice of intention to hold the claims was required to be filed on or before October 22, 1979. See 43 U.S.C. 9 1744(a) and (b) (1982). Additionally, proof of labor or notice of intention to hold is required to be filed prior to December 31 of each year thereafter. 43 U.S.C. § 1744(a) (1982). Certificates of location for the claims were

^{1/} The following are the mining claims listed in BLM's decision and the dates of location:

F-57858	Riffle Association #2	June 3, 1970
F-57859	Riffle Association #3	August 2, 1972
F-57860	Riffle Association #4	August 2, 1972
F-57861	Riffle Association #5	July 30, 1972
F-57862	Riffle Association #6	July 30, 1972
F-57863	Riffle Association #7	July 30, 1972
F-57864	Riffle Association #8	July 30, 1972

recorded with BLM on September 11, 1979. The required evidence of annual assessment work was apparently filed timely with BLM in 1979, 1980, 1981, and 1982, However, the record shows that the affidavit of annual assessment work for 1983 was not filed until July 19, 1984.

In its statement of reasons, appellant contends that BLM should be estopped from declaring the Riffle Association claims abandoned and void. Appellant refers to the four elements which must be present to establish the defense of estoppel as described in *United States v. Georgia-Pacific Co.*, 421 F.2d 92 (9th Cir. 1970):

(1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury.

Id. at 96.

Appellant claims that BLM knew on December 31, 1983, that the 1983 affidavit of assessment work had not been filed and that BLM then knew it would take action to declare the claims abandoned and void.

Appellant asserts that it had a reasonable right to rely on BLM's actions or inactions. Appellant contends that all of BLM's actions from December 31, 1983, until February 10, 1986, were consistent with appellant's belief that BLM was not pressing any cause for abandonment of the claims. Appellant notes that BLM accepted the late-filed 1983 affidavit of assessment work, a timely filed 1984 affidavit of assessment work, and a timely filed 1985 Notice of Intention to Hold. Appellant observes that on two occasions, 18 and 24 months respectively after the missed filing deadline, BLM reviewed the Riffle case files and concluded "land status/filings okay." Also, appellant states that 23 months after the missed filing, BLM admonished appellant that 1985 affidavits of annual assessment work must be filed.

Enfield claims that it was "ignorant of the true facts." Enfield contends that it should not be charged with constructive knowledge of the abandonment statutes and regulations where BLM has apparently acted in disregard of those regulations. Appellant asserts that BLM acted as though the late 1983 filing and subsequent timely filings effected a cure and that appellant could not have been aware that it did not.

Appellant states that it clearly relied upon BLM's representations or lack thereof to its injury by paying over \$350,000 for the claims.

Appellant refers to the requirement of the Court of Appeals for the Ninth Circuit that when estoppel is applied against the Government, the Government's actions must amount to "affirmative misconduct," that is, that the four facts must be read as requiring an affirmative misrepresentation or affirmative concealment of a material fact by the Government. Appellant asserts that BLM's actions amount to affirmative misconduct. Appellant points

to the fact that BLM took no action to declare the claims abandoned and void for 25 months after the filing deadline.

Appellant asserts that affirmative misconduct is also found where the Government responds to an inquiry with erroneous information. Appellant points to its November 1985 correspondence with BLM in which it inquired what steps were necessary to preserve the viability of the claims. Appellant asserts that it spoke with a BLM employee who indicated that viability of the claims could be maintained by filing the 1985 affidavit of assessment work or notice of intention to hold (see appellant's letter to BLM dated Nov. 22, 1985).

Appellant states that another test employed by the Ninth Circuit in determining whether to equitably estop Government action is a balance between the relative injuries to the parties. Appellant asserts that there is no public interest to be served by deeming the claims abandoned except the Government's interest in regularity. Appellant contends, however, that it would suffer real and substantial injury if BLM's decision were upheld.

Appellant contends the situation in this case is analogous to a bona fide purchaser situation. Appellant asserts that it purchased the Riffle claims for value on the strength of a record which showed "land status/ filings okay," and that after the purchase BLM sought to effectuate and record an abandonment of the property. Appellant asserts that a purchaser should be entitled to rely on public records and after paying valuable consideration in good faith for real property in reliance thereon, should not have its title overthrown by BLM's untimely action.

Appellant agrees that on February 19, 1982, the State of Alaska selected all the lands encompassing the claims for transfer to the State. Appellant contends that BLM rejected portions of these selections because of inclusion within the Wild and Scenic River System. However, appellant points out that the remaining portions have been tentatively approved for transfer to the State. Appellant states that to the extent the lands encompassing the Riffle claims have been tentatively approved for transfer to the State, such lands are open to mineral location under the law.

[1] The Board has consistently held, in conformity with section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982), and the applicable Departmental regulations (43 CFR Subpart 3833), that the owner of an unpatented mining claim, located on public land prior to October 21, 1976, must file, with the local recording office where the claim is recorded and with the proper BLM office, on or before December 30 in each calendar year following the first filing of either evidence of annual assessment work or a notice of intention to hold the claim, one of those documents. See, e.g., *Steve E. Cate*, 97 IBLA 27 (1987); *Thurman Oil & Mining Co.*, 90 IBLA 342, 345-46 (1986); *Jayne A. McHargue*, 61 IBIA 163 (1982); *Kathryn Mackenzie*, 58 IBLA 64 (1981). Failure to file the necessary document timely in either office results in a conclusive presumption that the claim has been abandoned and renders the claim void. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4(a). In 1983, the deadline for filing the "proof of assessment work" was December 30, 1983.

On July 19, 1984, a copy of the 1983 affidavit of assessment work for the Riffle claims #1 through 8 was filed with BLM. The date December 19, 1983, is stamped on the copy of the affidavit, although the name of the local recorder who stamped the document is not legible. There is no evidence that this affidavit of assessment work or any other affidavit of assessment or notice of intention to hold the claims was filed with BLM in 1983.

[2] Appellant does not contend that it filed proof of labor with BLM on or before December 30, 1983. Rather, it contends that BLM should be estopped from declaring the claims abandoned and void. This Board has well established rules governing our consideration of estoppel issues. We have adopted the elements of estoppel described by the Ninth Circuit Court of Appeals in *United States v. Georgia-Pacific Co.*, supra at 96, (quoting *Hampton v. Paramount Pictures Corp.*, 279 F.2d 100, 104 (9th Cir. 1960)), See *Ptarmigan Co.*, 91 IBIA 113, 117 (1986). Estoppel is an extraordinary remedy it relates to the public lands. *Harold E. Woods*, 61 IBLA 359, 361 (1982). In addition, estoppel against the Government in matters concerning the public lands must be based upon affirmative misconduct, such as misrepresentation or concealment of material facts. *United States v. Ruby Co.*, 588 F.2d 697, 703-04 (9th Cir. 1978); *D. F. Colson*, 63 IBLA 221 (1982); *Arpee Jones*, 61 IBLA 149 (1982). Finally, we have noted that while estoppel may lie where reliance on Governmental statements deprived an individual of a right which he could have acquired, estoppel does not lie where the effect of such action would be to grant an individual a right not authorized by law. See *Edward L. Ellis*, 42 IBLA 66 (1979).

Under these standards, the doctrine of estoppel does not apply in the present case. Assuming, arguendo, the first two requirements described in *Georgia-Pacific* were met, appellant could not have been ignorant of the "true facts." The requirement to file "prior to December 31" is statutory and is repeated in the Department's regulations. Persons dealing with the Government are chargeable with knowledge of statutes and duly promulgated regulations. *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947). As a prospective purchaser, it was up to appellant to review the file to ascertain whether its predecessors-in-interest had complied with FLPMA and Departmental regulations.

Appellant contends that BLM demonstrated affirmative misconduct by its delay in declaring the claims abandoned and void. Even assuming that the time it took for BLM to review its files and notify appellant that its claims were void constituted unreasonable delay, no right of appellant was in jeopardy. As noted by the Supreme Court in *Locke v. United States*, 105 S.Ct. 1785, 1795 (1985), section 314 of FLPMA is self-executing. See *Lynn Keith*, 53 IBLA 192, 88 I.D. 369 (1981). Thus, the claims became abandoned and void when the annual filings were not timely made, not upon BLM's declaration of the fact. BLM's decision was declaratory of existing facts and did not constitute the action which caused the voiding of the claims. Moreover, BLM had no affirmative obligation to inform a claimant of his claims' invalidity within any specific time frame. See 43 CFR 3833.5(f).

Appellant states that affirmative misconduct is also found where the Government positively responds to inquiries with erroneous information. In its November 1985 correspondence with BLM, appellant inquired what steps must be taken to preserve the viability of the Riffle claims. BLM's response dated January 14, 1986, reads in pertinent part as follows:

Your letter of November 19, 1985 has been recorded with BLM as your Notice of Intention to Hold. [2/] We do need a Quit Claim Deed or written document stating you are the new owner, your mailing address, and the BLM serial numbers assigned to each claim.

We are enclosing copies of the federal regulations concerning assessment filings, notice of intention to hold, change of interest, deferment of assessment, and surface management. Expenditures in excess of \$100 for assessment work do not carry over to future years.

There is no statement in this letter that appellant's claims were valid or that the assessment work affidavit for 1983 was properly filed. That such implicit representation might be ascribed to the Department based on this correspondence with BLM personnel does not constitute affirmative misconduct. See Ptarmigan Co., supra at 117-18.

Appellant asserts that BLM's conduct in repeatedly accepting documents for filing subsequent to December 30, 1983, BLM's statement in the case file abstract that "land status/filings okay," BLM's admonition to Forty Mile Mines that a 1985 affidavit of annual assessment work was due and BLM's oral response to appellant's inquiries regarding the steps to be taken to preserve the viability of the claims amount to affirmative misconduct.

Appellant points to BLM's conduct, but does not refer to any written document stating that the claims were valid and that an affidavit of annual assessment work was properly filed in 1983.

2/ By letter dated Nov. 19, 1985, appellant informed BLM of its "intention to hold." In a number of cases the Board has considered whether various documents sent to BLM by mining claim locators qualify as notices of intention to hold a mining claim for the purpose of satisfying the requirement of section 314(a). In *Add-Ventures, Ltd.*, 95 IBLA 44, 49 (1986), the Board held that in order for a document filed with BLM to qualify under the statute as a notice of intention to hold a mining claim, the document must have been filed with BLM as a notice of intent, must be a copy of a document that was or will be filed with the local jurisdiction where the claim's location certificate was recorded, and must identify the claim by name, by BLM assigned claim number, or by a description sufficient to locate the claim on the ground. See also *L&S Mines*, 98 IBLA 123, 124-25 (1987). There is nothing on the face of this letter which shows that it is a copy of a document that was or would be filed with the local jurisdiction where the claims' location certificates were recorded.

[3] In *Steve E. Cate*, supra at 32, the Board discussed the difficulty inherent in finding a claim of estoppel based on alleged oral advice. The Board quoted the Supreme Court in *Heckler v. Community Health Services*, 467 U.S. 51, 65, 104 S.Ct. 2218, 2226-27 (1984), which reads in pertinent part:

The appropriateness of respondent's reliance is further undermined because the advice it received from Travelers was oral. It is not merely the possibility of fraud that undermines our confidence in the reliability of official action that is not confirmed or evidenced by a written instrument. Written advice, like a written judicial opinion, requires its author to reflect about the nature of the advice that is given to the citizen, and subject that advice to the possibility of review, criticism and reexamination.

This Board has expressly ruled that, as a precondition for invoking estoppel, the erroneous advice upon which reliance is predicated must be, inter alia, "in the form of a crucial misstatement in an official decision." *United States v. Morris*, 19 IBLA 350, 377, 82 I.D. 146, 159 (1975), quoting from *Marathon Oil Co.*, 16 IBLA 298, 316, 81 I.D. 447, 455 (1974). The case file abstracts are not official decisions. Since appellant can point to no such official decision, this is another ground for rejecting its claim of estoppel.

Appellant contends that its situation is analogous to that of a bona fide purchaser. Appellant asserts that it purchased the property in February 1985 on the strength of the record which showed "land status/filings Okay." Appellant contends this term appeared in two case file abstracts dated June 13 and October 7, 1985. Yet appellant could not have relied on these abstracts in purchasing these claims as they are dated after the date of purchase. Also, we note that these abstracts include an entry dated July 19, 1984, which reads "Evidence of Assessment filed 1983." The same abstracts, which appellant states it relied upon when purchasing the claims" clearly show that no affidavit of assessment work was filed in 1983.

Appellant also raises the possibility that some of these claims may be open to location under State law, in the case of those claims which were located upon lands selected for conveyance to Alaska. The question of which lands may be available for relocation is not, however, before us in this appeal. This appeal concerns only the question of the compliance by appellant with the recording requirements imposed by 43 U.S.C. § 1744 (1982). The Board expresses no opinion concerning the validity of any of these claims under State law. Cf. *Ed Bilderback*, 89 IBLA 263 (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.

Franklin D. Arness
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

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