

CHESTER WITTWER

IBLA 94-206

Decided July 10, 1996

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring 13 mining claims abandoned and void. CMC 111436-CMC 111439, CMC 111442-CMC 111450.

Affirmed.

1. Mining Claims: Abandonment–Mining Claims: Rental or Claim Maintenance Fees: Generally–Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

Responsibility for satisfying the rental fee requirement of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1374, 1378-79 (1992), resides with the owner of the unpatented mining claim, millsite, or tunnel site, as Congress has mandated that failure to make the annual payment of the claim rental fee as required by the Act shall conclusively constitute an abandonment of the unpatented mining claim, millsite, or tunnel site. When a mining claimant fails to qualify for a small miner exemption from the rental fee requirement, failure to pay the fee in accordance with the Act and regulations results in a conclusive presumption of abandonment. Neither the claimant's lack of actual knowledge of the statutory requirement to pay rental fees nor BLM's failure to give personal notice to the claimant of that statutory requirement excuses the claimant's lack of compliance with the rental fee requirement since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Chester Wittwer, pro se; Lowell L. Madsen, Assistant Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This appeal has been filed by Chester Wittwer from a November 5, 1993, decision of the Colorado State Office, Bureau of Land Management (BLM), declaring 13 mining claims abandoned and void. The claims were identified by serial number and claim name in Enclosure #1 attached to the BLM decision. The basis for the decision was the failure to file either a rental fee of \$200 per claim or a certificate of exemption by August 31, 1993, as

required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act of October 5, 1992), P.L. 102-381, 106 Stat. 1374, 1378-79 (1992).

In his notice of appeal, appellant asserts that he had no knowledge of the statutory requirement until he went to "the court house to record my claims [1] on [A]ugust 31, 1993," at which point he telephoned BLM and tendered payment in the amount of \$200 by credit card for another claim not involved in the BLM decision. Appellant relates that he could only pay the required fee for one claim as "\$200.00 a claim is completely out of the question." Further, appellant states that he has since learned that there is an exemption available for owners of 10 or fewer claims and, in his notice of appeal, he specifies 10 claims for which he requests an exemption. In a supplemental statement of reasons for appeal subsequently filed, appellant reiterates that he received no notice from BLM regarding compliance with the rental fee requirements or filing for an exemption. Additionally, appellant contends that "since I have not yet made any money off [these] claims I can not pay \$200.00 per claim on 13 mining claims."

Counsel for BLM has filed an answer asserting that Congress has the power to condition continued retention of appellant's mining claims on performance of affirmative duties imposed to further legitimate legislative objectives, citing United States v. Locke, 471 U.S. 84, 104 (1985).<sup>2/</sup> With respect to appellant's claim of lack of notice of the statutory requirements, BLM asserts that there is generally no requirement that a claimant be given personal notice of the impact of a new statute on his property so long as the statute provides a reasonable opportunity for affected claimants to become aware of the requirements. Further, it is pointed out that BLM published proposed and final regulations governing implementation of this statute in the Federal Register. Additionally, BLM asserts that it sent a postcard summarizing the requirements of the statute to all mining claimants whose names and addresses were on file with BLM as a result of recordation documents filed under section 314 of FLPMA. Finally, BLM notes that appellant, as the owner of

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<sup>1/</sup> The claims or documents appellant was recording at the courthouse are not clear from the record. Copies of location notices for the claims at issue in this appeal were all recorded with BLM on Sept. 19, 1979, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1994). As these claims were all located prior to Oct. 21, 1976, this constituted compliance with section 314(b).

<sup>2/</sup> The Locke case involved judicial review of a Board decision, Madison D. Locke, 65 IBLA 122 (1982), finding mining claims to be abandoned and void as a consequence of the failure to timely file evidence of assessment work in accordance with section 314 of FLPMA and the implementing regulations. See 43 U.S.C. § 1744(a), (c) (1994).

at least 13 claims, was not entitled to a small miner exemption at the time the rental payment was due.

[1] The relevant statute, the Act of October 5, 1992, provides in pertinent part that:

[F]or 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 Act also contained an identical provision establishing rental fees for the following assessment year ending at noon on September 1, 1994, and requiring payment of such additional \$100 rental fee for each claim on or before August 31, 1993. 106 Stat. 1378-79. Implementing Departmental regulations provide in pertinent part 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). 3/

The statute further provides 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; see 43 CFR 3833.4(a)(2) (1993). 4/

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3/ The regulations promulgated to implement the mining claim rental fee provisions of the Act of Oct. 5, 1992, are found in the 1993 codification of Title 43 of the Code of Federal Regulations at Subpart 3833.

4/ The only exception provided from this annual rental requirement is the "small miner" exemption, available to claimants holding 10 or fewer claims on Federal lands. 106 Stat. 1378-1379; 43 CFR 3833.1-5(d), 3833.1-6, and 3833.1-7 (1993); see William B. Wray, 129 IBLA 173 (1994). The record shows that appellant held more than 10 claims at the time of the Aug. 31, 1993, filing deadline.

When a claimant fails to qualify for a small miner exemption from the rental fee requirement, failure to pay the rental fee in accordance with the Act and the regulations results in a conclusive presumption of abandonment. William B. Wray, *supra* at 175; Lee H. & Goldie E. Rice, 128 IBLA 137, 141 (1994). The Department is without authority to excuse lack of compliance with the rental fee requirement of the Act, to extend the time for compliance, or to afford any relief from the statutory consequences. *Id.* In the absence of timely rental payments or an applicable exemption, BLM properly declared the claims abandoned and void.

With respect to appellant's challenge regarding the adequacy of notice, we have previously considered the same issue under the Act of October 5, 1992, and its implementing regulations. In Dee W. Alexander Estate, 131 IBLA 39 (1994), we noted that the language of the Act dealing with the consequences of the failure to make the annual payment of the claim rental fee is very similar to the language used by Congress in section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1994), which provides that the failure to record the notice of location of a mining claim, millsite, or tunnel site with BLM or to file evidence of annual assessment work or a notice of intention to hold "shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner." <sup>5/</sup> As we noted in Alexander, the Supreme Court has upheld the constitutionality of section 314 of FLPMA, concluding that a mining claim for which timely filings are not made is extinguished by operation of law notwithstanding the claimant's intent to hold the claim. United States v. Locke, 471 U.S. at 97. "Regulation of property rights does not 'take' private property when an individual's reasonable, investment-backed expectations can continue to be realized as long as he complies with reasonable regulatory restrictions the legislature has imposed." 471 U.S. at 107 (citations omitted). On the issue of the adequacy of notice to claimants, the Locke Court reversed the district court finding that individualized notice of the filing deadlines was constitutionally required and held:

In altering substantive rights through enactment of rules of general applicability, a legislature generally provides constitutionally adequate process simply by enacting the statute,

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<sup>5/</sup> The Board has consistently held that responsibility for complying with the recordation and filing requirements of FLPMA rests with the claimant and the failure to comply with time periods prescribed in section 314 of the FLPMA would, in and of itself, cause the claim or site to be lost. In numerous decisions dealing with this provision the Board specifically held that it is of no avail to appellants to point out that they were unaware of these regulatory requirements. Armando Majalca, 48 IBLA 351 (1980); Charles Caress, 41 IBLA 302 (1979); Donald H. Little, 37 IBLA 1 (1978). Similarly the Board has held that BLM has no affirmative duty to send claimants a reminder notice concerning the need to make the annual filing required by 43 U.S.C. § 1744 (1994). Gordon B. Copple, 105 IBLA 90, 95 I.D. 219 (1988).

publishing it, and, to the extent the statute regulates private conduct, affording those within the statute's reach a reasonable opportunity both to familiarize themselves with the general requirements imposed and to comply with those requirements. Texaco, [Inc. v. Short], 454 U.S. [516,] at 532. [Additional citations omitted.]

471 U.S. at 108. Although this Board has no authority to declare an act of Congress or a duly promulgated regulation unconstitutional, see Amerada Hess Corp., 128 IBLA 94, 98 (1993), in deciding the Alexander case we found the Act as implemented by BLM to be consistent with the constitutional requirements set forth in the Locke and Texaco cases. Dee W. Alexander Estate, supra at 43. <sup>6/</sup>

The constitutionality of the Act of October 5, 1992, has also been upheld in court against fifth amendment challenge. Kunkes v. United States, 32 Fed. Cl. 249 (Ct. Fed. Cl. 1994), aff'd, 78 F.3d 1549 (Fed. Cir. 1996). Finding "Congress retains the affirmative power to change the conditions for continued ownership of mineral claims, assuming that power is reasonably exercised," the court further held that:

Claimholders have always been subject to some ongoing proof of their interest in developing the mineral resources of their claims. Although the Act [of October 5, 1992,] raised the ante, it did so in a way that cannot be considered substantially different in kind or degree from what had previously been required. It was plainly motivated by the same purpose, namely elimination of stale or worthless claims. H.R.Rep. No. 626, 102nd Cong., 2d Sess. 14 (1992). The Supreme Court has held that this is a legitimate governmental interest. Locke, 471 U.S. at 105-06. [Additional citations omitted.]

32 Fed. Cl. at 254-55. On appeal, the court found:

It is entirely reasonable for Congress to require a \$100 per claim fee in order to assess whether the claim holders believe that the value of the minerals in their claims is sufficiently great to warrant such a payment; and whether claim holders have the resources and desire to develop these claims. If the claims are not valued by the claim holders sufficiently to warrant a \$100 fee payment, then the claim holders' decision not to pay the fee eliminates an unnecessary encumbrance on public lands and frees the land for a more valued use.

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<sup>6/</sup> In reaching that conclusion, we recognized the efforts of BLM to notify claimants by individual mailing and by newspaper publication. We also noted that notice of rulemaking was published in the Federal Register: 58 FR 12878 (Mar. 5, 1993) (proposed rules); 58 FR 38186 (July 15, 1993) (final rules).

78 F.3d at 1556. Accordingly, we find that neither the fact that appellant did not receive personal notice of the rental fee and exemption filing requirements nor the inability of appellant to afford the rental fee supports his challenge to the BLM decision.

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.

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C. Randall Grant, Jr.  
Administrative Judge

I concur.

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David L. Hughes  
Administrative Judge

