

BRUCE PARKE

IBLA 79-334

Decided July 25, 1979

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring mining claim abandoned and void. OR MC 3409.

Affirmed.

1. Constitutional Law: Generally -- Mining Claims: Assessment Work -- State Laws

A provision of State law, relating to assessment work on mining claims, which is more liberal than the requirements of Federal law, cannot override such Federal law. Article IV, Section 3, Clause 2, of the Federal Constitution vests in the Congress' authority to promulgate appropriate laws governing the public lands and other property of the United States.

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

Under the Federal Land Policy and Management Act of 1976, sec. 314, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on Oct. 10, 1977, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1978, or the claim will be conclusively deemed to have been abandoned.

APPEARANCES: Bruce Parke, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated April 4, 1979, of the Oregon State Office, Bureau of Land Management (BLM), holding the Red Dog #3

mining claim to have been abandoned for failure to file an annual assessment statement or notice of intention to hold the claim, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the pertinent regulation, 43 CFR 3833.2-1.

The Red Dog #3 claim was located on October 10, 1977.

43 U.S.C. § 1744(a)(1) and (2) (1976) of FLPMA and the pertinent regulation, 43 CFR 3833.2-1(b)(1) require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with the State Office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Failure to file the required instruments is deemed conclusively to constitute an abandonment of the mining claim. 43 U.S.C. § 1744(c), 43 CFR 3833.4(a). Since appellant's claim was located in October 1977, either evidence of assessment work or a notice of intention to hold the mining claim had to be filed prior to December 31, 1978.

On appeal appellant refers to a California State requirement allowing a longer period of time for performing assessment work and for filing a statement.

[1] In essence, appellant is suggesting that such laws of the State of California override the requirements imposed by Federal statutes and regulations.

A local enactment or regulation, even if based on the acknowledged police powers of a State, must always yield in case of conflict with the exercise by the General Government of any power it possesses under the Constitution, or with any right which that instrument gives or secures. Jacobson v. Massachusetts, 197 U.S. 11, 25 (1905); Connolly v. Union Sewer Pipe Co., 184 U.S. 540, 556 (1902); Lochner v. New York, 198 U.S. 45 (1905). See also Olsen v. Smith, 195 U.S. 332, 344 (1904); New York ex rel. Cutler v. Dibble, 21 How. 366 (1859); Compagnie Francaise de Navigation a Vapeur v. State Board of Health, 186 U.S. 380, 393 (1902).

Article IV, Section 3, Clause 2, of the Constitution clearly provides that the "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . ." No state legislation can interfere with this right or embarrass its exercise. Gibson v. Chouteau, 13 Wall. 92, 99 (1872).

[2] The matter herein is controlled by FLPMA, the applicable provision of which we have cited. When the appellant failed to file

either an assessment statement or a notice of intention to hold the claim, the State Office properly held the claim to have been abandoned and declared it void. W. A. Starr, 38 IBLA 74 (1978).

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.

Frederick Fishman  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

