

IDAHO MINING AND DEVELOPMENT CO.

IBLA 85-396

Decided June 23, 1986

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring lode mining claims abandoned and void.

Affirmed.

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

BLM may properly declare an unpatented mining claim located after Oct. 21, 1976, abandoned and void where the copy of the notice of location of the claim was received by BLM 1 day after the deadline for filing, pursuant to sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1982), even though claimant mailed the document prior to the deadline.

APPEARANCES: Joe Swisher, General Manager, Idaho Mining and Development Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Idaho Mining and Development Company has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated October 29, 1984, declaring the Eagle No. 178 Fractional and the Eagle Nos. 179 through 185 lode mining claims abandoned and void. The basis for the decision was the failure to file copies of the notices of location of the claims with BLM within 90 days after the date of location of the claims, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982).

Appellant's mining claims were located June 29, 1984, in Idaho County, Idaho, and recorded with the county recorder on August 30, 1984. Copies of the notices of location of the claims were received by BLM on September 28, 1984.

Section 314(b) of FLPMA requires the owner of an unpatented mining claim located after October 21, 1976, to file with BLM a copy of the notice of location of the claim "within ninety days after the date of location of such claim." This requirement is replicated in 43 CFR 3833.1-2(a). Therefore, the statutory deadline for filing copies of appellant's notices of location was September 27, 1984.

In its statement of reasons for appeal, appellant contends it mailed copies of the notices of location by certified mail from Lewiston to Boise, Idaho, on September 26, 1984, rather than handcarrying them, upon the advice of a BLM employee:

We were told by BLM in Boise to place the claims in the mail at Lewiston and be sure they were postmarked. It was further explained to us that a trip to Boise would be unnecessary since the claims would be treated as timely filed as long as they were postmarked within the period prescribed by the regulations.

Appellant submits a copy of a receipt for certified mail, date stamped September 26, 1984, bearing the handwritten notation "Eagle 178-185." Appellant argues the copies of its notices of location should be deemed timely filed under 43 CFR 3833.0-5(m).

[1] Section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1982), provides that the failure to file "as required by" section 314(b) of FLPMA "shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner." In such circumstances, the claim "shall be void." 43 CFR 3833.4(a). Thus, it is well established that where the owner of an unpatented mining claim fails to file a copy of the notice of location of the claim within 90 days after the date of location, BLM properly declares the claim abandoned and void. B. Rigby Young, 69 IBLA 88 (1982), and cases cited therein.

The term "file" is defined by Departmental regulation to mean "being received and date stamped by the proper BLM office." 43 CFR 3833.0-5(m). Thus, for the purposes of recording a notice of location with BLM, depositing a document in the mails does not constitute filing. See 43 CFR 1821.2-2(f). We recognize, as appellant notes, that 43 CFR 3833.0-5(m) further provides:

For the purpose of complying with § 3833.2-1 of this title, "timely filed" means being filed within the time period prescribed by law, or received by January 19th after the period prescribed by law in an envelope bearing a clearly dated postmark affixed by the United States Postal Service within the period prescribed by law. This 20-day period does not apply to a notice of location filed pursuant to § 3833.1-2 of this title.

The regulation at 43 CFR 3833.2-1 concerns the annual filing of either evidence of assessment work or notices of intention to hold claims, in accordance with section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982).

The regulation at 43 CFR 3833.1-2, on the other hand, governs the filing of a copy of the notice of location with BLM. Thus, the above-quoted regulation expressly provides that the date of the postmark does not constitute the date of filing for purposes of recording the notice of location under section 314(b) of FLPMA, and 43 CFR 3833.1-2. Therefore, even though appellant mailed the copies of its notices of location on September 26, 1984, 1 day before the statutory deadline, it cannot contend that mailing by the deadline establishes timely filing under 43 CFR 3833.0-5(m). The date of receipt serves as the date the documents are deemed to have been recorded with BLM, *i.e.*, September 28, 1984, 1 day after the statutory deadline.

Appellant, however, asserts it relied upon the advice of a BLM employee in mailing the documents rather than handcarrying them, which it purportedly was prepared to do on September 26, 1984, in order to ensure a timely filing. The Board has held that reliance on erroneous information given by an employee of the Department cannot serve to excuse compliance with the applicable law and regulations, nor can it relieve the claimant of the consequences imposed by statute or regulations for failure to comply with such requirements. John Plutt, Jr., 53 IBLA 313 (1981). Lack of actual knowledge of recordation requirements is not a sufficient basis on which to predicate an estoppel where claimant is properly charged with constructive knowledge of such requirements. See John Plutt, Jr., supra. In the instant case, the applicable regulation, 43 CFR 3833.0-5(m), clearly put appellant on notice that a copy of a notice of location will not be considered filed under 43 CFR 3833.1-2(a) until it is received and date stamped by BLM. It is well established that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1982); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Francis X. Furlong II, 73 IBLA 67 (1983). Because of the knowledge imputed to it, appellant cannot successfully claim ignorance of the material facts. See Francis X. Furlong II, supra.

We conclude that BLM properly declared appellant's mining claims abandoned and void for failure to file copies of the notices of location within 90 days after the date of location, where this is mandated by the statute. See United States v. Locke, 105 S.Ct. 1785 (1985) (1-day late filing of affidavit of assessment work).

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.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

John H. Kelly
Administrative Judge.

