

INTERIOR BOARD OF LAND APPEALS

Dee W. Alexander Estate, et al.

131 IBLA 39 (October 12, 1994)

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IBLA 94-795 Decided October 12, 1994

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring certain unpatented mining claims abandoned and void for failure to pay rental fees for both the 1993 and 1994 assessment years. M MC 21527 etc.

Affirmed.

1. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally

A decision declaring an unpatented mining claim abandoned and void for failure to file the annual rental fee as required by statute will be upheld notwithstanding claimant's lack of actual advance knowledge of the requirement. When the statute has been published, implementing regulations have been published, and notices have been published in news-papers of general circulation, the decision will be sustained even though the BLM has not provided claimant with personal advance notice of the requirement by certified mail.

APPEARANCES: Alexander W. Gambrel, Spokane, Washington, for appellants.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Dee W. Alexander Estate, William J. Alexander, and June L. Alexander have appealed from the July 12, 1994, decision of the Montana State Office, Bureau of Land Management (BLM), declaring certain unpatented mining claims abandoned and void for failure to pay rental fees or submit a certificate of exemption from payment for both the 1993 and 1994 assessment years. 1/

1/ The names and serial numbers of the claims declared abandoned and void are set forth as follows:

<u>Serial Number</u>	<u>Claim Name</u>
M MC 21527	Goat Creek Silver #1
M MC 21528	Goat Creek Silver #2
M MC 21529	Goat Creek Silver #3
M MC 21530	Goat Creek Silver #4

The BLM decision declared the above-referenced mining claims abandoned and void because claimants had failed to comply with the requirements of the Department of the Interior and Related Agencies Appropriations Act, 1993, P.L. 102-381, 106 Stat. 1374, 1378-79 (1992) (the Act). Specifically, the decision noted that in order to hold a claim, claimants were required to pay rental fees in the amount of \$100 per claim for both the 1993 and 1994 assessment years on or before August 31, 1993, in the absence of qualifying for a small miner exemption. Since BLM had not received either rental fees or qualifying certificates of exemption by August 31, 1993, BLM held the claims were conclusively deemed to be abandoned and void by operation of law.

In their statement of reasons, appellants contend that both the statute itself and the BLM application of the Act have violated their Constitutional rights because it has unjustly voided a substantial property interest of appellants without adequate notice and without compensation. Appellants assert that neither the postcards sent to claimants by BLM informing them of the new rental fee regulations, nor publication in the local newspapers, was adequate to notify appellants of their new obligations. Further, appellants argue that it is unreasonable to conclude that publication in the Federal Register constitutes constructive notice. Appellants contend that a certified letter explaining the obligation and the consequences of noncompliance would have constituted more reasonable notice.

The relevant statute enacted by Congress provides in pertinent part that:

[F]or each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *.

106 Stat. 1378. The Act also contained an identical provision establishing rental fees for the following assessment year ending at noon on September 1,

fn. 1 (continued)

M MC 21531	Goat Creek Silver #5
M MC 21532	Goat Creek Silver #6
M MC 21533	Goat Creek Silver #7
M MC 21534	Goat Creek Silver #8
M MC 21535	Goat Creek Silver #9
M MC 21536	Goat Creek Silver #10
M MC 21537	Goat Creek Silver #11

1994, and requiring payment of an additional \$100 rental fee for each claim on or before August 31, 1993. 106 Stat. 1378-79. Implementing Departmental regulations provide in pertinent part as follows:

Mining claim or site located on or before October 5, 1992. A nonrefundable rental fee of \$100.00 for each mining claim, mill site, or tunnel site, shall be paid on or before August 31, 1993, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental fee of \$200.

43 CFR 3833.1-5(b).

The statute further provides that "failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant." 106 Stat. 1379; see 43 CFR 3833.4(a)(2). 2/ When a claimant fails to qualify for a small miner exemption from the rental fee requirement, failure to pay the rental fee in accordance with the Act and the regulations results in a conclusive presumption of abandonment. William B. Wray, supra at 175; Lee H. & Goldie E. Rice, 128 IBLA 137, 141 (1994). The Department is without authority to excuse lack of compliance with the rental fee requirement of the Act, to extend the time for compliance, or to afford any relief from the statutory consequences. Id. In the absence of timely rental payments or an applicable exemption, BLM properly declared the claims abandoned and void.

[1] Appellants seek to distinguish cases such as the Wray case on the ground that the failure of BLM to provide adequate notice to the claimants was not put in issue in those cases. With regard to the issue of the adequacy of notice, we note that the language of the Act dealing with the consequences of the failure to make the annual payment of the claim rental fee is very similar to the language used by Congress in section 314(c) of FLPMA, 43 U.S.C. § 1744(c), which provides that the failure to record the notice of location of a mining claim, millsite or tunnel site with BLM or file evidence of annual assessment work or a notice of intention to hold "shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner." 3/ The Supreme Court has upheld the constitutionality of section 314 of FLPMA, concluding that a mining claim for which

2/ The only exception provided from this annual rental requirement is the "small miner" exemption, available to claimants holding 10 or fewer claims on Federal lands. 106 Stat. 1378-1379; 43 CFR 3833.1-5(d); 3833.1-6; 3833.1-7; see William B. Wray, 129 IBLA 173 (1994). The record shows that appellants held more than 10 claims and they have not asserted that they qualified for this exemption.

3/ The Board has consistently held that responsibility for complying with the recordation and filing requirements of FLPMA rests with the owner of the unpatented mining claims, millsite, or tunnel site, as Congress mandated that failure to file the proper documents in the proper offices within the

timely filing are not made in extinguished by operation of law notwithstanding the claimant's intent to hold the claim. United States v. Locke, 471 U.S. 84, 97 (1985). With regard to the adequacy of notice to claimants, the Court held:

In altering substantive rights through enactment of rules of general applicability, a legislature generally provides constitutionally adequate process simply by enacting the statute, publishing it, and, to the extent the statute regulates private conduct, affording those within the statute's reach a reasonable opportunity both to familiarize themselves with the general requirements imposed and to comply with those requirements. Texaco, [Inc. v. Short], 454 U.S. [532] at 532.

471 U.S. at 108 (additional citations omitted). In upholding section 314 of FLPMA and reversing the district court finding that individualized notice of the filing deadlines was constitutionally required, the Court relied substantially on its analysis in the Texaco case.^{4/} Specifically, concerning the adequacy of notice provided by the legislature, the Court held:

Generally, a legislature need do nothing more than enact and publish the law, and afford the citizenry a reasonable opportunity to familiarize itself with its terms and comply. In this case, the 2-year grace period included in the Indiana statute forecloses any argument that the statute is invalid because mineral owners may not have had the opportunity to become familiar with its terms. It is well established that persons owning property within a State are charged with knowledge of relevant statutory provisions affecting the control or disposition of such property.

It is also settled that the question of whether a statutory grace period provides an adequate opportunity for citizens to

fn. 3 (continued)

time periods prescribed in section 314 of the FLPMA would, in and of itself, cause the claim or site to be lost. In numerous decisions dealing with this provision the Board specifically held that it is of no avail to appellants to point out that they were unaware of these regulatory requirements. Armando Majalca, 48 IBLA 351 (1980); Charles Caress, 41 IBLA 302 (1979); Donald Little, 37 IBLA 1 (1978). Similarly the Board has held that BLM has no affirmative duty to send claimants a reminder notice concerning the need to make annual filing required by 43 U.S.C. § 1744 (1988). Gordon B. Copple, 105 IBLA 90, 95 I.D. 219 (1988).^{4/} This case involved a constitutional challenge to the Indiana Dormant Mineral Interests Act which provided that a severed mineral interest lapses and reverts to the current surface owner of the property unless the mineral owner files a statement of claim in the county recorder's office within the 20-year period or within a 2-year grace period after enactment.

become familiar with a new law is a matter on which the Court shows the greatest deference to the judgment of State legislatures.

454 U.S. at 532 (footnotes omitted).

Although this Board has no authority to declare an act of Congress or a duly promulgated regulation unconstitutional, see Amerada Hess Corp., 128 IBLA 94, 98 (1993), we find this Act as implemented by BLM to be consistent with the constitutional requirements set forth in the Locke and Texaco cases. It was within Congress' authority to mandate specific notice requirements in the statute but, for whatever reasons, it did not. While the grace period in the instant case is less than the period allowed by the statute in Texaco, appellants acknowledge the efforts of BLM to notify claimants by individual mailing and by newspaper publication. Notice of rulemaking was published in the Federal Register. 58 FR 12878 (Mar. 5, 1993) (proposed rules); 58 FR 38186 (July 15, 1993) (final rules). Although it is regrettable that appellants apparently never received actual notice of the rental fee requirement prior to receipt of the BLM decision, it appears that the notice provided is in compliance with the due process requirements as applied by the courts.

Appellants requested that the Board stay the effect of BLM's decision pending review of their appeal. Our review of this request necessarily includes consideration of the likelihood of success on the merits of the case, pursuant to 43 CFR 4.21(b). In doing so, we have found that appellants' arguments cannot prevail before the Board, and we have therefore decided the appeal on its merits. See Texaco Trading & Transportation Inc., 128 IBLA 239, 241 (1994). As we have resolved this appeal on its merits, the request for stay is denied as moot.

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, and the request for stay is denied as moot.

C. Randall Grant, Jr.
Administrative Judge

I concur:

James L. Byrnes
Chief Administrative Judge