

EDGAR W. COOK
MARLENE COOK

IBLA 81-275

Decided October 20, 1981

Appeal from decision of the California State Office, Bureau of Land Management, declaring the Golden Buck and Golden Doe mining claims abandoned and void. CA MC 79472 and CA MC 79473.

Affirmed.

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

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

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

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest

the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Administrative Authority: Generally--Constitutional Law:
Generally--Federal Land Policy and Management Act of 1976:
Recordation of Mining Claims and Abandonment-- Mining Claims:
Recordation

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

4. Administrative Procedure: Adjudication--Evidence: Generally --
Evidence: Presumptions--Federal Land Policy and Management Act
Mining Claims and Abandonment--Mining Claims: Abandonment

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting sec. 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, evidence that a claimant intended not to abandon his claim is not material and may not be considered in such cases.

APPEARANCES: William B. Grant, Esq., San Diego, California, for appellants.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Edgar W. Cook and Marlene Cook bring this appeal from the December 18, 1980, decision of the California State Office, Bureau of Land Management (BLM), which declared the Golden Doe and Golden Buck

lode mining claims, CA MC 79472 and CA MC 79473, abandoned and void because copies of location notices were not filed with BLM on or before October 22, 1979, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976) and the regulations set forth at 43 CFR 3833.1-2(a) and 3833.4.

In the statement of reasons for appeal appellants assert in sum that the statute and regulations under which the claims have been declared abandoned and void, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a), are unconstitutional in that they serve to deprive them of a valuable property right without due process of law, just compensation, or prior notice or hearing, all in derogation of the Fifth Amendment of the United States Constitution. In addition, appellants assert that both Federal and state agencies had actual knowledge of the claims, that the claims were neither stale nor dormant, and that since the acquisition of the claims yearly affidavits of annual labor had been filed.

The record indicates that the Golden Buck and Golden Doe mining claims were located on April 25, 1932, and June 25, 1950, respectively. Appellants filed copies of the notices of location with the Sacramento, California, BLM office on December 12, 1980.

[1] Under section 314 of FLPMA, 43 U.S.C. § 1744 (1976), and the applicable regulation at 43 CFR 3833.1-2(a), the owner of an unpatented mining claim located prior to October 21, 1976, had until October 22, 1979, to record the location notice with BLM. Recordation is effected only by filing in the proper BLM office a copy of the official record of the notice or certificate of location filed under state law, 43 CFR 3833.1-2(a). Failure to comply with the regulations governing recordation of a copy of the certificate or notice of location of an unpatented mining claim must result in a conclusive finding that the claim has been abandoned and that it is void. 43 U.S.C. § 1744(c) (1976). Kenneth C. Eichner, 56 IBLA 391 (1981); Walter Schivo, 53 IBLA 40 (1981); William H. Tomporowski, 53 IBLA 21 (1981).

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself, and would operate even without the regulations. A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. Lynn Keith, 53 IBLA 192, 196, 88 I.D. 369, 371-72 (1981).

"Section 1744(c) [of FLPMA] leaves the Secretary no discretion, requiring that the claims be conclusively deemed abandoned when the filing provisions are not met." Western Mining Council v. Watt, 643 F.2d 618, 628 (9th Cir. 1981). In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive

or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Lynn Keith, supra; Thomas F. Byron, 52 IBLA 49 (1981).

[3] Appellants' challenge of the constitutionality of the statute and regulations cannot be sustained. To the extent that due process of law requires that claimants be afforded some form of hearing prior to declaring their unpatented mining claims abandoned and void for failure to timely file the documents required by section 314 of FLPMA, that requirement is satisfied by claimants' right of appeal to this Board. John J. Schnabel, 50 IBLA 201, 204 (1980). No evidentiary hearing is required where the validity of a claim depends upon the legal effect to be given uncontested facts of record. John J. Schnabel, supra at 204; Dorothy Smith, 44 IBLA 25 (1979); see United States v. Consolidated Mines & Smelting Co., Ltd., 455 F.2d 432, 453 (9th Cir. 1971); Dredge Corporation v. Penny, 362 F.2d 889, 890 (9th Cir. 1966). The applicable regulations merely mirror the statute and, to the extent that they have been considered by the courts, they have been upheld. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Western Mining Council v. Watt, supra. This Board has no authority to declare a duly promulgated Departmental regulation invalid where the regulation is consistent with the underlying statutory authority. Colorado-Ute Electric Association, Inc., 46 IBLA 35, 47 (1980); see Arizona Public Service Company, 20 IBLA 120, 123 (1975); Duncan Miller, 12 IBLA 206 (1973); cf. Feldslite Corporation of America, 56 IBLA 78, 88 I.D. 643 (1981) (regulation which compels a result not authorized by statute will not be followed to extent inconsistent); Garland Coal & Mining Co., 52 IBLA 60, 88 I.D. 24 (1981) (regulation which has no statutory basis will be afforded no force or effect).

With respect to the constitutionality of the statute, this Board adheres to its earlier holdings that the Department of the Interior, being an agency of the executive branch of the Government, is not the proper forum to decide whether an act of Congress is constitutional. Lynn Keith, supra; Alex Pinkham, 52 IBLA 149 (1981). Jurisdiction of such an issue is reserved exclusively to the judicial branch.

Appellant also asserts that the claims were neither stale nor dormant in that from the time of their acquisition in 1968 they were continuously worked and occupied.

[4] As this Board noted in Lynn Keith, supra, at common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying

with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, evidence that a claimant intended not to abandon is not material and may not be considered. Lynn Keith, supra.

Accordingly, 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.

C. Randall Grant, Jr.

Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Douglas E. Henriques
Administrative Judge

