

Editor's note: 87 I.D. 248; -- appealed, sub nom. Tosco v. Watt, Reverse
Civ. No. C-8680 (D. Colo. May 1, 1985), 611 F.Supp. 1130; dismissed as
moot, No. 85-1968 (10th Cir. Aug. 12, 1987), 826 F.2d 948; See also 51
IBLA 97 and 68 IBLA 37.

UNITED STATES v. CATLIN BOHME ET AL.

UNITED STATES v. EXXON CORP. ET AL.

UNITED STATES v. AIDABELLE BROWN ET AL.

IBLA 79-558

Decided June 30, 1980

Cross appeals of Administrative Law Judge Harvey C. Sweitzer's decision dismissing a Government contest to various oil shale placer mining claims and declaring others null and void. Colorado Contest Nos. 658, 659 and 660. On remand from the United States District Court for the District of Colorado.

Affirmed in part, reversed in part.

1. Administrative Procedure: Burden of Proof -- Contests and Protests: Generally -- Evidence: Prima Facie Case -- Mining Claims: Contests -- Rules of Practice: Appeals: Burden of Proof -- Rules of Practice: Government Contests

The assertion that annual assessment work has not been performed is the assertion of a negative fact. If an examination of the mining claims and the nearby lands does not reveal the accomplishment of the required work, and there is no record of any such work having been performed, then evidence

to this effect would be sufficient to establish a prima facie case. It would then devolve upon the claimant to show by a preponderance of countervailing evidence that he has substantially complied with the statute.

2. Administrative Procedure: Burden of Proof -- Contests and Protests: Generally -- Evidence: Burden of Proof -- Mining Claims: Contests -- Mining Claims: Determination of Validity -- Rules of Practice: Appeals: Burden of Proof -- Rules of Practice: Government Contests

In a Government contest proceeding to determine the validity of a mining claim, the claimant is always the proponent of the rule or order, always the one claiming to have earned the benefit of the mining laws through his compliance therewith. Regardless of whether the issue on which the validity of the claim rests is discovery, mode of location, or performance of assessment work, the relative position and obligation of the contestant and the contestee remain the same.

3. Administrative Procedure: Adjudication -- Contests and Protests: Generally -- Mining Claims: Assessment Work -- Mining Claims: Contests -- Mining Claims: Determination of Validity -- Rules of Practice: Government Contests

Where the Government contests the validity of a mining claim for nonperformance of annual assessment work, there is nothing inherent or implied in that action which requires a conclusion that the claim is valid in all other respects, nor may the bringing of such an action be treated as tantamount to an admission by the Government that "property rights in the claim have been established by the making of a valid location."

4. Mineral Leasing Act: Generally -- Mining Claims: Abandonment -- Mining Claims: Assessment Work -- Stare Decisis

Failure to maintain a claim by doing assessment work each year may constitute evidence of abandonment. Independently, a failure to substantially comply with the requirement that annual assessment work be performed, 30 U.S.C. § 28 (1976), requires a finding that the claim has not been "maintained" within the meaning of sec. 37 of the Mineral Leasing Act, 30 U.S.C. § 193 (1976), and may result in a forfeiture of the claim. Hickel v. The Oil Shale Corp., 400 U.S. 48 (1970).

5. Equitable Adjudication: Generally -- Estoppel

No decision of any Federal court, or any formal decision or Instruction issued by the Department of the Interior has ever purported to hold that a mining claimant is not required under 30 U.S.C. § 28 (1976) to perform annual assessment work. Relevant court decisions deal not with the question whether oil shale claimants are required to comply with the provisions of sec. 28, but whether the United States is a beneficiary of a failure to perform the assessment work, and such decisions expressly note that a mining claimant is required to perform labor of \$100 annually for each claim.

6. Equitable Adjudication: Generally -- Laches

The defense of laches is not available against the Government in cases involving public lands. Even were laches determined to be an available defense, it would clearly be circumscribed by the same limitations surrounding the doctrine of estoppel.

APPEARANCES: David G. Manter, Esq., Denver, Colorado, Neil S. Mincer, Esq., Glenwood Springs, Colorado, for appellants in Contest No. 658; Warren O. Martin, Esq., Denver, Colorado, for appellants in Contest

No. 659; H. Michael Spence, Esq., Denver, Colorado, Fowler Hamilton, Esq. and Richard W. Hulbert, Esq., New York, New York, and Donald L. Morgan, Esq., Washington, D.C., for appellants in Contest No. 660. Lyle K. Risin, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Government.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The above-captioned cases are before the Interior Board of Land Appeals on cross-appeals of the decision of Administrative Law Judge Harvey C. Sweitzer, dated July 17, 1979, dismissing contests against various oil shale placer mining claims and declaring others null and void for failure to substantially comply with the requirement that annual assessment work the amount of \$100 be performed for the benefit of each claim, 30 U.S.C. 28 (1976).

Because of the lengthy history of these cases in the Department and the courts, we will depart somewhat from the usual practice of setting forth the events immediately culminating in the decision from which the appeals are prosecuted. After identifying the parties and other preliminary matters, therefore, we shall reach and review Judge Sweitzer's decision as the chronology of these cases dictates.

I

INTRODUCTION

CONTEST 658 - Mineral Patent Application C-028751

Contestees are: Cameron Catlin Bohme; St. Clair Napier Catlin; John R. Farnum, Jr.; Elizabeth Young Farnum Hinds; James M. Larson; Jean Larson; Rachael Magnall; Neil S. Mincer; Barnette T. Napier; Barnette T. Napier, Jr.; Grace A. Savage; Joan L. Savage; and John W. Savage. Contestees hold possessory title to the Northwest, Northeast, Southwest, and Southeast oil shale placer mining claims, all originally located on July 2, 1918. Those claims are collectively referred to as the Compass Group, an appellation we will also use. The claims are situate in sec. 2 T. 7 S., R. 98 W., sixth principal meridian, Garfield County, Colorado. 1

On June 1, 1959, contestees or their predecessors in interest filed patent application for the Compass Group. Final certificate issued on August 16, 1961.

1/ The Compass claims are situated in W 1/2 E 1/2 NE 1/4, W 1/2 NE 1/4, N 1/2 NW 1/4, SW 1/4 NW 1/4, NW 1/4 SW 1/4, S 1/2 SW 1/4, SE 1/4.

CONTEST 659 - Mineral Patent Application C-030979

Contestees are Exxon Corporation (Exxon), a New Jersey corporation; Joseph B. Umpleby; Wasatch Development Company (Wasatch), a Colorado corporation; and Dixie Wittstruck as trustee under the will of R. E. Magoo, Jr., deceased. Contestees hold possessory title to the Elizabeth Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, located on May 18, 1918, and the Carbon Nos. 1 through 12, located on April 10, 1918. These claims are situate in N 1/4 sec. 32, secs. 33 through 36, T. 4 S., R. 97 W., sixth principal meridian, Garfield County, Colorado. 2/

On September 8, 1959, contestees or their predecessors in interest applied for patent of the subject claims with the exception of Elizabeth No. 3. No final certificate has been issued.

CONTEST 660 - Mineral Patent Application C-012327

Contestees are: Aidabelle Brown, individually and as personal representative of the Estate of Harry Donald Brown; Penelope Chase Brown Ulrey, individually and as trustee for the Estate of Harry and Penelope Chase Brown; and The Oil Shale Corporation (TOSCO), a Nevada corporation, as lessee. Pacific Oil of California (Pacific) appears as a named contestee. In 1964, however, Pacific Oil reconveyed title

2/ Specifically, the Elizabeth and Carbon claims are situated in N 1/2 sec. 32, and secs. 33 through 36 in their entirety. Portions of the surface and mineral estates have been patented and are not here involved.

to contestees or their predecessors in interest. It therefore appears that Pacific Oil is no longer a proper party to this litigation; it is at best a nominal party.

Contestees hold possessory title to the Oyler Nos. 1 through 4 oil shale claims, originally located on September 25, 1916. These claims are situate in secs. 10, 11, 12, T. 6 S., R. 95 W., sixth principal meridian, Garfield County, Colorado, 3/ within the exterior boundaries of the Naval Oil Shale Reserve No. 1, 4/ Colorado No. 1.

In September 1955, application for patent was filed by Pacific Oil of California, then possessory owner of the Oyler claims. Final certificate issued on August 28, 1956.

All of the mining claims involved in these three contests were, by decisions of various dates in 1931, declared null and void on the ground, inter alia, of failure to comply with the assessment work requirements of the general mining laws, specifically 30 U.S.C. § 28 (1976). The import and general effect of these decisions and subsequent Departmental actions relating to these claims will be delineated infra.

3/ The Oyler claims are situated in sec. 10, lots 1 and 4, E 1/2 NE 1/4 (NE 1/4); sec. 11, N 1/2, N 1/2 SW 1/4; and sec. 12, W 1/2 NW 1/4.

4/ Created by Executive Order, dated December 6, 1916.

For the purposes of clarity and convenience, we shall refer to the several groups of contestees by contest number, or by the first name leading those of the other contestees in the caption of each appeal. Thus, unless otherwise indicated, references to Bohme, Exxon, or Brown, shall be understood to designate the entire group of contestees in each appeal.

It is also noted that our references to assessment years 5/ will name the concluding year in which assessment work was due. Thus, reference to the year 1929, for example, denominates the assessment work year ending June 30, 1929.

II

HISTORY

Prior to 1920, oil shale was a locatable and patentable mineral under the Mining Law of 1872, May 10, 1872, 17 Stat. 91, 30 U.S.C. § 22 et seq. (1976). Section 28 thereof provides:

On each claim located after the 10th of May 1872, and until a patent has been issued therefor, not less than \$100 worth of labor shall be performed or improvements made during each year. On all claims located prior to the 10th day of May 1872, \$10 worth of labor shall be

5/ Prior to 1958, the assessment work year commenced July 1 and ended June 30 of the following year. On August 23, 1958, P.L. 85-736, 72 Stat. 829 (85th Cong. 2d Sess.), changed the commencement of the assessment year to September 1.

performed or improvements made each year, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location.

In 1899, the Secretary of the Interior held, in P. Wolenberg, 29 L.D. 302, 304 (1899):

The annual expenditure of one hundred dollars, in labor or improvements, * * * is solely a matter between rival or adverse claimants to the same mineral land, and goes only to the right of possession, the determination of which is committed to the courts and not to the land department [citing Hughes v. Ochsner, 27 L.D. 396 (1898), and Opie v. Auburn Gold and Mining Co., 29 L.D. 230 (1899)].

Congress enacted the Mineral Lands Leasing Act (Leasing Act), February 25, 1920, 41 Stat. 437, 30 U.S.C. § 181 et seq. (1976). That Act withdrew oil shale, among other minerals, from the operation of the mining law, and provided that thereafter these minerals were available for development by leasing only. The Act contains a savings clause, sec. 37, 41 Stat. 451, which provides, in material part, that: "[A]s to valid claims existent at the date of the passage of this Act and thereafter maintained in compliance with the laws under which initiated, which claim may be perfected under such laws, including discovery."

Subsequent to the enactment of the Leasing Act, supra, the Secretary held in Emil L. Krushnic, 52 L.D. 282 (1927), aff'd on rehearing, 52 L.D. 295 (1928), that performance of annual assessment work on claims located for oil shale was a prerequisite to maintaining the claims in compliance with the laws under which they were initiated, as required by section 37 of the Leasing Act (commonly referred to as the "savings clause"). Thus, a failure to perform assessment work annually terminated a claimant's right under the mining location. Under this interpretation, hundreds of oil shale claims were declared invalid for failure to comply with the assessment work requirements. Included among these claims were those which are involved in the instant appeals.

In Wilbur v. United States ex rel. Krushnic (Krushnic), 280 U.S. 306 (1930), the Supreme Court considered the effect and meaning of the savings clause with regard to the assessment work requirements of the Mining Law of 1872. Krushnic held possessory title to a claim on which he had defaulted in annual assessment work for the year immediately preceding his application for patent. Final certificate issued before the contest was instituted. The issue presented was whether the Leasing Act of 1920 extinguished the right under the general mining law to preserve a mining claim under the original location by resuming work after a failure to perform annual assessment labor.

The Supreme Court held that:

While he is required to perform labor of the value of \$100 annually, a failure to do so does not ipso facto forfeit the claim, but only renders it subject to loss by relocation. And the law is clear that no relocation can be made if work be resumed after default and before such relocation.

Prior to the passage of the Leasing Act, annual performance of labor was not necessary to preserve the possessory right * * * as against the United States, but only against subsequent relocators. So far as the government was concerned, failure to do assessment work for any year was without effect. Whenever \$500 worth of labor in the aggregate had been performed, other requirements aside, the owner became entitled to a patent, even though in some years annual assessment labor had been omitted.

* * * * *

* * * [A]fter failure to do assessment work, the owner equally maintains his claim, within the meaning of the Leasing Act, by a resumption of work, unless at least some form of challenge on behalf of the United States to the valid existence of the claim has intervened * * *. [Emphasis in original. Citations omitted.]

280 U.S. at 317-18.

On June 17, 1930, following the decision of the Supreme Court in Krushnic, supra, instructions for adverse proceedings against oil shale claims on the ground of default in assessment work were issued. In these Instructions, 53 I.D. 131 (1930), Secretary Wilbur directed:

[W]here, as in this case, patent proceedings have been instituted and the requisite expenditure has been made, the applicant has shown compliance with the law in maintaining the claim, no challenge can, at this late date, be made against the claimants because of failure to perform annual labor. Such challenge must be at a time when under the law adverse claimants could assert their rights.

It is clear * * * that the United States, in order to make a lawful challenge to the validity of an oil shale claim for failure to do the annual assessment work in any patent proceedings, must do so at a time when there is an actual default and no resumption of work and prior to the time the patent proceedings including the publication of notice have been completed.

As a result, it was the Department's official position that it possessed authority to initiate contest proceedings for failure to perform annual assessment work, provided such challenge was instituted during actual default and prior to resumption of the work. Accordingly, the Department proceeded against oil shale claims in appropriate circumstances.

Five years later, Ickes v. Virginia-Colorado Development Corp. (Virginia-Colorado), 295 U.S. 639 (1935), was decided. In that case, the mining claimant had defaulted in assessment work in the year immediately preceding the initiation of the contest proceedings. The Department subsequently declared the claim null and void. The issue presented was whether the mining claimant had the right to retain possession of the claim, as against the United States, and resume work at any time before a valid relocation by another. No relocation could have occurred during the period of default.

The Supreme Court held that the mining claimant was squarely within the savings clause of the Leasing Act:

Plaintiff had lost no rights by failure to do the annual assessment work; that failure gave the government no ground of forfeiture. [Citing Krushnic, supra.]

* * * Plaintiff was entitled to resume [work]. * * * Plaintiff's rights after resumption would have been as if "no default had occurred." Belk v. Meagher, [104 U.S. 279 (1881)] * * *. "Such resumption does not restore a lost estate * * *; it preserves an existing estate." [Emphasis in original.]

295 U.S. at 646.

Thus, Virginia-Colorado rejected the Department's interpretation of Krushnic, that a default in assessment work subjected a mining claim to governmental challenge during the actual period of default and prior to subsequent resumption of assessment work. In the Shale Oil Company, 55 I.D. 287 (1935), the First Assistant Secretary stated:

In view of this opinion of the court, the adverse proceedings and decision of the Commissioner therein in the instant case must be held as without authority of law and void. The * * * decision * * * in the Virginia-Colorado Development Corporation [53 I.D. 666 (1932)] case and the instruction of June 17, 1930, are hereby recalled and vacated. The * * * decisions in the cases of Francis D. Weaver [53 I.D. 175 (1930)] and Federal Oil Shale Company [53 I.D. 213 (1930)] and other Departmental decisions in conflict with this decision are hereby overruled. [Emphasis supplied.]

55 I.D. at 290.

In the nearly 30 years following Virginia-Colorado and the Shale Oil Company, supra, the Department was of the official view that

default in assessment work was exclusively a matter between rival claimants. That official view was widely disseminated among miners, members of the state and Federal legislatures, and governmental agencies, and the interested public. We believe the administrative record herein, amply supplemented by exhibits adduced by contestees during the trial in district court, admits of no other conclusion regarding the Department's official view that defaults in annual assessment work inured only to the benefit of rival claimants. Many hundreds of oil shale claims had been declared null and void during the 1920's and 1930's on the principal ground of default in performance of annual assessment work. After Virginia-Colorado and the Shale Oil Company, supra, many of these claims proceeded to patent notwithstanding those early decisions, the Department's view than being that such decisions were invalid for any purpose.

Contestees filed patent applications in 1955 (Contest 660) and 1959 (Contest 658 and 659). Bohme (Contest 658) and Brown (Contest 660) received final certificate. In 1961, however, the Department adopted the position that the pre-1935 administrative contest proceedings barred issuance of patent. Accordingly, contestees' patent applications were denied by decisions dated February 16 and 23, 1962. Contestees appealed the Director of the Bureau of Land Management, but the Secretary, in exercise of his supervisory jurisdiction, submitted the case to the Solicitor for final decision. That decision,

Union Oil Co. of California, 6/ 71 I.D. 169 (1964), affirmed the Manager's 7/ decisions to reject the contestees' patent applications.

In Union Oil, the Solicitor recognized that:

The basis of the Manager's decisions in the present cases was not that the original cancellations were correct as a matter of law at the time they were made, but rather, that "under * * * principles of finality of administrative action, estoppel by adjudication, and res judicata * * *," they cannot now be challenged. [Emphasis in original.]

71 I.D. at 170.

Citing the Shale Oil Company, supra, the Solicitor asserted that the language used therein "distinguishes those cases actually before the Secretary from those which are not. As to the former, the Commissioner's decisions canceling the claims were expressly recalled and vacated. The latter were merely 'overruled' [footnote omitted]." 71 I.D. at 175.

After noting the Department's longstanding practice of giving prospective application to its decisions, the Solicitor concluded that the Shale Oil Company decision "merely recalled and vacated the earlier decision in that particular case `* * * thereby depriving the

6/ Supplemental decision, Union Oil Co. of California, 72 I.D. 313 (1965)
 7/ The duties at that time exercised by the Land Office Manager are now primarily located in the Office of the BLM State Director.

earlier opinion of all authority as precedent.'" Id. at 176. This view was based in large part on the fact that contestees (or their predecessors in interest), with the exception of Brown, failed to appeal the old contest decisions after notice and hearing. Id. at 172, n.5. In such circumstances, the Solicitor ruled the earlier decisions must be held conclusive, and "in the absence of a legal or equitable basis warranting reconsideration," such decisions would not be reopened. That the Supreme Court or a court of appeals should subsequently invalidate the legal basis for such decisions was held insufficient to require "reconsideration and reversal of cases finally decided before the change in the interpretation or application of the law" (citations omitted). Id. at 177.

In response to arguments advanced by contestees, the Solicitor also ruled that neither Krushnic nor Virginia-Colorado, supra, denied the Secretary's jurisdiction to challenge the claims in the 1930's; rather, those decisions had merely found error in his interpretation and application of the explicit terms of the statutes relating to the effect of failure to perform annual assessment work. The Solicitor expressly rejected the contention that the United States had consistently recognized the validity of the subject claims during the period 1955 through 1962.

As previously noted, Union Oil Company affirmed the Manager's decisions to reject the patent applications for the instant claims.

Contestees therein then sought review of the Solicitor's decision in the District Court for the District of Colorado. The Oil Shale Corporation v. Udall, 261 F. Supp. 954 (D. Colo. 1966). We think it advisable to set forth at length the issues there presented, as they have recurred throughout this litigation.

First, plaintiffs contended that Krushnic and Virginia-Colorado, supra, stand for the proposition that the Department lacked authority to declare oil shale claims null and void on the ground of failure to perform annual assessment work. Second, plaintiffs challenged the adequacy of notice of the pre-1933 contest proceedings. Third, referring to various pronouncements of the Department's officials and employees between 1935 and 1962, and the patenting of claims previously declared void in circumstances identical to those surrounding the subject claims, plaintiffs argued that such acts constituted a rule of law which could not be retroactively altered by the Department. Thus, they argued that the old contests had no effect on the validity of the claims. Plaintiffs further asserted that they and their predecessors in interest had justifiably relied upon this rule of law.

The Union Oil decision, supra, was premised upon the assumption, in the view of the district court,

that the Supreme Court had not denied the Department's jurisdiction with respect to the subject matter. * * * In

essence, [the Solicitor] determined that the applicants were required to take action to nullify these rulings at the time and that their failure to exercise this initiative constituted something in the nature of an implied acquiescence.

261 F. Supp. at 965.

The court further noted:

In support of his holding that there was such jurisdiction, the Solicitor pointed to the language in Virginia-Colorado to the effect that the Secretary had authority by appropriate proceedings to determine that a claim was invalid for lack of discovery, fraud, or other defect, or that it was subject to cancellation by reason of abandonment. From this he concluded that the Department at all times retained jurisdiction; that is, power over these claims. As we view it, this was an unjustified interpretation of the decisions of the Supreme Court. It overlooked the basic nature in terms of property of a mining location. Both Krushnic and Virginia-Colorado proceeded on a fundamental proposition that this creates a vested property right which can be defeated only by a competitor. Historically, this was the nature and character of the mining claim, and to overlook it is to change a fundamental rule of property.

* * * [A]n adjudication by a tribunal lacking subject matter jurisdiction is wholly nugatory, need not be appealed, and can not be res judicata. When, as here, the Department acted beyond the authority granted to it by the law, it acted in the particular area beyond its jurisdiction. * * * It is clear from a reading of * * * [Virginia-Colorado] that the Court was speaking on the question of the Department's jurisdiction. As to pre-1920 locations, the Court held that they retained the legal status which they had enjoyed prior to the adoption of the Leasing Act. * * * [Krushnic and Virginia-Colorado] rule that prior to the adoption of this Act the performance of assessment work was unnecessary to the preservation of the locator's possessory right against the Government.

Virginia-Colorado clarified beyond question the proposition that the Government has never had a possessory

right to pre-Leasing Act mining claims defective only for failure to perform assessment work. It follows from this that the Department is wholly without jurisdiction to inquire into the status of assessment work performance.

261 F. Supp. at 965-66.

The Court of Appeals for the Tenth Circuit affirmed the district court's judgment of reversal. Udall v. The Oil Shale Corporation, 406 F. 759 (10th Cir. 1969).

The Supreme Court granted certiorari to consider whether Krushnic and Virginia-Colorado had been correctly construed and applied. In Hickel v. The Oil Shale Corp. (TOSCO), 400 U.S. 48 (1970), the Court while declining to overrule these cases, limited the holdings therein. Specifically, the Court held:

[D]icta to the contrary, we conclude that they must be confined to situations where there had been substantial compliance with the assessment work requirements of the 1872 Act, so that the "possessory title" of the claimant, granted by 30 U.S.C. § 26, will not be disturbed on flimsy or insubstantial grounds.

Unlike the claims in Krushnic and Virginia-Colorado, the Land Commissioner's findings indicate that the present claims had not substantially met the conditions of § 28 respecting assessment work. Therefore we cannot say that Krushnic and Virginia-Colorado control this litigation. We disagree with the dicta in these opinions that default in doing the assessment work inures only to the benefit of relocators, as we are of the view that § 37 of the 1920 Act makes the United States the beneficiary of all claims invalid for lack of assessment work or otherwise. It follows that the Department of the Interior had, and has,

subject matter jurisdiction over contests involving the performance of assessment work.

400 U.S. at 57.

The Court expressly rejected the proposition that enforcement of the assessment work provision derived solely from relocations as relocation was impossible after 1920. The opposite conclusion would mean "that a claim could remain immune from challenge to anyone with or without any assessment work, in complete defiance of the 1872 Act." 400 U.S. at 56.

As to the argument that the Shale Oil Co., *supra*, constituted an administrative rule which nullified the 1930-33 contest proceedings which had held appellees' claims void, and as to the question whether those proceedings, if still valid, were currently reviewable for substantive and procedural errors, the court directed consideration on remand of "all issues relevant to the current validity of those contest proceedings * * * including the availability of judicial review." 400 U.S. at 58.

On remand, in The Oil Shale Corp. v. Morton, 370 F. Supp. 108 (D. Colo. 1973), the district court treated its task as two-fold: To decide whether the 1930-33 contests are valid and therefore a proper basis for the Manager's decisions to reject contestees' patent applications; and secondly, should the old contests be held nullities,

whether the subject claims are presently valid, after all other possible grounds of invalidity have been considered. The issue of procedural defects in the old contest proceedings was reserved pending resolution of the foregoing issues.

In effect, the district court ruled that the Department's statements in the years from 1935 to 1961, in the form of Departmental memoranda, official correspondence and regulations, constituted a rule which "had the force and effect of law to the same extent as though written into the statute." (Citations omitted.) 370 F. Supp. at 122. The court characterized this "legislative rule" as a "procedural rule * * * binding on the Department and this Court under the holding of *Service v. Dulles*, 354 U.S. 363 (1957)," and concluded that contestees and the mining industry were therefore justified in believing assessment work involved possessory rights and was solely a matter of concern to rival claimants to mineral lands. The court also found that the old contests had been vacated by the Shale Oil Co., supra, and therefore constituted no obstacle to patent. Thus, no administrative appeal had been necessary in the view of the court to remove the impediment posed by the old contest decisions. Id. at 123.

The court further held the Government estopped from denying patents based on the old contest decisions, on the basis of the following acts and statements:

(1) The Secretary's 1935 holding in Shale Oil, supra, which, in response to the ruling in Ickes v. Virginia-Colorado Development Corp. [supra], specifically overruled all departmental decisions purporting to invalidate oil shale claims for failure of assessment work requirements; (2) the subsequent dismissal, adverse to the government, of contest proceedings pending against these and other oil shale claims; and (3) the systematic issuance of patents from 1935 to 1962 to other oil shale claim owners whose claims had purportedly been invalidated for assessment work failure prior to Ickes v. Virginia-Colorado Development Corp.].

370 F. Supp. at 124.

As there had been no administrative hearing within the Department to consider other possible grounds for the current invalidity of the claims, the district court remanded the subject cases to the Bureau of Land Management for further action.

As to the challenge of the processing of the patent applications on procedural grounds, the district court was of the opinion that regardless of the notice and hearing provided in the old proceedings, contestees were entitled to present evidence to the Manager on the issue of whether those voidances were themselves invalid.

After commenting on contestees' opportunity to adduce evidence and present argument at trial, and after noting that the parties did not request a remand to the Department, the court found as follows:

1. Whether the Department had repudiated the 1930-33 contests was a question of fact, or of mixed law and fact; rejection of the patent applications constituted a finding that there had been no repudiation of the voidances. The Solicitor's reliance on the notice and hearing provided in 1930-33 as reason for denying a current hearing was erroneous, as contestees sought a hearing on the Department's conduct since 1935. Contestees were therefore entitled to an evidentiary hearing in accordance with the rule of United States v. O'Leary, 63 I.D. 341 (1956).

2. The court noted without comment contestees' charge that the Solicitor had been impermissibly involved with both the recommendation to reject the patent applications and administrative appellate review of the decisions to do so. The court observed that regulations promulgated in 1972 (now) prevent similar occurrences.

On September 22, 1975, the Tenth Circuit Court of Appeals vacated the decision of the district court. The court perceived the substantive grounds relied upon by the district court to be (1) the vacating effect of the Shale Oil Co. decision, supra; (2) the Department's "rule" of patenting oil shale claims previously declared void for failure to do assessment work; and (3) estoppel. In the court's view, only grounds (1) and (2) related directly to the Supreme Court's order of remand; ground (3) was deemed an issue relevant to the current validity of the old contests.

The Court of Appeals noted that the district court's holding that the old assessment contests could not furnish a present basis for barring patents to these contestees necessarily encompassed, however, other issues--abandonment, inadequate assessment work, fraud, "and the like"--not previously adjudicated in any administrative proceeding. The Tenth Circuit observed that the issue of the current effect of the previous contests, and whether current judicial review for substantive and procedural errors is possible at this time, would remain to be considered should the district court's decision at 370 F. Supp. 108 be invalidated upon further appellate review.

Thus, in remanding to the district court, 8/ the Tenth Circuit directed:

1. Where appropriate, contestees should apply for patent. 9/ In those instances where contestees had applied for patent (Bohme, Brown and Exxon) the cases should be remanded to the Department for

8/ The mandate was recalled by the court on March 1, 1976, and stayed through April 11, 1976, pending the outcome of contestees' petition for writ of certiorari. That petition was denied in June 1976. The district court in turn stayed its order of remand to the Department until it had entered its judgment in Shell Oil Co. v. Kleppe, 426 F. Supp. 894 (D. Colo. 1977), aff'd 591 F.2d 597 (10th Cir. 1979). The Supreme Court upheld the decision of the court of appeals. Andrus v. Shell Oil Co., 48 U.S.L.W. 4603 (June 3, 1980); see n.12, infra.

9/ That part of the order pertains to The Oil Shale Corp. v. Kleppe, No. 74-1344, No. C-8680 in the district court, the only case in which the claimants had not filed patent applications. The district court retained jurisdiction over No. C-8680 pending our decision herein. In the event claimants in that case elect to seek patent, the case will be remanded to the Department. Order of Remand, January 17, 1977 (D. Colo.), p. 2.

reconsideration and reprocessing. In either event the Department was directed to assert and consider any and all bases for the invalidity of these claims.

2. On the issue of estoppel, the Department was further directed to receive all competent evidence upon the question of individual reliance upon the actions of Interior during the years 1935-62 regarding the legal effect of the early assessment work contests.

3. After the conclusion of the administrative proceedings, the district court would try the issue of alleged substantive or procedural deficiencies in the old contests, and rule upon the propriety of judicial review at the present time, including taking of additional evidence if necessary. The court required the district court to "supplement its present findings of fact and conclusions of law as needed to dispose of the new matters presented." Order of Remand, September 22, 1975, p. 7. It is noted, however, that the Department was granted an opportunity, in the course of these remand proceedings, to correct any existing procedural errors.

4. In the event the Department asserted no additional bases of invalidity--that is, in addition to old assessment work contests--the parties were invited to enter into a stipulation to that effect, thus eliminating all but the question of the availability at this time of judicial review of the old contests.

By order dated January 17, 1977, the district court remanded these cases for further administrative proceedings. The order of remand directed the Department in material part to:

(a) consider and rule upon all possible obstacles to the patenting of these claims;

* * * * *

(c) receive all competent evidence on the issue of estoppel, which concerns the question of individual reliance by claimants upon the prior actions of the Department of Interior regarding the effect of the assessment work contests; and

(d) correct any existing procedural errors [10/] made in prior proceedings.

In addition, the Department was directed to consider the implications of the decision by the Tenth Circuit in Shell Oil Co. v. Kleppe, No. 74-F-739 (D. Colo. Jan. 17, 1977), 11/ "wherever relevant to the issue raised at those proceedings."

To conform to the Supreme Court's direction that the Department assess any and all bases for barring contestees' patent applications, the Colorado State Office, Bureau of Land Management (BLM), instituted contest proceedings against these claims in May 1977. The contest complaints charged as to each group of claims (1) lack of discovery of

10/ As noted in Hickel v. The Oil Shale Corp., supra, the Secretary held in Union Oil Co., supra, that the 1930-33 contest proceedings are subject to reopening as to any locator for whom receipt of service is not adequately shown.

11/ See n.12, infra.

a valuable mineral deposit or, alternatively, that no such discovery presently exists 12/; and (2) that the claims were previously declared invalid in 1930-33, on the ground of failure to perform annual assessment work as required by law. In Contest 659 (Carbon-Elizabeth claims), the United States also charged that these claims were not physically located on the ground prior to the enactment of the Leasing Act, supra; that the claims are abandoned; and with respect to one claim, that a defect in title exists. In Contest 658 (Compass Group), the Government additionally charged that the lands embraced by the claims are nonmineral in character and thus not patentable.

Following a prehearing conference with Judge Sweitzer, all counsel agreed that the charge that "annual assessment work has not been performed on these claims as required by law" is the only issue ripe for determination by these administrative proceedings.

In each case contestees generally deny the charges and contend that the contests are barred by estoppel and laches.

12/ As to this point, on June 2, 1980, the Supreme Court rendered its decision in Andrus v. Shell Oil Co., 48 U.S.L.W. 4603 (June 3, 1980). The syllabus of that case recites:

"Held: The oil shale deposits in question are 'valuable mineral deposits' patentable under the [Mineral Leasing] Act's saving clause. The Act's history and the developments subsequent to its passage indicate that the Government should not be permitted to invalidate pre-1920 oil shale claims by imposing a present marketability requirement on such claims. The Department's original position, as set forth in Instructions, issued shortly after the Act became law, authorizing the General Land Office to begin adjudicating applications for patents for pre-1920 oil shale claims and later enunciated in Freeman v. Summers, [52 L.D. 201 (1927)] is the correct view of the Act as it applies to the patentability of pre-1920 oil shale claims."

On July 18, 1978, a hearing before Administrative Law Judge Harvey C Sweitzer was conducted. On July 17, 1979, Judge Sweitzer issued his decision dismissing the charge that annual assessment work had not been performed as required by law as to the Compass group (Northwest, Northeast, Southwest and Southeast) and the Oyler group (Nos. 1-4), and sustained as to the Carbon group (Nos. 1-5) and the Elizabeth group (Nos. 1, 2, 4-12, inclusive). Accordingly, the latter placer mining claims were held invalid. These cross-appeals followed. The parties completed their posthearing briefing in January 1980.

III

THE DECISION AND ARGUMENTS ON APPEAL

Preliminarily, we will set forth (a) Judge Sweitzer's understanding of counsel's stipulations as presented at the prehearing conference and at the hearing; (b) his procedural rulings and definitions or clarifications (Dec., pp. 4-19).

The Stipulations

Judge Sweitzer's Prehearing Conference Order No. 1 contained the following paragraphs based upon counsel's stipulations:

4. In consideration of the decision of the United States District Court for the District of Colorado in Shell Oil Co. v. Kleppe, No. 74-F-739 (January 17, 1977), and with a view to expediting the decision of other issues, trial of issues as to discovery of minerals will be deferred pending final decision of the appeal in Shell Oil Co. now awaiting argument in the Court of Appeals.

* * * * *

7. The parties fully reserve their respective contentions heretofore advanced with respect to the effect, if any, of prior administrative decisions in assessment work Contests Nos. 12029, 12039 and 12972.

8. The parties contemplate presenting evidence, by stipulation if possible, as to the surface characteristics of the claims in contest and the mineralization at depth.

Regarding paragraph 7, supra, it appears that Judge Sweitzer was of the opinion that, except as to the issue of individual reliance and any supplements to the record on that point, the question of the present effect of the 1930-33 contests had been extensively litigated in the courts and, therefore, in accordance with the Orders of Remand, supra, was not to be relitigated in the administrative hearing. Comments of counsel at the prehearing conference, pp. 10-11, are set forth in his decision (Dec., pp. 7-8).

Procedural Rulings

In edited form, we repeat Judge Sweitzer's rulings:

1. The only issue ripe for consideration at the hearing was whether annual assessment work had been performed on the claims as

required by law. Judge Sweitzer supported this conclusion with citations to Contestant's Opening Brief, p. 1; Contestees' Opening Posthearing Brief, p. 3; and Contestees' Supplement to Their Opening Posthearing Brief in Contest 658, p. 1 (Dec., p. 10).

2. The Judge referred to his findings in Addenda A and B, relating to the question of reliance by the claimants upon the prior actions of the Department concerning the old assessment contests (Addendum A), and relating to the question of reliance by the claimants upon prior actions of the Department relating to the need to continue to perform annual assessment work (Addendum B).

3. Judge Sweitzer determined that all other possible obstacles -- abandonment, fraud, lack of physical location on the ground (Contest 659) and defective title--had been waived by contestant as neither deferred, reserved, nor at issue; he therefore dismissed all charges except that pertaining to assessment work. The Judge also asserted that the Government had failed to present a prima facie case of such other charges.

4. Regarding the Department's opportunity to correct any existing procedural errors, the Judge understood this directive to refer to the pre-1972 combination of advocacy and appellate functions. Judge Sweitzer noted that contestees had neither raised nor argued alleged procedural error, and concluded that contestees had been afforded a

fair hearing within the meaning of the Administrative Procedure Act, 5 U.S.C. § 556 (1976), which had corrected any procedural errors.

5. Judge Sweitzer held that, unlike other Government contests to determine the validity of mining claims, where the charge is nonperformance of assessment work it is similar to a charge of abandonment and implies tacit admission by the Government that the claim is valid in all other respects, thereby making the United States "the proponent of the rule or order," and imposing upon the Government the ultimate burden of proof.

6. Judge Sweitzer determined that a further hearing on the issues dismissed by his decision should not be ordered. As grounds therefor, the Judge cited (a) contestant's opportunity to argue and fully litigate the issues dismissed; (b) the additional time and expense to which contestees would be put by a contrary ruling; (c) that the justification for not ordering a hearing in the instant matter was as compelling as those set forth in United States v. Bowen, 38 IBLA 390 (1979), in which the refusal of an Administrative Law Judge to order a further hearing was affirmed; and (d) the possible objection of the district court or the court of appeals to any further delay.

7. All arguments or proposed findings and conclusions inconsistent with the decision were rejected as unsupported by the evidence or immaterial.

8. Concerning the contestees' argument that the remand orders did not contemplate requiring an appeal to the Interior Board of Land Appeals, Judge Sweitzer adverted to a letter, dated February 6, 1980, from the Under Secretary to counsel of certain contestees, denying the petition requesting an order that the hearing decision constitute the final decision of the Department.

Judge Sweitzer also noted that for purposes of clarification, all references to an assessment year would utilize the concluding year in which assessment work was due. See n.5, supra. Thus, the year 1929 denominated the assessment year commencing July 1, 1928, and ending June 30, 1929.

It is our intention to separately summarize the evidence for each of Judge Sweitzer's rulings, and the contentions of the parties with respect thereto. The decision held that claimants in Contests 658 (Bohme) and 660 (Brown) had substantially complied with the assessment work requirements of the mining law, 30 U.S.C. § 28 (1976). A contrary finding was entered as to Contest 659 (Exxon). The decision also found, with respect to Bohme and Brown, that the claimants had relied upon the acts and statements of the Department from 1930 to 1962 both as to the effect of the old assessment contests (Addendum A) and the need to perform the annual assessment work (Addendum B).

Contestees appeal the adverse ruling as to Contest 659 and urge affirmance of all rulings favorable to them. The Government similarly

appeals the findings as to Contests 658 and 660 and certain other rulings. Specifically, the parties argue five principal issues:

1. Whether the Government was correctly required to bear the burden of proving the contest charges against these oil shale claims.

2. Whether contestees have performed annual assessment work as required by law and thereby maintained their claims. Three sub-issues are presented: What is required by the statute; whether 30 U.S.C. § 28 (1976) governing assessment work is to be read in pari materia with 30 U.S.C. § (1976) governing the prerequisites for a patent application; and what is the import of Hickel v. TOSCO, supra, as it concerns these two questions. Contestees specifically contend that an assessment contest must be instituted during a period of default and prior to resumption of development work.

3. The Government challenges the weight and credibility accorded certain evidence (Opening Brief, pp. 41-50). Included in this issue is the question whether the Judge correctly interpreted certain evidentiary stipulations.

4. Whether the decision correctly concluded that claimants had justifiably relied upon the Department's acts and statements from 1930-62 regarding the effect of the old contests and the need to perform assessment work annually.

5. Whether Departmental regulations promulgated prior to September 1972, preclude assessment work contests.

The Burden of Proof

The decision held that: "A Government challenge to the validity of a mining claim alleging failure to perform annual assessment work implicitly acknowledges that a possessory title exists which it is asking be forfeited. * * * [I]n doing this, the Government becomes a proponent of a rule or order that such a forfeiture has occurred" (Dec., p. 18).

In support of this ruling, Judge Sweitzer cited General Land Office Circular No. 460, 44 L.D. 572 (1916), in which it is directed, in pertinent part, that the Government is to assume the burden of proving the charges in contests initiated upon report against claims to the public lands, unless otherwise ordered. For the reasons that follow, we need not consider further points urged in support thereof.

Upon this point, the decision is in error and must be reversed. In United States v. O'Leary, supra, it was determined that hearings relating to the validity of mining claims held before the Department were subject to the provisions of the Administrative Procedure Act. That Act provides that "the proponent of a rule or order has the

burden of proof." 5 U.S.C. § 556(d) (1976). In Foster v. Seaton, 271 F. 836 at 838 (D.C. Cir. 1959), the Court of Appeals upheld the Secretary's ruling that in a mining claim contest, the Government "bears only the burden of going forward with sufficient evidence to establish a prima facie case and that the burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid." That decision and its progeny remain valid precedents which may not be ignored. See, e.g., United States v. Zweifel, 508 F.2d 1150, 1157 (10th Cir. 1975), cert. denied, sub nom. Roberts v. United States, 423 U.S. 829 (1975), rehearing denied, 423 U.S. 1008 (1975); United States v. Springer, 491 F.2d 239, 24 (9th Cir.), cert. denied, 419 U.S. 834 (1974).

We think the error of Judge Sweitzer's ruling on this matter may be rooted in the unfortunate proclivity of the various authorities to suggest that substantial nonperformance of assessment work may equate with abandonment of the claim. As but one example, in Hickel v. TOSCO, supra 57, the Court stated that defaults in performance of assessment work "might be the equivalent of abandonment." We see only a contingent, inconclusive connection.

In the absence of a statutory presumption that a default constitutes abandonment (see 43 U.S.C. § 1744 (1976)), 13/ the fact of

13/ Section 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), requires the recordation in the proper office of the Bureau of Land Management by the owner of unpatented lode or placer mining claim or mill or tunnel site claims, of a copy of the official record of the location notice of the claim, and annually a

abandonment is determined on the basis of the intention of the party. Thus, a hypothetical mining claimant might have manifested a clear intention not to abandon his claims by each year posting thereon notices of intention to hold them, recording such notices, publishing them in a newspaper, forming a company for the development of his claims, etc., but performing no assessment work whatever. The weight of evidence in such a case would clearly militate against a finding on the basis of common law principles that the mining claimant had "abandoned" the claims. But would that absolve him of the consequences of his failure to meet his statutory obligation to perform assessment work each year for the benefit of each claim? Obviously not.

It is the mining claimant's duty under 30 U.S.C. § 28 (1976) to perform work in the amount of \$100 for the benefit of each claim annually and that is an objective standard which he must meet regardless of other manifestations of his intent to retain the claims. A default, then, if it is to have any consequential effect, must result in forfeiture, not abandonment. Of course, where abandonment is charged, the nonperformance of assessment work would have evidentiary value in proving the charge. But why should we concern ourselves with the question of abandonment at all in such a case? It is purely a

fn. 13 (continued)

notice of intention to hold the mining claim or an affidavit of assessment work. The section also provides that failure to file the required instruments within the designated time frame shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner. Further, nothing in the section shall be construed as a waiver of the assessment or other requirements of the mining law. See also 43 C.F.R. Subpart 3833.

question of whether the claimant preserved his asserted possessory right the claims by doing substantially what the statute requires in order to maintain the claims.

While we have noted above that there has been a certain confusion engendered by the occasional equating of the question of a forfeiture for failure to perform assessment work with the question of an abandonment, in the context of oil shale claims it is clear that the distinction has always been recognized. Thus, in Virginia-Colorado, supra, the Court found that the Department was without jurisdiction to inquire into the failure to perform assessment work. This holding would have been impossible if the Court perceived that the failure to perform the necessary work constituted a claim of abandonment since the Court had always recognized the authority of the Department to invalidate a mining claim upon a charge of abandonment properly proved. Thus, in Virginia-Colorado, 295 U.S. at 645-646, the Court expressly noted:

There is no suggestion of lack of discovery, fraud or other defect. There is no ground for a charge of abandonment. The allegations of the bill, admitted by the motion to dismiss, dispose of any such contention. Plaintiff had lost no rights by failure to do the annual assessment work; that failure gave the government no ground for forfeiture. Wilbur v. Krushnic, supra. [Emphasis supplied.]

[1] Abandonment, being essentially a question of intent, is difficult of proof, and perhaps should impose a heavy evidentiary burden on the one who asserts it. But the assertion that annual assessment

work has not been performed is the assertion of a negative fact. If an examination of the claims and the nearby lands does not reveal the accomplishment of the required work, and there is no record of any such work having been performed, then evidence to this effect would be sufficient to establish a prima facie case. It would then devolve on the claimant to show by a preponderance of countervailing evidence that he has substantially complied with the statute.

This is precisely what the Court of Appeals was addressing in Foster v. Seaton, supra:

[The claimants,] and not the Government, are the true proponents of a rule or order; namely, a ruling that they have complied with the applicable mining laws. * * * Were the rule otherwise, anyone could enter upon the public domain and ultimately obtain title unless the Government undertook the affirmative burden of proving that no valuable deposit existed. We do not think that Congress intended to place this burden on the Secretary.
[Emphasis supplied.]

271 F.2d at 838.

[2] Although the court there was considering a case in which the Government had charged that no qualifying discovery of a valuable mineral deposit had been made, we are unable to draw a distinction between such cases and those now before us, insofar as the burden of proof is concerned. In a Government contest proceeding to determine the validity of a mining claim, the claimant is always the proponent of the rule or order, always the one claiming to have earned the

benefit of the mining laws through his compliance therewith, always the
"seeking a gratuity from the Government." Regardless of whether the issue
on which the validity of the claim rests is discovery, mode of location,
performance of assessment work, the relative position and obligation of the
contestant and contestee remain the same.

Judge Sweitzer held that in a contest to determine the validity of a
mining claim where the charge is nonperformance of assessment work, the
burden of proof imposed on the Government is different - and greater - from
where the contest is brought on a charge of no discovery of a valuable
deposit of minerals. This is so, Judge Sweitzer found, because
"performance of assessment work is a condition subsequent to maintain a
mining claim after property rights in the claim have been established by
the making of a valid mineral location. * * * In this respect, it is not
dissimilar to abandonment * * *" (Dec., p. 16; citation omitted).

[3] The vice in this reasoning is dual. First, as we have already
pointed out, nonperformance of assessment work bears very little similarity
to abandonment. One might just as easily say that a lessee who fails to
perform a continuing obligation under a lease had "abandoned" the
leasehold. Second, where the Government contests the validity of a claim
for nonperformance of annual work, there is nothing inherent or implied in
that action which requires a conclusion

that the claim is valid in all other respects, nor may the bringing of such an action be treated as tantamount to an admission by the Government that "property rights in the claim have been established by the making of a valid location."

In sum, Judge Sweitzer erred in holding that "the Government [in this case] becomes a proponent of a rule or order that such a forfeiture has occurred," and must, therefore, assume the ultimate burden of proof.

Annual Performance of Assessment Work

Judge Sweitzer construed the Supreme Court's decision in Hickel v. TOSCO, supra, as overruling, sub silentio, that portion of Krushnic, supra which held that the Government must institute contest proceedings at a time when a rival claimant might challenge the claim--that is, during the period of default and before resumption of work (Dec., pp. 26-7). Contestees contend, in essence, that the fact that the Court declined to expressly overrule the Krushnic and Virginia-Colorado cases precludes a contrary conclusion. Contestees also argue that the timeliness of a challenge for failure to do assessment work was not before the Court, and therefore the rule enunciated in Krushnic has retained its validity.

TOSCO clearly addressed the issue of whether Krushnic and Virginia-Colorado correctly held that failure to do assessment work

furnishes no ground for forfeiture, but inures only to the benefit of relocators. The Supreme Court ruled that the United States is "the beneficiary of all claims invalid for lack of assessment work or otherwise. It follows that the Department of the Interior had, and has, subject matter jurisdiction over contests involving the performance of assessment work." 400 U.S. at 57.

In our view, contestees' argument regarding the timeliness of a Government challenge proves too much. The argument can be sustained only if the relevant discussion in TOSCO is ignored. In TOSCO, the Court noted that in Virginia-Colorado the lapse in assessment work had been held to provide no basis for a charge of abandonment. The decision in TOSCO continued:

We construe that statement to mean that on the facts of that case failure to do the assessment work was not sufficient to establish abandonment. But it was well established that the failure to do assessment work was evidence of abandonment. Union Oil Co. v. Smith, 249 U.S. 337, 349; Donnelly v. United States, 228 U.S. 243, 267. If, in fact, a claim had been abandoned, then * * * [t]he United States had an interest in retrieving the lands. [Citations omitted.] The policy of leasing oil shale lands under the 1920 Act gave the United States a keen interest in recapturing those which had not been "maintained" within the meaning of § 37 of that Act. We agree with the Court in Krushnic and Virginia-Colorado that every default in assessment work does not cause the claim to be lost. Defaults, however, might be the equivalent of abandonment; and we no hold that token assessment work, or assessment work that does not substantially satisfy the requirements of 30 U.S.C. § 28, is not adequate to "maintain" the claims. [Emphasis supplied.]

400 U.S. at 56-7.

[4] We find the import of the language emphasized unambiguous: (1) failure to maintain a claim by doing assessment work each year may constitute evidence of abandonment; and (2) independently, a failure to substantially comply with the requirement that annual assessment work be performed (30 U.S.C. § 28 (1976)) requires a finding that the claim has not been "maintained" within the meaning of section 37 of the Leasing Act and results in a forfeiture of the claim.

Thus, in both Krushnic and Virginia-Colorado, the Supreme Court found that an abandonment could not be found by the mere fact of omission of one year's assessment work, particularly in the light of the claimants' subsequent actions. Similarly, the one year's deficiency in assessment work was held not to constitute a failure to "substantially satisfy" the assessment requirements. Contestees, in contending that a Government challenge to a failure to perform assessment work must be initiated during the period of nonperformance, have confused the requirements for showing abandonment, as explicated in Krushnic and Virginia-Colorado, with the requirements for establishing a forfeiture, as delineated in TOSCO.

Contestees also contend that the Departmental regulations in effect prior to September 1, 1972, preclude a Government challenge premised on a failure to perform assessment work prior to that date. Such a contention finds little support in other cases considered by the Supreme Court. Thus, the Court stated in Cameron v. United States, 252 U.S. 450, 459-61 (1920)

By general statutory provisions the execution of the laws regulating the acquisition of rights in the public lands and the general care of these lands is confided to the land department, as a special tribunal; and the Secretary of the Interior, as the head of the department, is charged with seeing that this authority is rightly exercised to the end that valid claims may be recognized, invalid ones eliminated, and the rights of the public preserved. [Citations omitted.]

A mining location which has not gone to patent is of no higher quality and no more immune from attack and investigation than are unpatented claims under the homestead and kindred laws. If valid, it gives to the claimant certain exclusive possessory rights, and so do homestead and desert claims. But no right arises from an invalid claim of any kind. All must conform to the law under which they are initiated; otherwise they work an unlawful private appropriation in derogation of the rights of the public.

Of course, the land department has no power to strike down any claim arbitrarily, but so long as the legal title remains in the Government it does have power, after proper notice and upon adequate hearing, to determine whether the claim is valid and, if it be found invalid, to declare it null and void. This is well illustrated in Orchard v. Alexander, 157 U.S. 372, 383.

* * * [T]o the same effect is Michigan Land & Lumber Co. v. Rust, 168 U.S. 589, 593, where in giving effect to a decision of the Secretary canceling a swamp land selection by the State of Michigan theretofore approved, but as yet unpatented, it was said: "It is, of course, not pretended that when an equitable title has passed the land department has power to arbitrarily destroy that equitable title. It has jurisdiction, however, after proper notice to the party claiming such equitable title, and upon a hearing, to determine the question whether or not such title has passed. [Citations omitted.] In other words, the power of the department to inquire into the extent and validity of the rights claimed against the Government does not cease until the legal title has passed."

It is now beyond cavil that the Secretary of the Interior has subject matter jurisdiction to determine whether unpatented oil shale mining claims were maintained within the meaning of the savings clause

in section 37 of the Leasing Act, including performance of adequate annual assessment work. Hickel v. TOSCO, supra.

Although the Department did not contest unpatented oil shale claims for failure to perform annual assessment work for many years following Krushnic and Virginia-Colorado, because of its misunderstanding of its authority to do so, such earlier inaction does not make the present contests improper.

For the reasons discussed above, we affirm Judge Sweitzer's holding that a contest to determine whether a failure to substantially satisfy the requirements of 30 U.S.C. § 28 (1976), has resulted in a forfeiture of the claim is not barred by a resumption of assessment work.

Contestees also contend that these contests are barred by the performance, for each claim involved in these contests, of \$500 worth of assessment work as a prerequisite for obtaining a patent, as required by 30 U.S.C. § 29 (1976).

An applicant for a patent must show, inter alia, that \$500 worth of labor or improvements has been expended upon the claim by the claimant or his grantor. 30 U.S.C. § 29 (1976). Contestees argue that the Court in TOSCO did not consider or rule upon whether sections 28 and 29 must be read in pari materia. In effect, contestees maintain that inasmuch as under section 29, a total expenditure of \$500 is

all that is needed to entitle a claimant for a patent, completion of expenditures in that amount constitutes "substantial satisfaction" of the requirements for annual expenditure found in section 28.

We agree with Judge Sweitzer that this contention is without support, either in the statutory scheme of the mining law, or the Departmental decisions holding that the purpose for doing assessment work under sections 28 and 29 is the same. We recognize that both requirements are grounded in the same consideration: to encourage actual development of mineral lands. United States v. Coleman, 390 U.S. 599 (1968); United States v. Iron Silver Mining Co., 128 U.S. 673 (1888). But this very purpose would not be served if contestees' argument was accepted. Under their argument it would be possible to expend \$500 in the initial assessment year, and hold a claim for decades without any further expenditure. Surely, this is not what Congress had in mind in requiring annual expenditures on each claim. Rather, Congress enacted a scheme in which no claim could proceed to patent prior to the expenditure of \$500 for development thereof. In the alternative, if a claimant chose not to go to patent, he was required to expend \$100 in each year on the claim. It was the choice of the claimant who, upon expending \$500 for the development of the claim, nevertheless decided not to apply for patent, which resulted in the requirement that the claimant annually expend \$100 towards the claim's development. Until final certificate issues, a mineral claimant is obligated, under the provisions of section 28, to expend \$100 annually. This is so whether

such claimant has expended \$500 or \$5,000 on the claim. There is nothing inconsistent in the requirements of sections 28 and 29. The decision of Judge Sweitzer is affirmed with regard to this issue.

Judge Sweitzer's decision holds that annual assessment work requirement of 30 U.S.C. § 28 (1976), is satisfied by "a reasonably persistent effort to comply annually with the \$100 assessment work requirement but that an occasional failure to literally comply will be excused" (Dec., p. 30). In addition, Judge Sweitzer found "that the data in evidence which were recorded or filed do not necessarily show all the work that was performed" (Dec., p. 31). The Judge also found that "the work that the evidence shows to have been done was performed in good faith * * * tended to develop the claims, and to facilitate the eventual extraction of ore therefrom" (Dec., p. 32). It is correctly pointed out that the obligation to perform assessment work annually ceases following the issuance of final certificate. 43 CFR 3851.5.

According to Judge Sweitzer's tabulations, assessment work, statutory suspensions, or lieu notices appear for each of the following years for the Compass claims: 1919, 1920-30, 1931 for the Southwest claim only, 1932, 1949, and 1955 (Dec., p. 37). Contestees in No. 658 filed patent applications in June 1959; final certificate issued in August 1961. Thus the record evidence shows that out of 43 years, the requirements of 30 U.S.C. § 28 (1976) were satisfied in only 14 of

those years and 15 years in the case of the Southwest claim only. A lengthy excerpt of the testimony of John W. Savage, a contestee in No. 65 is set forth as evidence of additional assessment work performed not of record.

Mr. Savage testified that at a time near the filing of the patent application, contestees took steps to be certain that \$500 worth of work had been performed; that though "considerable amounts" of assessment work was done at that time, "no record was kept of this kind of thing because [Savage] believed that the only amount of labor and improvements necessary to get patent was a total of \$5-hundred worth"; that contestees had secured aerial photographs of the "whole Coal Ridge"; that road work was done, though the witness did not know whether it benefited the claims or the surrounding patented land; and that contestee ceased filing affidavits of assessment work "a long time prior" to receipt of final certificate (Dec., pp. 37-41).

The Judge concluded that this showing of additional work was "in no way overcome by Contestant." Thus, contestant had not shown a failure to substantially comply with the labor requirements (Dec., p. 42). Accordingly, the charge of failure to do annual labor was dismissed as to the Compass claims.

Regarding the rulings pertaining to Contest No. 658, contestant here asserts that the Judge misunderstood certain stipulations. In

that connection, the Government states that in each case the parties had stipulated that there was no assessment work of record other than that furnished by contestees in the abstracts of title filed in support of the patent applications. In Contest 658, the stipulated evidence consists of three mineral reports and the mineral examiner's discussion of geology and assessment work (Opening Brief, p. 39).

Judge Sweitzer held that the Government's assertions that this testimony should be discounted were unpersuasive, noting that counsel for the Government had the opportunity to cross-examine Mr. Savage, to clarify his testimony, and to make appropriate argument regarding the stipulation or its intended purpose and effect, and had failed to so avail himself.

Judge Sweitzer found that contestees in Contest No. 659 satisfied assessment requirements in 1919 (lieu), 1920-26, 1932 (suspended), 1957, and 1958 (Dec., p. 44). Application for patent was filed in 1959; final certificate never issued. Because contestees' predecessors in interest ceased performing assessment work prior to the decision of Krushnic, supra in 1930, he determined that contestees could not assert reliance on Departmental policy implementing that decision. The Carbon-Elizabeth claims were declared null and void for lack of substantial compliance with the provisions of 30 U.S.C. § 28 (1976).

As to the Oyler claims in Contest No. 660, the decision found substantial compliance demonstrated by the following: at least \$400

worth of labor was done for the four claims as a group in 1917-19, 1921, 1923-25. In 1922, 1926, 1927, and 1928, the annual expenditure was less than \$400 (\$100 per claim) (Dec., pp. 45-46).

Specifically, no work was done on the Oyler No. 1 for the years 1924-26, and in 1922 the amount was less than the statutory \$100 minimum. For the years 1922-25, no work was done on the Oyler No. 2 and in 1923 and 1926 the amount was less than \$100. No work was done on the Oyler No. 3 in 1926 and 1928. No work was done on the Oyler No. 4 in 1926, and in 1922, 1923, and 1927, the work was less than the statutory minimum. Adequate work was done in 1930, no work in 1931, performance was suspended in 1932 and lieu or notices of intent were filed for 1933, 1935-38, and 1949. In 1939, the claimants filed a declaration of intent to "claim all benefits under a Supreme Court decision favoring such holding," Exh. P-346 P24, which was not filed pursuant to any statute. This data was gleaned, in part, from the 1929 and 1931 mineral examination reports of the General Land Office. The parties stipulated the admission of these reports, Exh. P-346. Finally, the decision contains the statement that affidavits asserting the performance of \$100 of annual labor had been performed as to each claim for 1924 and 1925. In addition, it is noted that the parties stipulated that because of weathering and age, a current physical examination of the claim must be deemed unreliable to conclusively show the number or extent of all the improvements and work thereon (Dec., pp. 45-47).

From this, it was held that the Government had failed to show a default in substantially complying with the assessment work requirements the law. In so ruling, the Judge reasoned that the 1929 mineral report shows work continued on one or more of the claims for the years 1921-28, and from this concluded by implication that claimants "intended to, and did, accomplish the work to benefit each of the claims in the value of at least \$100 per year, notwithstanding [the mineral examiner's] allocation the work" (Dec., p. 47).

For the period of time from 1931 to August 28, 1956, when final certificate issued for the Oyler claims, the Judge relied in part on an historical sketch prepared in 1952 by contestees' predecessors in interest Exhs. P-334 and 335. It is conceded in the decision that this sketch is "very general" as to what work benefited the Oyler claims and as to when the work was done (Dec., p. 48). Contestant concedes that the 1929 mineral report shows that more labor was actually performed than that appearing on record, but characterizes such additional labor as "spotty." It is argued however, that much of the labor was disallowed, omitted or inadequate (Opening Brief, p. 46).

Contestant also contends that the historical sketch referred to above provides no factual basis for these rulings, that it is incredible, and further, that the Judge failed to regard the document as a whole in concluding that the matters discussed therein refer to the Oyler claims. Specifically, the Government states that the Oyler

claims are listed as the first oil shale claims acquired by the Index Oil Shale Company (Index), followed by the acquisition of the Mt. Blaine claims. It is argued that all the labor discussed in the rest of Exh. P-335 pertains to the Mt. Blaine claims, and that the narrative shows that no work was performed at all from 1932 to 1952. The final page of the historical sketch contains a statement to the effect that annual labor was done by and at the expense of Index.

In addition to the findings set forth, in each case the decision found that at least \$500 worth of assessment work had been performed on or for the benefit of each of the claims, and that work had been resumed on each claim prior to the institution of contest proceedings.

Before we proceed to address specific contentions respecting the findings in each contest, we must consider Judge Sweitzer's formulation of the standard for determining whether a claimant has substantially complied with the annual assessment work requirements. As noted, the decision states that a reasonably persistent effort is contemplated by TOSCO and that occasional failures are excusable with the meaning of that decision.

We cannot agree with that formulation. It is clear beyond peradventure that TOSCO holds that in order to maintain a claim in compliance with the mining law of 1872, \$100 worth of assessment work must be done each year. 400 U.S. at 54.

In determining what constitutes substantial compliance with 30 U.S.C. § 28 (1976), resort to the facts of Krushnic and Virginia-Colorado is necessary. In each case the mining claimant had failed to perform assessment work in only a single year after the location of the claims; in the latter case, it was argued that resumption of work was prevented by actions of the Government. There was no question, as in these appeals, whether claimants performed less than \$100 of work in other assessment years. Moreover, in TOSCO, the Court unambiguously distinguished the facts of these cases: "Unlike the claims in Krushnic and Virginia-Colorado, the Land Commissioner's findings indicate that the present claims had not substantially met the conditions of § 28 respecting assessment work. Therefore we cannot say that Krushnic and Virginia-Colorado control this litigation." 400 U.S. at 57. We reject the "reasonably persistent" standard, applied by Judge Sweitzer, on the ground that it impermissibly and erroneously liberalizes the court's holding in TOSCO, despite the Supreme Court's express statement that the rule of Krushnic and Virginia-Colorado was to be confined to a narrow ambit.

We turn now to the contentions in each case above set forth. We find that the holding in Contest No. 658 is correct. Contestees stipulated that the assessment work of record is accurate, although incomplete (Tr. 20). As mentioned, the decision found that assessment work had been performed for 15 of the 43 years between location and issuance of final certificate. John Savage's testimony was offered as

evidence of additional work done not of record. That testimony establishes that contestees did some road work between 1954 and 1968. The assertion of considerable additional work arises from the witness' statements that he did additional work though some of the improvements were difficult to find (Dec., p. 38), although he did not attempt to allocate any expenditures expressly to the Compass claims (Dec., p. 39). It should be noted that the witness admitted that he could not tell how much additional work not of record has been done (Dec., p. 40), and that he did not know how much of the additional work was for the oil shale claims or the surrounding patented Timber and Stone Act claim (Dec., pp. 39, 41).

We hold that the contestant presented a prima facie case of lack of substantial compliance with 30 U.S.C. § 28 (1976). The burden then shifted to the contestees to show by a preponderance of evidence that substantial compliance with the assessment requirements had been made. Hickel v. TOSCO, supra. We agree with Judge Sweitzer that contestees' evidence preponderates over that adduced by the Government. Judge Sweitzer noted:

Contestees' evidence in this regard may have been objectionable in part (but was received without objection) and it is not without ambiguity, for example, as to just how much work would inure to the benefit of the Compass claims and for which years, and the surprising but unrebutted and unexplained statement that "there were affidavits of labor of one sort or another for every year from 1890 to 1950." But it is adequate, in the absence of even a scintilla of a contrary showing, to require a determination that Contestant has not met its burden.

(Dec., p. 42). We have noted above our disagreement with the Judge's allocation of the burden of proof. Nevertheless, in view of the failure of the contestant to either attack the credibility of this evidence or to submit more evidence in addition to that which established its prima facie case, we must hold that appellant in Contest No. 658 has preponderated over the Government's showings. Accordingly, we hold that contestees have shown substantial compliance with the requirements of 30 U.S.C. § 28 (1976), as explicated by the Supreme Court in TOSCO.

The decision in Contest No. 659 declaring the Carbon-Elizabeth claims null and void is affirmed. Contestees' evidentiary arguments in support of reversal are founded on the erroneous assumption that the Government bears the burden of proof and need not be considered further. We have also already disposed of the contention that 30 U.S.C. §§ 28 and 29 (1976) are to be read in pari materia. For the reasons hereinbefore discussed, the evidentiary record as to these claims does not support a finding that contestees have substantially performed assessment work as the term was construed in TOSCO, and Judge Sweitzer's decision is accordingly affirmed.

Regarding the Oyler claims in Contest No. 660, we find certain contradictions within the evidence, and reflected in the decision, which must be resolved against contestees. First, it is noted that the parties stipulated that certain mineral reports set forth all

evidence of record concerning the performance of assessment work. Exh. P-346. In addition, the mineral examination reports contain certain findings allocating the work among the four claims. Exh. P-346, pp. 6-8. It was incorrect for the Judge to substitute his inferences for the facts as stipulated. Assessment work issues are not to be adjudicated on the basis of inferences derived from previous "patterns" of conduct. Moreover, the inference is unjustified. Contrary to the Judge's conclusion, there is ample evidence to conclude that the "continuing pattern of performing the work" did not occur each year; such evidence is found in the facts as stipulated and as found by the Judge.

We note, for example, that the statement that affidavits of labor in the amount of \$100 were filed for each claim in 1924 and 1925 (Dec., p. 46), directly contradicts the data set forth in the 1929 mineral report. We believe we are bound by the facts as stipulated for the years 1921-28, and to the extent that the decision is inconsistent with the following, it is reversed:

	<u>No. 1</u>	<u>No. 2</u>	<u>No. 3</u>	<u>No. 4</u>	<u>Total</u>
1921	600.40	600.40	600.40	600.40	2,401.60
1922	52.80	---	183.80	89.00	325.60
1923	346.25	64.20	319.58	82.30	812.33
1924	---	---	186.27	224.20	410.47
1925	---	---	370.05	144.40	514.45
1926	40.00	---	---	---	40.00
1927	100.00	100.00	100.00	82.30	382.30
1928	<u>100.00</u>	<u>100.00</u>	<u>---</u>	<u>100.00</u>	<u>300.00</u>
	1,199.45	904.60	1,760.10	1,322.60	5,186.75

Exh. P-346, p. 8.

As mentioned, the decision in Contest No. 660 relied in part on an historical sketch. Our reading of Exh. P-335 convinces us of the correctness of contestant's contentions that this document should be accorded little, if any, weight. We disagree with contestant's assertion that the document shows that no labor was done from 1932 to 1952, and conclude, rather, that work ceased in 1938 or 1939 (Exh. P-335, p. 15). We do agree, however, that the text of the narrative describes "work done on the land comprised of the placer oil shale claims in the Mt. Blaine group" (Exh. P-335, p. 17). As to the Oyler claims, "[i]t was the intention of the Index Company eventually to establish a plant on this site." Id. Moreover, the narrative was prepared, it appears, for use in a suit to quiet title to all claims held or formerly held by the Index Company. Id. An illegible signature appears over the names of the president and manager of the company, which was dissolved in 1939. It thus appears that there is no merit in contestant's suggestion that this document is self-serving.

We think contestees have failed to establish substantial compliance with the requirements of 30 U.S.C. § 28 (1976), and accordingly, the Oyler claims are declared null and void.

Estoppel and Laches

The question of the applicability of estoppel arises in a number of different aspects in the Judge Sweitzer's decision. In the text of

the decision he found that under the doctrine expounded in Atlantic Richfield Co. v. Hickel, 432 F.2d 587, 592 (10th Cir. 1970), "an administrative determination running contrary to law will not constitute estoppel against the federal government." Thus, he found that the government was not estopped by either the Shale Oil Company, 55 I.D. 287 (1935), or the pre-1972 regulations, to contest the oil shale claims for failure to substantially satisfy the requirements of 30 U.S.C. § 28 (1976 (Dec., pp. 48-53)).

Addendum A to Judge Sweitzer's decision dealt with the question of reliance by the individual claimants on prior Departmental actions regarding the effect of the old assessment work contests in light of the decisions in Krushnic and Virginia-Colorado. Judge Sweitzer found that a number of the claimants, or their predecessors in interest had relied on Departmental assurances that the old contest proceedings were nullities.

Addendum B concerned the question of reliance by the claimants upon the prior actions of the Department regarding the need to perform annual assessment work. Judge Sweitzer found, in effect, that the individual claimants and their predecessors in interest had relied upon assertions of the Department that failure to perform assessment work was of no concern to the Department.

With regard to Addendum A, we note that the question of the legal efficacy of the old assessment work contests has been reserved by the

Federal courts, and we will accordingly make no comments thereon. Insofar as Judge Sweitzer's findings of reliance in Addendum A are concerned, we find that these findings are supported by the record and concur therein.

Similarly, we agree with Judge Sweitzer that, even were estoppel available relating to the need to perform annual assessment work, the principle upheld in Atlantic Richfield Co. v. Hickel, supra, would prohibit the application of estoppel. We do not agree, however, with Judge Sweitzer's findings that the claimants, in deciding not to perform annual assessment work, relied on Departmental actions.

[5] The fundamental flaw in Judge Sweitzer's findings on this point is one which recurs throughout the contestee's arguments on estoppel. The simple fact is that contestees can point to no decision of any Federal court, or any formal decision or Instruction issued by the Department of the Interior that ever purported to hold that a mining claimant was not required under 30 U.S.C. § 28 (1976) to perform annual assessment work. The decisions in Krushnic and Virginia-Colorado dealt not with the question whether oil shale claimants were required to comply with the provisions of section 28, but whether the United States would be a beneficiary of a failure to perform the assessment work. Indeed, both Krushnic and Virginia-Colorado expressly noted that a mining claimant was required to perform labor of \$100 annually for each claim. See 280 U.S. at 317; 295 U.S. at

645. The Departmental decisions and pronouncements to which contestees advert were of similar import.

Thus, contestees, in effect, are arguing that an equitable estoppel should lie because they knowingly violated an affirmative obligation under the law in reliance on the fact that they were immune from punishment. They are attempting to resort to equity to absolve themselves from the consequences of their willful violations of the mining law. Among the cardinal principles of equity, however, are the maxims that equity may be invoked only to do equity, and that one who seeks equitable relief must do so "with clean hands." Appellants can show no equitable basis for the invocation of an estoppel to excuse their past failures to perform the annual assessment work mandated by 30 U.S.C. § 28 (1976).

[6] Regarding the defense of laches, Judge Sweitzer found that in the first instance the defense of laches is not available against the Government in cases involving public lands, citing United States v. California, 332 U.S. 19, 40 (1947), and secondly, that even were laches determined to be an available defense, it would clearly be circumscribed by the same limitations surrounding the doctrine of estoppel (Dec., pp. 53-54). We agree.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of Judge Sweitzer in Contest No. 658, dismissing the complaint

against the Southwest, the Northwest, the Northeast, and the Southeast placer mining claims is affirmed; the decision of Judge Sweitzer in Contest No. 659, holding that the Carbon placer mining claims Nos. 1 to 5, inclusive, and the Elizabeth placer mining claims Nos. 1, 2, and 4-12, inclusive, invalid is affirmed; and the decision of Judge Sweitzer in Contest No. 660, dismissing the complaint against the Oyler placer mining claims Nos. 1 to 4, inclusive, is reversed, and the Oyler Nos. 1 to 4 are hereby declared invalid.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

APPENDIX

In past years Congress has from time to time suspended the need to perform annual assessment work on unpatented mining claims. Generally, not in all cases, a notice of intent to hold the claim was required. Periods of suspension were:

Jan. 1, 1893 to Dec. 31, 1893 (28 Stat. 6)
Jan. 1, 1894 to Dec. 31, 1894 (28 Stat. 114)
Jan. 1, 1913 to Dec. 31, 1913 (38 Stat. 235)
Jan. 1, 1917 to Dec. 31, 1918 (40 Stat. 343)
Jan. 1, 1919 to Dec. 31, 1919 (41 Stat. 279 & 354)
Jan. 1, 1931 to July 1, 1932 (47 Stat. 291 & 474)
July 1, 1932 to July 1, 1933 (48 Stat. 72)
July 1, 1933 to July 1, 1934 (48 Stat. 777)
July 1, 1934 to July 1, 1935 (49 Stat. 337)
July 1, 1935 to July 1, 1936 (49 Stat. 1238)
July 1, 1936 to July 1, 1937 (50 Stat. 306)
July 1, 1937 to July 1, 1938 (52 Stat. 1243)
July 1, 1941 to July 1, 1943 (56 Stat. 271)
May 3, 1943 to July 1, 1947 (57 Stat. 74)
June 30, 1947 to July 1, 1948 (61 Stat. 213)
June 17, 1948 to July 1, 1948 (62 Stat. 475)
July 1, 1948 to July 1, 1949 (62 Stat. 571)
July 1, 1949 to July 1, 1950 (63 Stat. 200 & 213)

In addition, personnel in military service were excused from doing assessment work for certain periods of the Spanish American War, World War I, and World War II. The respective acts are found in 30 Stat. 651, 40 Stat. 243, and 54 Stat. 1188.

The Act of July 3, 1942 (56 Stat. 647) provided for suspension of assessment work on claims withdrawn for national defense efforts in the prosecution of World War II.

