

Editor's note: Reconsideration denied by order dated March 28, 1979

AL SHERMAN

IBLA 78-535

Decided December 14, 1978

Appeal from decision of the Oregon State Office, Bureau of Land Management, dismissing appellant's protest against State Office's requiring him to make certain filings with respect to his mining claim. OR-7065.

Affirmed.

1. Administrative Authority: Generally--Constitutional Law: Generally -- Federal Land Policy and Management Act of 1976: Generally -- Mining Claims: Recordation

Department of the Interior, as agency of executive branch of Government, is not proper forum to decide whether or not statute enacted by Congress is constitutional.

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

Appellant's prior filings of mining claim documents with BLM do not relieve him of filing obligations imposed by sec. 314 of Federal Land Policy and Management Act and implementing regulations at 43 CFR Subpart 3833, which are binding.

APPEARANCES: Al Sherman, Days Creek, Oregon, pro se.

38 IBLA 300

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Appellant appeals the dismissal by the Oregon State Office, Bureau of Land Management (BLM), by decision of June 21, 1978, of his protest to making the mining claim filings required by the Federal Land Policy and Management Act of 1976 (FLPMA). FLPMA, section 314, 90 Stat. 2769, 43 U.S.C.A. § 1744 (West Supp. 1978) requires that owners of unpatented lode or placer mining claims make certain descriptive filings with the Government. The implementing regulations set out detailed requirements at 43 CFR Subpart 3833. The present validity of appellant's mining claim is not in issue here. Appellant merely objects to having to make the required filings.

The mining claim in issue has been denominated the Aljack placer claim, and is situated in the E 1/2 NE 1/4 SW 1/4 sec. 5, T. 30 S., R. 2 W., Willamette meridian, in Douglas County, Oregon. Appellant first located this claim and filed a notice of location thereon on May 23, 1949. On March 12, 1951, and April 27, 1970, he relocated and filed amended notices.

The crux of the State Office decision is that it followed the course the Congress ordered and this Department has implemented by regulation. On appeal, appellant argues that the State Office decision is not valid, for the reasons that his claim has been previously recorded with the BLM so that he should not be forced to re-record, that the filing requirements legislated by the Congress are unconstitutional, and that the new regulations "are not in favor of the miner."

[1] As for appellant's insistence that the new recording requirements are unconstitutional, we adhere to our earlier holdings that this Department, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by the Congress is constitutional. See Alaska District Council of the Assemblies of God, Inc., 8 IBLA 153 (1972); Masonic Homes of California, 4 IBLA 23, 78 I.D. 312 (1971). The Constitution places authority in the Congress to "dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. CONST. art. IV, § 3, cl. 2. The Congress has clearly directed that the mining claim filings in issue be made. Under our system of laws, if an enactment of the Congress is in conflict with the Constitution, it is within the authority of the judicial branch, not the executive branch, of the Government to so declare.

[2] In his objection to having to re-record his mining claim, appellant presumably refers to the notices of location and affidavits of annual assessment which he has filed in years past and which are included in the record. Appellant's prior filings of these documents with the BLM do not relieve him of the filing obligations imposed by section 314 of FLPMA and the implementing regulations, which are of

binding legal effect and which must be followed. There may be some filing redundancy in appellant's case, but a comparison of the documents appellant has filed in past years with the documents he must file to comply with FLPMA and the regulations, especially 43 CFR 3833.1-2(c) on supplemental information and maps, discloses that such redundancy is of slight degree. Put simply, the Government's policy with respect to filing requirements for those who wish to receive the benefit of holding mining claims on Federal lands has changed, and as a result, appellant is being required to shoulder an additional burden if he desires continued enjoyment of such benefits. ^{1/}

This change reflects the Government's heightened concern over effective management of such claims and efficient oversight of private parties' claims of title to Federal lands. See 43 CFR 3833.0-2.

The Senate Committee on Interior and Insular Affairs expressed the reasons for these filing requirements in S. Rep. No. 94-583, 94th Cong., 1st Sess. 64-66 (1975), where it said in part:

One of the most persistent and significant roadblocks to effective planning and management of most Federal lands, including the national resource lands, is the status of hardrock mining and mining claims on those lands under the Mining Law of 1872, as amended (30 USC 22-47). The status accorded mining and its implications for the public land planner were recently outlined as follows:

The prime concern of public land managers is that mining is given a preferential status on almost all the public lands under the present law. Under the policy of "free mining" a prospector is unrestricted as long as he is diligently exploring for mineral deposits, without regard to the impact which his activity may have on other uses of the land. . . . This situation has obviously compromised the ability of public land managers to develop and administer a comprehensive plan which provides, in an even and balanced way, for all uses of the public lands. Mining lies outside this process. Because mining tends to dominate other uses whenever and wherever it occurs, the land management policies implemented by the agencies are continually subject to displacement by a mineral claimant [footnote omitted].

* * * * *

^{1/} We note that such benefits have been granted by the Congress in the exercise of its discretion. See the General Mining Laws, 30 U.S.C. § 21 et seq. (1970).

[T]he Committee did address a particular procedural problem concerning the registration of mining claims – a problem which is particularly frustrating to the public land manager. The source of this problem is what is often termed "stale claims". There is no provision in the 1872 Mining Law, as amended, requiring notice to the Federal government by a mining claimant of the location of his claim. The mining law only requires compliance with local recording requirements, which usually means simply an entry in the general county land records. Consequently, Federal land managers do not have an easy way of discovering which Federal lands are subject to either valid or invalid mining claim locations. According to some estimates, there are presently more than 6,000,000 unpatented claims on the public lands, excluding national forests, and more than half of the units of the National Forest System are reputedly covered by mining claims. [Footnote omitted.] Of course, the vast majority of these claims will never be pursued, and do not directly interfere with land management. They do, however, create significant uncertainty regarding the actual extent of valid locations. Furthermore, as unpatented mining locations can be bought and sold, they have become the basis for many unauthorized occupancies on the public lands. These claims constitute a cloud on the title of a large portion of the Federal lands.

Appellant has argued that the new filing requirements "are not in favor of the miner." ^{2/} In light of the fact that these requirements are now the law, such an argument is moot. Such an objection would appropriately have been before this Department for consideration when it called for comments upon the proposed recordation regulations at 41 Federal Register 54084 (Dec. 10, 1976), but in promulgating the final regulations as it did, the Department issued the dispositive word on the manner in which it would accommodate the various conflicting interests in answering the congressional mandate on recordation of claims.

^{2/} Appellant specifically refers to the "regulations put forth in Circular No. 2419." We note that this BLM circular merely reprints the regulations appearing in 43 CFR Subpart 3833.

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.

Anne Poindexter Lewis
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

