

DAVID and ROIRDON DOREMUS

IBLA 82-165

Decided February 17, 1982

Appeal from an Idaho State Office, Bureau of Land Management, decision declaring unpatented mining claims abandoned and void for failure to file timely evidence of assessment work or notice of intention to hold. I MC 23295 and I MC 23296.

Affirmed.

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

Sec. 314(a) of FLPMA requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, to file with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter, an affidavit of assessment work performed thereon, or a notice of intention to hold the claim, or a detailed report provided by sec. 28-1 of Title 30, relating thereto. Sec. 314(c) states that the failure to comply with subsection (a) invokes a conclusive presumption of the claim's abandonment, and 43 CFR 3833.4(a) declares that the claim "shall be void."

2. Mining Claims: Abandonment--Notice: Generally --Regulations: Generally--Statutes

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

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

Like other entities of the executive branch of the Federal Government, the Board of Land Appeals is not empowered to adjudicate the constitutionality of a statute. That is the province of the judicial system.

APPEARANCES: Merrily Munther, Esq., Boise, Idaho, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

David and Roirdon Doremus appeal the November 5, 1981, decision of the Idaho State Office, Bureau of Land Management (BLM), that declared their unpatented mining claims abandoned and void for failure to file timely evidence of assessment work or a notice of intention to hold the mining claims prior to December 30, 1980, as required by Departmental regulations, 43 CFR 3833.2. Appellants located their lode mining claims, "Wizard" and "Looking Glass," I MC 23295 and I MC 23296, in 1974. In 1980 appellants apparently performed assessment work on their claims, as they had in the previous years since location, but they admittedly failed to file a copy of the affidavit of assessment work with BLM. Appellants contend that the resulting BLM decision is contrary to several important principles of law.

[1] They argue that the application to their claims of section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) and (c) (1976), is an arbitrary and unreasonable exercise of the police power, effecting a forfeiture of their claims in a manner contrary to due process guarantees of the Fifth Amendment of the United States Constitution. Section 314(a) requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file with BLM, within the 3-year period following that date, and prior to December 31 of each year thereafter, either a notice of intention to hold the mining claim, an affidavit of assessment work performed thereon, or a detailed report provided by section 28-1 of Title 30, relating thereto. Section 314(c) states that the failure to comply with subsection (a) invokes a conclusive presumption of the affected mining claim's abandonment, and an implementing regulation, 43 CFR 3833.4(a), declares that the mining claim "shall be void."

[2, 3] We acknowledge appellants' assertion that they were without actual knowledge that their failure to file with BLM would give rise to the conclusive presumption of abandonment. However, contrary to their assertions, the actualization of that presumption need not have been preceded by any particular notice to them from BLM, because the public is deemed to know the content of relevant statutes and regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). This Board is not empowered to adjudicate the constitutionality of statutes; that is the

province of the judicial system. Lynn Keith, *supra*. But Federal courts of appeals have upheld FLPMA in challenges to its constitutionality. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981), *cert. denied*, 50 U.S.L.W. 3369 (Nov. 10, 1981). This Board also cannot remedy appellants' other complaints against the FLPMA mining claim recordation system instituted by Congress. BLM has acted pursuant to the statutory and regulatory duties placed upon it, and has acted correctly in declaring appellants' mining claims abandoned and void. The law contains no provision allowing the Department of the Interior to waive compliance with the laws of recordation, or to accept late filings or reinstate claims. West Fork Mining Co., 60 IBLA 370 (1981); Lyman Mining Co., 54 IBLA 165 (1981). Therefore, no useful purpose would be served in granting appellants' request for a hearing on the facts. John Murphy, 58 IBLA 75 (1981).

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 is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

