

FRED W. CROXEN III

IBLA 81-717

Decided July 29, 1981

Appeal from decision by California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 88909 through CA MC 88946.

Affirmed.

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

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

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

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM for recordation on Apr. 6, 1981, and the filing fees therefor are not paid to BLM until Apr. 27, 1981,

the recordation date of the notices is Apr. 27, 1981.

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

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

4. Notice: Generally -- Regulations: Generally -- Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Fred W. Croxen III, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Fred W. Croxen III ^{1/} has appealed the California State Office, Bureau of Land Management (BLM), decision of May 1, 1981, which returned without recording the notices of location for a number of unpatented mining locations: T-3 to T-5, T-7 to T-23, and T-36 lode mining claims, Julia "A" and Julia "A" (amended) lode mining claims, and AU 1 to AU 6, AU 11 to AU 15, AU 21, AU 22, AU 35, and AU 36 placer mining claims, CA MC 88909 through CA MC 88946, because the notices of location together with the filing fees had not been filed within 90 days after the date of location, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b). The mining claims were declared abandoned and void.

Appellant states that the mining claims were located January 23, 1981, and recorded in the records of Imperial County, California. Thereafter, on April 6, 1981, within the 90-day period following the date of location prescribed by FLPMA, copies of the notices of location were submitted to BLM.

Because no service fees were submitted, BLM returned the notices to the claimant. Later, on April 27, 1981, after the 90-day period for filing had expired, the notices were resubmitted to BLM together with the appropriate service fees of \$ 5 per claim. The documents were again returned unrecorded, as being submitted too late.

^{1/} The appeal is taken on behalf of Fred W. Croxen III, Don W. Clay, Canan D'Avela, Jan McGee, Christina Loving, and John Banes.

Argument is advanced that the date of filing with BLM should be considered to be April 6, 1981, when the notices of location were first submitted to BLM and impressed with the BLM time and date stamp.

[1, 2] Regulations implementing section 314, FLPMA, supra, are contained in 43 CFR Subpart 3833. Section 3833.1-2(b) requires that, for mining claims located after October 21, 1976, a copy of the official record of the notice of location must be filed in the proper office of BLM within 90 days following the date of location. "Filed" means being received and date stamped by BLM. Section 3833.1-2(d) states that each claim recorded with BLM shall be accompanied by a \$ 5 service fee. Without payment of the full service fee, there is no recordation of the mining claim with BLM. Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981); Brewery Hill Mining Co., 49 IBLA 197 (1980; Weldon Mead Kennedy, 49 IBLA 180 (1980); Joe B. Cashman, 43 IBLA 239 (1979). Thus, as the full service fee of \$ 5 per claim was not tendered until April 27, 1981, it must be held that the date of recordation of the 38 claims with BLM cannot be considered to have occurred earlier than that date, notwithstanding that BLM had initially stamped them as having been received on April 6, 1981.

[3, 4] Section 3833.4 provides that failure to file any instrument required by FLPMA within the time prescribed shall be deemed conclusively to constitute an abandonment of the mining claim and it shall be void. This Board has no authority to excuse lack of compliance. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). It is axiomatic that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations pertinent thereto. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Brewery Hill Mining Co., supra. Appellant's ignorance of the filing fee requirement justifies no exception to the rule.

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.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

