

Editor's note: Reconsideration denied by order dated Nov. 16, 1981

ROY B. SMALLEY ET AL.

IBLA 81-281

Decided October 28, 1981

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring the Ed Smalley Gravel placer mining claim abandoned and void. I MC 4512.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment -- Mining Claims: Assessment Work -- Mining Claims: Recordation

Under 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), where the owner of unpatented mining claim located before Oct. 21, 1976, submits a copy of the location notice to BLM in April 1978, and proof of labor to BLM in Oct. 1979, but fails to submit evidence of annual assessment work or notice of intention to hold the mining claim on or before Dec. 30, 1980, BLM properly declares the mining claim abandoned and void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

APPEARANCES: Roy B. Smalley, et al., pro sese. 1/

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Ed and Mrytle Smalley located the Ed Smalley Gravel placer mining claim on March 28, 1944. On June 20, 1944, the notice of location for this claim was recorded in Twin Falls County, Idaho. On April 11, 1978, Ed and Myrtle Smalley conveyed their interest in the claim to Roy and

1/ Roy B. Smalley, Carabel C. Smalley, Timothy Smalley, and Melissa Smalley all signed the notice of appeal.

Carabel Smalley, husband and wife, and to Timothy and Melissa Smalley (the Smalleys) by quitclaim deed.

On April 18, 1978, the Idaho State Office, Bureau of Land Management (BLM), received a copy of an amended notice of location, map, and the aforementioned quitclaim deed from the Smalleys for the claim in question pursuant to the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1. On January 5, 1979, BLM requested a copy of the original notice of location.

Sometime later, the Smalleys sent BLM a copy of this original notice of location. Although this copy bears no date stamp, it appears that it was filed pursuant to BLM's notification dated January 5, 1979. On October 19, 1979, BLM received proof of labor from the Smalleys for the 1979 assessment year. On December 31, 1980, BLM received another proof of labor from the Smalleys for the 1980 assessment year.

On January 16, 1981, BLM declared the Ed Smalley Gravel placer mining claim abandoned and void because evidence of annual assessment work or notice of intention to hold was not received by December 30, 1980, as required by 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1. The Smalleys appealed.

[1] Section 314, 43 U.S.C. § 1744 (1976), states:

(a) The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection.

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by section 28-1 of Title 30, relating thereto. [Emphasis supplied.]

The applicable regulation, 43 CFR 3833.2-1(a)(1), states:

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. [Emphasis supplied.]

The regulation which specifies the consequence of a failure to file, 43 CFR 3833.4(a), provides: "The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this regulation within

the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void."

Thus, pursuant to 43 U.S.C. § 1744(a)(1) (1976) and 43 CFR 3833.2-1(a)(1), evidence of annual assessment work or a notice of intention to hold is required to be filed on or before December 30 of each calendar year after recording. Accordingly, appellants should have filed proof of labor with BLM on or before December 30, 1980, and since they failed to do so, BLM properly declared their claim abandoned and void under 43 CFR 3833.4(a). John R. Erickson, 57 IBLA 77 (1981); M.D.C., Inc., 57 IBLA 35 (1981); OMCO, Inc., 55 IBLA 77 (1981).

Appellants contend that the BLM decision was unjust because the proof of labor was postmarked December 29, 1980, even though it was not received until December 31, 1980. Appellants argue that the postmark date is controlling in all Government agencies. Appellants' contention is incorrect. The postmark date is not controlling. Rather, the controlling date is the date on which BLM received the document and date stamped it. John R. Erickson, *supra*; M.D.C., Inc., *supra*; OMCO, Inc., *supra*; *see* 43 CFR 3833.1-2.

Appellants also allege that they were not aware of the regulation or that the postmark date was not valid. However, all persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations. Abram H. Kreider, 57 IBLA 68 (1981); Robert P. Wilson, 57 IBLA 40 (1981); David R. Newman, 57 IBLA 23 (1981). This Board has no authority to excuse lack of compliance. Western Mining Council v. Watt, 643 F.2d 618, 628 (9th Cir. 1981); M.D.C., Inc., *supra*; Charles M. Lowe, 55 IBLA 384 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). This is true even if the filing is only 1 day late. M.D.C., Inc., *supra*; Melvin Darby, 56 IBLA 41 (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.

Bernard V. Parrette
Chief Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Gail M. Frazier
Administrative Judge

