

Appeal from decision of California State Office, Bureau of Land Management, declaring Chieftain mining claim CA MC 52128 abandoned and void.

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. 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

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

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

Due process does not require notice and a right to be heard prior to the initial decision 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., for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

El Capitan Oil Company, Inc. appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated February 9, 1981, declaring the Chieftain mining claim abandoned and void for failure to file evidence of assessment work or notice of intention to hold the claim as required by 43 CFR 3833.2-1, issued pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). BLM added that no notice of location had been filed.

Appellant's claim was located prior to October 21, 1976. On October 19, 1979, appellant filed with BLM "Proof of Annual Labor" with respect to the mining claim for the assessment year ending on September 1, 1979, a description of the claim, a map showing the location of the claim, and a \$5 service fee. On March 2, 1981, appellant filed with BLM "Proof of Annual Labor" for the assessment year ending September 1, 1980, along with its notice of appeal. There was no filing of any kind during calendar year 1980.

On appeal appellant argues that 43 U.S.C. § 1744 and 43 CFR 3833.1, 3833.2, and 3833.4 are unconstitutional because they serve to deprive appellant of a valuable property right without due process of law and without just compensation by imposing a forfeiture of said mining claim for failure to file certain documents with BLM prior to notice or hearing, all in derogation of the Fifth Amendment of the United States Constitution.

Appellant contends that the purpose of the statute is to give notice to BLM of dormant or stale claims and that the filing of the papers in 1979 served to give such notice. Appellant alleges that it has, from the time of acquisition of the claim, continuously worked and occupied it as evidenced by the filing of proofs of annual labor.

[1] The owner of an unpatented mining claim, located prior to October 21, 1976, must file with the proper BLM office by October 22, 1979, and on or before December 30 of each calendar year thereafter, evidence of annual assessment work performed or a notice of intention to hold the claim. 43 U.S.C. § 1744(a) (1976); 43 CFR 3833.2-1(a). Failure to file the required instrument is deemed conclusively to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

[2] Appellant's contention that the statute and regulations are unconstitutional is without merit. The Department of the Interior, being an agency of the executive branch of the Government, is not a

proper forum to decide whether an act of Congress is constitutional. James G. Robinson, 60 IBLA 134 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Jurisdiction of such an issue is reserved exclusively to the judicial branch. As for the regulations, to the extent they have been considered by the courts, the regulations have been upheld. See Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981). In any event, it has been frequently held that an appeals board of this Department has no authority to declare a duly promulgated regulation invalid. Exxon Co., U.S.A., 45 IBLA 313 (1980).

[3] Due process does not require notice and a right to be heard prior to the initial decision 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. Appeal to this Board satisfies due process requirements. Major G. Atkins, 60 IBLA 284 (1981); Fahey Group Mines, Inc., 58 IBLA 88 (1981); Dorothy Smith, 44 IBLA 25 (1979).

Appellant contends that the papers filed in 1979 served to give BLM notice of his claim. While it is true that BLM may be on notice of appellant's claim by virtue of the information filed, this does not excuse appellant from complying with the statutory requirements. Compliance with one regulation does not constitute compliance with another. See Major G. Atkins, supra.

There is no evidence in the record that appellant has ever filed the original notice of location with respect to the mining claim. ^{1/} Failure to file timely notice of location must result in a mining claim being declared abandoned and void. 43 U.S.C. § 1744(b) and (c) (1976); 43 CFR 3833.1-2; and 3833.4(a). The deadline for filing appellant's notice of location was October 22, 1979. 43 CFR 3833.1-2(a).

^{1/} Although there is no notice of location in the case file, there is a quitclaim deed dated Apr. 6, 1976, conveying the claim to appellant and a proof of labor for the assessment year ending Sept. 1, 1976, attached to its statement of reasons. In the original filing of the claim, El Capitan stated that "a thorough search of the title plants and local county recorder's office has failed to turn up any recordation of this property as a mining claim." As we noted in Marvin E. Brown, 52 IBLA 44 (1981), where a mining claimant is purporting to hold a claim under the provisions of 30 U.S.C. § 38 (1976) "reasonable evidence" of the original location notices may suffice. Inasmuch as it is clear that appellant failed to comply with the requirement of 43 U.S.C. § 1744(a) (1976) as regards annual filings for calendar year 1980, it is unnecessary to determine whether appellant had submitted "reasonable evidence" of the original location notice.

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.

Gail M. Frazier
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

