

PETRO-LEWIS CORP.
PARTNERSHIP PROPERTIES CO.

IBLA 81-581

August 31, 1981, Decided

Appeal from decision of the Wyoming State Office, Bureau of Land Management, declaring East End Nos. 3 and 4 oil placer mining claims abandoned and void. W-31045.

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

The fact that mining claims are oil placer claims and that there is production on the claims does not prevent the conclusive abandonment and voiding of the claims for failure to comply with FLPMA's recordation requirements.

3. Administrative Authority: Generally -- Constitutional Law: Generally -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation
Department of the Interior, as agency of executive branch of Government, is not a proper forum to decide whether or not the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

APPEARANCES: Morris R. Massey, Esq., Casper, Wyoming, for appellants.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Petro-Lewis Corporation and Partnership Properties Company, owners of interests in the East End Nos. 3 and 4 oil placer mining claims, have appealed from the March 18, 1981, decision of the Wyoming State Office, Bureau of Land Management (BLM), declaring these claims abandoned and void, because of the owners' failure to comply with the filing requirements of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976). BLM held that appellants had failed to record these claims prior to October 22, 1979, the statutory deadline for doing so, and that the claims were therefore conclusively deemed abandoned and void.

[1] Under section 314 of FLPMA, 43 U.S.C. § 1744 (1976), owners of unpatented mining claims located prior to October 21, 1976, had until October 22, 1979, to record the location with BLM and to provide certain ancillary information. The pertinent regulations are 43 CFR 3833.1-2 and 3833.2-1. ^{1/} Under section 314(c) of FLPMA, 43 U.S.C.

^{1/} 43 CFR 3833.1-2 provides:

"(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, shall file (file shall mean being received and date stamped by the proper BLM office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law."

43 CFR 3833.2-1 provides:

"(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 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."

§ 1744(c) (1976) and 43 CFR 3833.4, failure to comply with the regulations governing recordation of information relating to unpatented mining claims results in a conclusive finding that the claims have been abandoned and that they are void.

[2] It is irrelevant that these are oil placer claims, since FLPMA and the regulations provide no dispensation for such claims. Nor does the fact that appellants may be producing from these claims alter the result. The holding of a mining claim and the diligent pursuit of mining activities on it do not relieve an owner of the obligation imposed by statute to file required material. See Paul S. Coupey, 35 IBLA 112, 115 (1978).

[3] Appellants' arguments on constitutional law cannot be considered by this Board. The Department of the Interior as an agency of the executive branch of the Government is not a proper forum to consider whether the recordation provisions of FLPMA are constitutional. Harwell Mining Co., 56 IBLA 236 (1981); Alex Pinkham, 53 IBLA 149 (1981). However, we note that the United States Court of Appeals for the Tenth Circuit has stated that the Secretary of the Interior has broad authority to promulgate rules and regulations to aid him in his administration of the public lands, and that the regulations he has promulgated to implement FLPMA do not transcend such authority. Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981).

Congress specifically placed the burden on the mining claimant to show that his claim has not been abandoned by his compliance with FLPMA's requirements, and any failure to comply produces a conclusive presumption of abandonment. Harwell Mining Co., *supra* at 239; Lynn Keith, 53 IBLA 192, 197, 88 I.D. 369, 372 (1981).

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.

Bernard V. Parrette
Chief Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

