

WALTER C. EAGAR

IBLA 94! 58

Decided January 30, 1997

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring lode mining claims abandoned and void. U MC 255097 through U MC 255101, U MC 255104 through U MC 255108.

Affirmed.

1. Mining Claims: Abandonment! ! Mining Claims: Rental or Claim Maintenance Fees: Generally

"Filed" is defined in 43 CFR 3833.0-5(m) (1993) to mean "being received and date stamped in the proper BLM office." Although that regulation specified a 15-day grace period for the filing of affidavits of assessment work and notices of intention to hold mailed to the proper BLM office in an envelope clearly postmarked by the United States Postal Service within the period prescribed by law, it expressly excluded rental fee filings and exemption certificate filings from its purview. Thus, an exemption certificate received by BLM on Sept. 2, 1993, in an envelope postmarked Aug. 31, 1993, is untimely filed.

APPEARANCES: Mike Eagar, Santa Clara, Utah, for appellant.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Walter C. Eagar, through his son, Mike Eagar, has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated October 19, 1993, declaring the Black Knole, Vanderbilt Nos. 1 through 4, Rattlesnake Nos. 1 through 4, and Sand Ridge lode mining claims, U MC 255097 through U MC 255101 and U MC 255104 through U MC 255108, abandoned and void. <sup>1/</sup> BLM took its action because of a failure to pay rental fees or file certificates of exemption from payment for the claims, for the 1993 and 1994 assessment years, on or before August 31, 1993, as then required

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<sup>1/</sup> The claims, which are situated in secs. 8, 17, and 20, T. 41 S., R. 13 W., Salt Lake Meridian, Washington County, Utah, were located in 1953 and relocated on Mar. 15, 1982.

by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (1992 Act), P.L. No. 102! 381, 106 Stat. 1378! 79 (1992), and its implementing regulations, 43 CFR 3833.1! 5 through 3833.1! 7 (1993).

On October 5, 1992, Congress passed the 1992 Act, a provision of which established that

for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28! 28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 \* \* \*.

106 Stat. 1378. The 1992 Act also contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of an additional \$100 rental fee on or before August 31, 1993. 106 Stat. 1378! 79.

Congress further mandated that "failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant \* \* \*." 106 Stat. 1379.

Implementing Departmental regulations provided as follows:

Mining claim or site located on or before October 5, 1992. A nonrefundable rental fee of \$100.00 for each mining claim, mill site, or tunnel site, shall be paid on or before August 31, 1993, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental fee of \$200.

43 CFR 3833.1! 5(b) (1993).

The only exemption provided from this annual rental requirement was the so-called small miner exemption, available to claimants holding 10 or fewer mining claims, mill sites, or tunnel sites on Federal lands who were required to meet all the conditions set forth in 43 CFR 3833.1-6(a) (1993). William B. Wray, 129 IBLA 173 (1994). If a claimant chose not to pay the rental fees and instead to seek an exemption, the regulations required the filing, on or before August 31, 1993, of a "separate statement \* \* \* supporting the claimed exemption for each assessment year [it] is claimed" (43 CFR 3833.1! 7(d) (1993)).

On appeal, appellant's son explains that because of his father's advanced age he had assumed responsibility for the assessment work for the claims. He states that he did not learn of the 1992 Act and its requirements until he visited the BLM office in St. George, Utah, in August 1993. He asserts that a BLM employee told him that he could file a small miner exemption and that "if we mailed the request to the B.L.M. by the last day of August, 1993, we would be in compliance."

On September 2, 1993, BLM received a letter from appellant, dated August 30, 1993, in an envelope postmarked August 31, 1993. Therein, appellant stated that he was "filing for a rental fee exemption under the small miner ruling [sic]." Attached to the letter was an affidavit of assessment work for the claims for the 1993 assessment year.

In its decision, BLM declared the claims abandoned and void because neither rental fees nor certificates of exemption were filed on or before August 31, 1993. We must affirm that decision.

The fact that appellant's son did not learn of the rental fee requirements until August 1993 cannot excuse lack of compliance with those requirements. The reason is that it is well-settled that all persons dealing with the Federal Government are presumed to know the requirements of applicable statutes and duly promulgated regulations published in the Federal Register. Lester W. Pullen, 131 IBLA 271, 273 (1994); see Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947). BLM is not required to send mining claimants notification of these laws and regulations. William Jenkins, 131 IBLA 166, 168 (1994).

Even if appellant's one sentence request in his letter received on September 2, 1993, could be construed as the filing of certificates of exemption for the 1993 and 1994 assessment years, the filing must be considered untimely. <sup>2/</sup>

[1] The applicable regulation, 43 CFR 3833.1! 7(b)(1) (1993), provided, in pertinent part: "The certified statement required by paragraph (d) of this section shall be filed in the proper State Office of the

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<sup>2/</sup> Appellant's letter did not contain any of the information required by the regulations to establish entitlement to a small miner exemption under the 1992 Act. However, 43 CFR 3833.4(b) (1993) provided:

"Unintentional failure to file the complete information required in \* \* \* [43 CFR] 3833.1! 7 (d) [(1993)] \* \* \*, when the document is otherwise filed on time, shall not be deemed conclusively to constitute an abandonment of the claim \* \* \*, but such information shall be filed within 30 days of receipt of a notice from the authorized officer calling for such information. Failure to file the information requested by the decision of the authorized officer shall result in the mining claim \* \* \* being deemed conclusively to be abandoned and it shall be void."

We need not decide the applicability of this regulation because of the untimely filing.

BLM on or before August 31, 1993, and shall contain all of the information required in paragraph (d) of this section." (Emphasis added.) This requirement applied to the certified statements for both the 1993 and 1994 assessment years. Id.; 43 CFR 3833.1! 7(b)(2) (1993).

In 43 CFR 3833.0-5(m), the Department defined "filed" to mean "being received and date stamped by the proper BLM office." 43 CFR 3833.0! 5(m) (1993). Although that regulation specified a 15-day grace period for the filing of FLPMA affidavits of assessment work and notices of intention to hold mailed to the proper BLM office in an envelope clearly postmarked by the United States Postal Service within the period prescribed by law, it expressly excluded rental fee filings and exemption certificate filings from its purview. 3/

Appellant's August 30 letter was not received and date stamped by BLM's Utah State Office on or before August 31, 1993. Thus, under the applicable regulation it was untimely. See William Harding, 130 IBLA 90, 91 (1994). 4/

The claims at issue were extinguished by operation of law when appellant failed timely to pay the appropriate rental fees or file qualifying certificates claiming exemption from the rental fee requirement on or before August 31, 1993. See Nannie Edwards, 130 IBLA 59, 60 (1994), and cases cited therein.

The fact that appellant's son may have received some erroneous advice from a BLM employee, while unfortunate, does not support overturning BLM's decision. It is well settled that the United States is not bound by the acts of its employees when they "cause to be done what the law does not sanction or permit." 43 CFR 1810.3(b); Carl S. Hansen, 130 IBLA 369, 373 (1994); Jack J. Grynberg, 114 IBLA 225, 229 (1990).

We are without authority to excuse lack of compliance with the 1992 Act and its implementing regulations, to extend the time for compliance, or to afford any relief from the statutory consequences. Lester W. Pullen, 131 IBLA at 273. BLM properly declared the claims abandoned and void.

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3/ The regulation stated: "This 15 day period does not apply to filings made pursuant to [43 CFR] §§ 3833.1-2, 3833.1! 5, or 3833.1! 7 [(1993)]."

4/ In section 10101 of the Omnibus Budget Reconciliation Act of 1993 (1993 Act), 30 U.S.C. § 28f (1994), Congress required the filing of a \$100 maintenance fee for all unpatented mining claims on or before Aug. 31 of each year from 1994 through 1998. It also allowed for the filing of certificates for exemption from the requirement in certain circumstances. In regulations promulgated to implement the 1993 Act, the Department revised 43 CFR 3833.0! 5(m) to extend the 15-day grace period to maintenance fees and certificates for exemption filed under the 1993 Act. The revised regulations are not applicable to 1992 Act filings. Thus, there can be no retroactive application of revised 43 CFR 3833.0-5(m) to 1992 Act filings. Kathleen K. Rawlings, 137 IBLA 368, 372 (1997).

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.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur.

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C. Randall Grant, Jr.  
Administrative Judge

