

WILLIAM ADOLPH YONKEE ET AL.

IBLA 81-197

Decided April 27, 1981

Appeal from a decision of the Wyoming State Office, Bureau of Land Management declaring placer mining claims abandoned and void. W MC 126131 through W MC 126134.

Affirmed.

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

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Notice: Generally--Regulations: Generally--Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

3. Administrative Authority: Generally--Federal Employees and Officers: Authority to Bind Government

Reliance upon erroneous or incomplete information provided by Federal employees does not create any rights not authorized by law.

4. 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 a statute enacted by Congress is constitutional.

APPEARANCES: Ruth Clare Yonkee, Esq., for appellants.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

William A. Yonkee, et al., appeal from a November 19, 1980, decision of the Wyoming State Office, Bureau of Land Management (BLM), declaring appellants' mining claims, the Hope and the Brimstone Nos. 1 through 3, abandoned and void under the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976); 43 CFR 3833.2-1(a) and 3833.4.

On September 6, 1979, the mining claims were filed for recordation with the Bureau of Land Management (BLM), as required by FLPMA and 43 CFR 3833.1-2(a). The claims were located in 1907 and 1917. 1/

[1] Section 314 of FLPMA, 43 U.S.C. § 1744 (1976), states:

(a) The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection.

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, or a detailed report provided by section 28-1 of Title 30, relating thereto.

1/ The Brimstone Nos. 1 through 3 were originally located on Mar. 15, 1907, as the Brimstone Nos. 1 through 3 sulphur and alum placer mining claims. The Hope claim was located on July 8, 1917, as the Hope oil placer mining claim. Amended location notices were filed on Nov. 15, 1966, to add the words "and all other minerals and valuable deposits" among the claimed minerals and to change the name of the claims as indicated in the text.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

Where, as here, appellants recorded their location notices with BLM on September 6, 1979, the aforementioned statute and the regulations adopted pursuant thereto required the filing of the affidavits of assessment work or notice of intention to hold on or before October 22, 1979. Since BLM did not receive the affidavits of assessment within the requisite time period, appellants' mining claims were deemed to be abandoned and void in accordance with the controlling statute and regulations. Santa Monica Hospital Center Foundation, 51 IBLA 194 (1980); Pearl Kelly, 51 IBLA 185 (1980); Michael Jon McFarland, 51 IBLA 173 (1980).

Appellants contend that the notices filed with BLM on September 6, 1979, were to serve the dual purposes of notices of location and notices of intention to hold. A notice of intention to hold is required by the statute to be a copy of a document which was filed in the office of the state where the notice of location was filed. 43 U.S.C. § 1744(a)(1) and (2) (1976); See Pacific Coast Mines, Inc., 53 IBLA 200 (1981). The statement that appellants had performed the assessment work in 1979 was not, itself, filed in the local offices and thus, under the terms of the statute, it cannot serve as a valid notice of intention to hold. See Robert W. Hanson, 46 IBLA 93 (1980).

Appellants contend that they attempted to comply with the law and relied upon various BLM documents, copies of which they submit with their appeal.

While we have recognized that the January 1977 publication entitled "Questions & Answers -- Recording of Mining Claims" was not without certain problems (see John Plutt, Jr., 53 IBLA 313 (1981)) appellants also had a copy of the actual regulations which tracked with the statutory provisions relevant herein. See 43 CFR 3833.2-2(a).

[2, 3] Appellants note that BLM cashed the check submitted as a filing fee for the claims and contends that the Government should be estopped from asserting that the claims were not properly recorded. In actual fact, however, the claims were properly recorded on September 9, 1979. As of that point in time, appellants were in full compliance with the law. It was only upon the failure of appellants to subsequently file proof of assessment work or notices of intention to hold, on or before October 22, 1979, that the conclusive presumption of abandonment, mandated by the statute, arose.

Appellants further note that their attorney had specifically requested to be advised "in the event that this is not sufficient or you have any questions regarding the same." BLM did not inform them of any insufficiency in the filings and appellants contend that BLM should now be estopped from asserting that there was any inadequacy. Estoppel against the Government, however, will not lie absent a showing of affirmative misconduct. See United States v. Ruby Co., 588 F.2d 697 (9th Cir. 1978). Failure to give advice is not "affirmative misconduct." 2/

In any event, as BLM stated, the sheer weight of filings which were being made at this time made it impossible for BLM personnel to examine in any great detail the documents being submitted. And, as we have pointed out above, the documents were adequate to meet the initial recordation requirements, though insufficient to constitute either the affidavit of assessment work or notice of intention to hold which was due on or before October 22, 1979.

Appellants also argue that due to the failure of BLM to promptly notify them of the statutory abandonment which arose after October 22, 1979, they caused further assessment work to be expended on these now invalid claims. While it is unfortunate that BLM was not able to promptly inform appellants of the insufficiencies of their filings, we do not believe, for the same reasons set forth supra, that this can serve to estop the Government from asserting the statutory abandonment, regardless of whether one invokes principles of estoppel or laches.

[4] Appellants allege that FLPMA is unconstitutional and that they were deprived of their rights without due process of law. The Board adheres to its earlier holdings that the Department, as an agency of the Executive Branch of the Government, is not the proper forum to decide whether a statute enacted by Congress is constitutional. Alaska District Council of the Assemblies of God, 8 IBLA 153 (1972); Masonic Homes of California, 4 IBLA 23, 78 I.D. 312 (1971). If an enactment of Congress were to be in conflict with the Constitution, it is within the authority of the judicial branch, not the executive branch, to so declare. Charlie Canal, 43 IBLA 10 (1979); Al Sherman, 38 IBLA 300 (1978). As regards their contention that various due process rights were abrogated by BLM's manner of adjudication, we merely point out that due process does not require notice and a right to be heard in

2/ We would also point out that another essential prerequisite to invoking an estoppel is lack of knowledge of the party asserting estoppel. United States v. Georgia Pacific, 421 F.2d 92, 98 (9th Cir. 1970). Inasmuch as all individuals are presumed to have knowledge of the relevant statutes and the duly promulgated regulations, it is doubtful whether an estoppel will ever lie in a situation such as that demonstrated by the instant appeal.

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); State of Alaska, 46 IBLA 12 (1980).

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

James L. Burski
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Douglas E. Henriques
Administrative Judge

