

HUGH A. JOHNSON

IBLA 81-232

Decided April 17, 1981

Appeal from the decision of the Wyoming State Office, Bureau of Land Management, declaring mining claims abandoned and void. W MC 173052 through 173123.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on Federal lands on or before Oct. 21, 1976, must file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. This requirement is mandatory, and failure to file conclusively constitutes abandonment of the claim by the owner.

2. Administrative Authority: Generally--Constitutional Law: Generally--Statutes

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

3. Administrative Procedure: Hearings--Constitutional Law: Due Process--Rules of Practice: Hearings

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

APPEARANCES: Robert C. Coates, Esq., San Diego, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Hugh A. Johnson has appealed the decision of the Wyoming State Office, Bureau of Land Management (BLM), dated November 28, 1980, declaring 72 mining claims, W MC 173052 through 173123, abandoned and void for failure to file evidence of annual assessment work on the claims on or before October 22, 1979.

In his statement of reasons, appellant does not contest the fact that he failed to timely file affidavits of assessment work but instead argues that section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1(a), are unconstitutional as applied to his claims as they deprive him of "a valuable property right without due process of law and without just compensation, in derogation of the Fifth Amendment of the United States Constitution."

[1] Section 314(a) of FLPMA, supra, requires the owner of an unpatented mining claim located prior to October 21, 1976, to file evidence of assessment work for the claim with BLM within the 3-year period following that date and prior to December 31 of each year thereafter. The corresponding Departmental regulation 43 CFR 3833.2-1(a) reads:

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Failure to so file is considered conclusively to constitute abandonment of a claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

[2] Appellant's argument that the recordation requirements are unconstitutional may not be considered by this Board. The Department of the Interior as an agency of the executive branch of the Federal Government is not a proper forum to consider the constitutionality of the recordation provisions of FLPMA, supra. Alice E. Deetz, 48 IBLA 59 (1980). In addition, regulations promulgated pursuant to these provisions have been upheld. Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), appeal pending.

[3] Due process does not require notice and a right to a prior hearing in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the initial BLM decision, adverse to him, becomes final. Appeal to this Board satisfies the due process requirements. George H. Fennimore, 50 IBLA 280 (1980); Dorothy Smith, 44 IBLA 25 (1979); H. B. Webb, 34 IBLA 362 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

