

Editor's note: Reconsideration denied by order dated Sept. 24, 1982

ELOISE JOYCE WILLIAMSON

IBLA 80-534

Decided September 9, 1980

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring mining claims OR 3833 (952) abandoned and void.

Appeal dismissed.

1. Mining Claims: Recordation--Rules of Practice: Appeals: Dismissal--Rules of Practice: Appeals: Statement of Reasons--Rules of Practice: Appeals: Timely Filing

An appeal from a decision declaring mining claims abandoned and void because of failure to meet the recordation requirements of the Federal Land Policy and Management Act may be dismissed where the appellant failed to file her statement of reasons or request for a further extension of time to file a statement within time granted by the Board and she does not satisfactorily show why a request was not timely filed, and there is no likelihood she could prevail on the merits of the case in any eventuality.

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

The Board of Land Appeals has no authority to waive the strict requirements of the Federal Land Policy and Management Act for recording mining claims, and where the requirements have not been met for a claim, the claim is properly declared abandoned and void.

APPEARANCES: Eloise Joyce Williamson, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Eloise Joyce Williamson, hereinafter appellant, has appealed from a decision dated February 12, 1980, of the Oregon State Office, Bureau of Land Management (BLM). In the decision, BLM returned notices of location of 32 mining claims, located before October 21, 1976, and a \$15 money order, because the filings were unacceptable for recordation with BLM under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2. The decision found the filings unacceptable, because, as to 24 claims, no copies of notices of location nor copies of notices of intent to hold the claims or of affidavits of assessment were filed. As to the other 8 claims, although handwritten copies of notices of location were filed, the decision found that several notices of intention to hold claims could not have been timely filed with the Jackson County Recorder's Office. 1/ The decision also held that the \$15 fee accompanying the notices of location could not cover, at \$5 each, all of the claims reported, and that there is no authority to waive the fees. The decision concluded that the claims must be deemed abandoned and void. 2/

After request therefor, appellant was accorded, on April 17, 1980, an extension of time, until May 12, 1980, for the filing of a statement of reasons in support of her appeal. Subsequently, on June 17, 1980, no such statement having been received, the Board ordered appellant to show cause within 30 days why her appeal should not be dismissed under 43 CFR 4.402(a) for failure to file the statement.

On July 18, 1980, appellant filed a response to the show cause order. It appears from this document that appellant's problem with BLM procedure stems from an asserted failure of unnamed attorneys to

1/ Although in appellant's filings the other 24 claims were identified by reference to page and book numbers in the county recorder's office, this cannot substitute for copies of the notices where her evidence shows notices were on file in the local recorder's office. Appellant's filings which purported to be statements of intent to hold claims were unaccompanied by any indication that such had been earlier filed with the County.

2/ Although it has been held that underpayment of fees may result in allowing the owner to record the number of claims corresponding to the amount actually paid, in this case the filings were otherwise defective, as detailed in the text, so any application of fees so paid would be improper. See Robert L. Steele, 46 IBLA 80 (1980); Ann Warnke, 45 IBLA 305 (1980).

probate years-old estates of some family members who were the original owners of the claims and from appellant's inability to find counsel to represent her. Accordingly, appellant requests this Department to investigate the Oregon State Bar Association for its insensitivity to her pleas for aid and "the Oregon procedure of probating estates and escheating." Additionally, appellant complained of the unconstitutionality of BLM's action here (insofar, she claims, as she was denied due process by, apparently, BLM's taking of her property right without just compensation) and requested a further extension of time for the filing of her statement of reasons.

Clearly, an investigation of the Oregon State Bar Association and of Oregon's probate procedure is beyond the jurisdiction of this Board. Similarly, a determination of the constitutionality of FLPMA is not within our authority. No court has ruled that FLPMA is unconstitutional. See Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979). Appellant must seek redress for these asserted wrongs in the appropriate forum.

[1] We have considered these and appellant's other allegations to determine whether the appeal should be dismissed because she failed to file a statement of reasons or a request for a further extension within the time provided by the order of April 17, 1980. Regulation 43 CFR 4.402(a) provides that an appeal to this Board will be subject to summary dismissal "[i]f a statement of reasons for the appeal is not included in the notice of appeal and is not filed within the time required." Appellant's reasons for failing to file her statement of reasons within the time provided by the order of April 17, 1980, relate also to the same reasons her mining claim filings were deficient, namely, her inability to hire an attorney, a lack of funds to cover copying costs with the local recorder's office, probate and estate difficulties, and some additional personal difficulties.

While sympathetic to appellant, we cannot grant her relief in this case and see no useful purpose to be gained by making any further extensions. Her appeal is subject to dismissal. Although appellant had filed her notice of appeal and first request for an extension within the time required, she does not satisfactorily show why her further request was not timely filed. In the circumstances, and because there is no likelihood she could prevail on the merits of this case in any eventuality, the appeal here will be dismissed.

[2] Although the appeal is dismissed, we note that the ultimate result of BLM's decision would have to be affirmed, in any event, because the requirements of FLPMA and the implementing regulations were not met by appellant. What appellant has shown are reasons to excuse her failure to meet all of the requirements of the statute and regulations. This Board has no authority to waive the strict mandatory requirements of the statute regardless of appellant's reasons and

excuses here for failing to comply. Appellant filed filing fees sufficient for only 3 claims. Thus, clearly as to 29 claims there were no filing fees as required by 43 CFR 3833.1-2(a). See n. 3. The claims were deficient for additional reasons.

Although the handwritten copies of the location record as to 8 of the claims might be sufficient to satisfy one of the recording requirements prescribed by FLPMA and the regulations for those claims, the other 24 claims were deficient because copies of the location notices were not filed, although apparently they were available in the local recorder's office. In any event, appellant has failed to meet the other recording requirements for any of the claims. Although appellant filed with BLM two documents purporting to be a "Notice of Intent to hold a group of mining claims, mills, tunnels and sites" covering all of the claims, these documents did not contain the information necessary for such a notice as required by 43 CFR 3833.2-3. 3/ In particular, the "notices" failed to set out a legally cognizable reason, as required by 43 CFR 3833.2-3(a)(1)(v), for failure to perform assessment work or to file an affidavit of assessment work performed. 4/ Thus appellant has failed in one respect or another to meet the filing requirements of FLPMA and the regulations with regard to all of her claims. The law is clear regarding the consequences of such failure, and the BLM decision appealed from was, therefore, correct in declaring the claims abandoned and void.

3/ BLM's decision recounted that as to one of the two such "notices" filed, insofar as it was filed with BLM at 10 p.m. on October 22, 1979, it "could not have been timely recorded with the county on or before October 22, 1979, as required by Section 314 of the Act." Whether or not this is a correct conclusion is inconsequential since the notices simply did not meet the requirements of the regulation cited in the text.

4/ The appropriate filing for these claims, all being located before October 21, 1976, would appear to be an affidavit of assessment work performed, there appearing to be no legally cognizable reason, from the record, which would excuse assessment work's being performed. The notice of intent to hold is thus inappropriate and useless for preserving appellant's claims. Appellant cited as her reasons for failure to file the affidavit "[p]hysical exhaustion," "being unable to hire a licensed mining attorney," "as well as [lack of?] funds to so do," and "legal and other implements [sic] beyond my control." None of these is sufficient reason for failure to do assessment work nor for failure to file the affidavit of such work performed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal in this case is dismissed.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge

