

Appeal from a decision of the Anchorage, Alaska, District Office, Bureau of Land Management, declaring placer mining claims abandoned and void. AA-30367 through AA-30370.

Affirmed.

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

In the case of mining claims located prior to Oct. 21, 1976, the failure to file copies of proofs of labor or notices of intent to hold the claims in the proper BLM office on or before Oct. 22, 1979, as required by 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) (1979), renders the claims abandoned and void.

2. Board of Land Appeals--Estoppel

An alleged misrepresentation by BLM of mining claim recordation requirements is not an appropriate basis for equitable estoppel where the party asserting estoppel could have become aware of the true requirements by reference to explicit provisions of the governing Federal statute and Departmental regulations. Furthermore, a claim of estoppel based on appellants' vague allegations that they made the filing "on the instruction from the BLM office" fails, because appellants have not established that BLM made a crucial misstatement in an official decision or other otherwise engaged in any "official misconduct."

APPEARANCES: Henry Krizman, Linda Ferguson, and Gordon Ferguson, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Henry Krizman, Linda Ferguson, and Gordon Ferguson have appealed from a decision of the Anchorage, Alaska, District Office, Bureau of Land Management (BLM), dated June 27, 1986, which declared their four Cascade

placer mining claims (AA 30367-70) abandoned and void for failure to file either evidence of annual assessment work or notices of intention to hold the claims on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1744 (1976), and 43 CFR 3833.2-1(a) (1979).

Appellants' mining claims were located prior to October 21, 1976. ^{1/} Copies of certificates of location for the claims were filed timely with BLM on October 2, 1979. However, the record shows that no affidavits of annual labor were received by BLM from appellants until November 7, 1979.

[1] Section 314(a) of FLPMA requires the owner of a lode or placer mining claim located prior to October 21, 1976, to file a copy of either a notice of intention to hold the mining claim or an affidavit of assessment work with BLM "within the three-year period following the date of the approval of this Act and prior to December 31 each year thereafter." Appellants' claims were located during 1962 and 1963. Accordingly, under the statute, appellants were required to file with BLM either an affidavit of assessment work or a notice of intention to hold their claims on or before October 22, 1979. ^{2/} Harry J. Phillips, 47 IBLA 252 (1980). The earliest copies of affidavits of annual labor appearing in the case file are date stamped as having been received by BLM on November 7, 1979. Therefore, these affidavits were not timely filed.

Failure to file the necessary documents timely in the proper office in conformity with section 314(a) of FLPMA, 43 U.S.C. | 1744(a) (1982), and the applicable Departmental regulations set out at 43 CFR Subpart 3833 results in a conclusive presumption that the claims have been abandoned and renders the claims void. 43 U.S.C. | 1744(c) (1982); 43 CFR 3833.4(a) (1979); see United States v. Locke, 471 U.S. 84 (1985); Steve E. Cate, 97 IBLA 27 (1987); Thurman Oil & Mining Co., 90 IBLA 342 (1986); and Jayne A. McHargue, 61 IBLA 163 (1982).

[2] Appellants do not dispute that they failed to file their affidavits on or before October 22, 1979, but complain that they acted on the advice of BLM: "In 1979 your own Department of Interior and BLM were unclear on the correct dates of filing for the affidavit of Annual Labor. On the instruction from the BLM office here in Anchorage, these affidavits were properly and timely filed." Appellants thus suggest that BLM

is estopped from declaring their mining claims abandoned and void because their 1979 affidavits of annual labor were submitted pursuant to instructions from the BLM office in Anchorage.

^{1/} The claims are listed as follows:

<u>BLM Serial Number</u>	<u>Claim Name</u>	<u>Date of Location</u>
AA-30367	Cascade	8/20/62
AA-30368	Cascade No. 2	4/21/63
AA-30369	Cascade No. 3	6/07/63
AA-30370	Cascade No. 4	6/07/63

^{2/} Oct. 21, 1979, fell on a Sunday, so that the deadline for filing was automatically extended to Monday, Oct. 22, 1979, the first day BLM's offices were open. See 43 CFR 1821.2-2(e).

This Board has well-established rules governing the application of estoppel and has adopted the elements of estoppel described by the Ninth Circuit Court of Appeals 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; see Enfield Resources, 101 IBLA 120, 122 (1988); Ptarmigan Co., Inc., 91 IBLA 113, 117 (1986). Under these standards, the doctrine of estoppel does not apply in the present case. Assuming, arguendo, that the first two requirements described in Georgia-Pacific were met, appellant had constructive knowledge of the actual mining claim recordation requirements, as the requirement to file by October 22, 1979, is statutory and was expressly repeated in the Departmental regulations in effect in 1979. 43 CFR 3833.2-1(a) (1979). 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).

Furthermore, 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 (9th Cir. 1978); D. F. Colson, 63 IBLA 221 (1982); Arpee Jones, 61 IBLA 149 (1982). Appellants make only a general allegation that they were acting on advice from BLM. No proof of misrepresentation in an official BLM decision has been proffered. This Board has expressly ruled that, as a precondition for invoking estoppel, the erroneous advice upon which reliance is predicated must be "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 Marathon Oil Co., 16 IBLA 298, 316, 81 I.D. 447, 455 (1974)). Since appellants have pointed to no such official decision, estoppel is not appropriate here.

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 from is affirmed.

David L. Hughes
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge