

CROWNITE CORP.  
AMERICAN PUMICE PRODUCTS, INC.

IBLA 83-804

Decided October 17, 1983

Appeal from decision of California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CA MC 45408 through CA MC 45422.

Affirmed.

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

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976, or those in 43 CFR 3833.2-1.

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

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the

Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Administrative Procedure: Adjudication -- Evidence: Generally --Evidence: Presumptions -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and that he, in fact, did so, in enacting the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), Congress specifically placed the burden on the claimant to show, by his compliance with the Act's requirements, that the claim has not been abandoned and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

APPEARANCES: Don Erik Franzen, Esq., Los Angeles, California, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of June 14, 1983, the California State Office, Bureau of Land Management (BLM), declared the unpatented Ray Gill #7, Ray Gill #11, Ray Gill #13, Ray Gill #31, Ray Gill #51 through #54, Donna, Donna #2 through #4, and Donna #6 through #8 placer mining claims, CA MC 45408 through CA MC 45422, abandoned and void because no proof of labor or notice of intention to hold the claims for 1982 was filed in the proper office of BLM by December 30, 1982, 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. The proof of labor was received by BLM on January 10, 1983, in an envelope bearing a Pitney-Bowes metered postmark of January 5, 1983.

Crownite Corporation and American Pumice Products, Inc., appeal, stating that American Pumice Products, Inc., has operated the claims owned by Crownite Corporation, has spent more than a million dollars in capital expenditures during the past 3 years, and has actively mined the claims during that period. Appellants state that the claims have not been abandoned and question whether there has been a statutory abandonment for the failure to file timely the proof of labor required by section 314 of FLPMA. Appellants state that a copy of the unrecorded proof of labor for 1982 and a proposed plan of operations were sent to the BLM Resource Area Office in Ridgecrest, California, on December 15, 1982. They allege that copies of the proof of labor were sent on December 28, 1982, to the BLM State Office in Sacramento, and to the County Recorder of Inyo County, both envelopes were addressed to the BLM office in Sacramento.

Appellants argue that there has been substantial compliance with the FLPMA requirements and no forfeiture should attach. They cite Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), aff'd 649 F.2d 775 (10th Cir. 1981), as holding the Secretary of the Interior cannot deem a mining claim abandoned merely because supplemental filings required only by 43 CFR 3833, and not by statute, are not made.

Appellants contend the proof of labor sent to the Ridgcrest Resource Area office of BLM was adequate to put BLM on notice that the required assessment work had been performed, even though no copy of the 1982 proof of labor was sent to the proper BLM office by December 30, 1982. They argue that their proof of labor received by BLM January 10, 1983, should be accepted as it was mailed prior to December 30, 1982, citing 43 CFR 3833.0-5(m). They suggest that if the claims are deemed abandoned under 43 U.S.C. § 1744 (1976), then that section of the Code is unconstitutional as no notice was given and no opportunity to be heard was granted before declaring the abandonment.

Appellants request a hearing before an Administrative Law Judge to review the factual issues raised herein.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located on Federal land to file a proof of labor or notice of intention to hold the claim both in the local recording office where the notice of location is of record and in the proper office of BLM prior to December 31 of every calendar year. The statute also provides that failure to file such instruments within the prescribed time periods shall be deemed conclusively to constitute an abandonment of the claim. As no proof of labor or notice of intention to hold the claims for 1982 was filed timely with BLM, and the envelope containing the proof of labor received January 10, 1983, did not give any indication that it had been mailed before December 31, 1982, BLM properly deemed the claims to be abandoned and void. J & B Mining Co., 65 IBLA 335 (1982); Margaret E. Peterson, 55 IBLA 136 (1981). The responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim. This Board has no authority to excuse lack of compliance, or to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2, 3] The Board responded to arguments similar to those presented here in Lynn Keith, supra. With respect to the conclusive presumption of abandonment and appellants' argument that the intent not to abandon was manifest, we stated:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive

or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

\* \* \* Appellant also argues that the intention not to abandon these claims was apparent \* \* \*. At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extant evidence that a claimant intended not to abandon may not be considered. [Emphasis in original.]

Although appellants assert the proof of labor was actually mailed timely to BLM, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if the envelope containing the proof of labor was delayed by the Postal Service, the fact would not excuse appellants' failure to comply with the cited regulations. Hughes Minerals, Inc., 74 IBLA 217 (1983); Regina McMahon, 56 IBLA 372 (1981); Everett Yount, 46 IBLA 74 (1980). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). The filing requirement is imposed by statute and this Board has no authority to waive it. Lynn Keith, supra.

Appellants' reliance on Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), is misplaced. In that case the court held that a claim could not be considered abandoned for failure to meet filing requirements not specified in 43 U.S.C. § 1744 (1976). In this case appellant failed to file "in the office of the Bureau designated by the Secretary." That is the language of the statute. The designation occurs in the regulations. 43 CFR 3833.1-2 requires filing "in the proper BLM office." "Proper BLM office" is defined in 43 CFR 3833.0-5(g) as the BLM office listed in 43 CFR 1821.2-1(d). That regulation lists Sacramento as the office for California, not Ridgecrest. Failure to timely file in the proper office results in abandonment of the claim, even if BLM has some kind of notice of it. 43 U.S.C. § 1744(c) (1976).

BLM has stated that it did not timely receive the 1982 proof of labor for these claims. Appellants have not shown anything to the contrary. The envelope containing the 1982 proof of labor bears a Pitney-Bowes metered postmark of January 5, 1983, at San Clemente, California. Such a postmark does not qualify the envelope for favorable consideration under 43 CFR 3833.0-5(m). It must be found, therefore, that BLM was not acting improperly in its decision declaring the claims to be abandoned and void under the provisions of FLPMA.

The petition for a hearing is denied.

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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Douglas E. Henriques  
Administrative Judge

We concur:

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Will A. Irwin  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

