

INTERIOR BOARD OF LAND APPEALS

United States
v.
Myrtle Hix, et al.

136 IBLA 377 (November 5, 1996)

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UNITED STATES
v.
MYRTLE HIX, ET AL.

IBLA 93-334

Decided November 5, 1996

Appeal from a decision of Administrative Law Judge Harvey Sweitzer declaring mining claims void. Colorado Contest No. 752.

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 of Affidavit of Assessment Work or Notice of Intention to Hold

Failure to file claims location notices or certificates with the county office of record and to file copies of those instruments in the appropriate office of BLM prior to Oct. 22, 1979, as required by 43 U.S.C. § 1744(a) (1994) constituted abandonment of mining claims and they were properly declared abandoned and void. An incomplete statement that the claims are simply void does not affect the legal result imposed by the statute when the deciding Administrative Law Judge also entered a finding that the claims were abandoned when the required instruments were not filed.

2. Estoppel–Mining Claims: Abandonment

A claim of estoppel against the United States is rejected when no showing is made of affirmative misconduct in the nature of an erroneous statement of fact in an official written decision and when the effect of finding estoppel would be to grant a right not authorized by law.

APPEARANCES: Don H. Sherwood, Esq., Denver, Colorado, for appellants Myrtle J. Hix, Beulah B. Black, and Samuel D. Queen; Lowell L. Madsen, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Myrtle J. Hix, Beulah B. Black, and Samuel D. Queen have appealed from a March 18, 1993, decision of Administrative Law Judge Harvey Sweitzer in mining contest Colorado No. 752 (Contest No. 752) holding the Sand Asphaltum Nos. 141 through 150 oil shale placer mining claims void. Contest No. 752, initiated by the Bureau of Land Management (BLM) on April 21, 1991, alleged that the annual assessment work requirement of \$100 per claim had not been completed. By order issued November 16, 1992, Judge Sweitzer permitted BLM to amend its complaint to allege that claims CMC 129482 through CMC 129491 were abandoned because of failure to comply with the filing requirements of 43 U.S.C. § 1744(a)(1) (1994). On December 31, 1992, the parties entered into a stipulation of fact and agreed that a hearing was unnecessary. After reviewing the stipulation and briefs, Judge Sweitzer found in his March 18, 1993, decision that the claims were void because documents required by 43 U.S.C. § 1744(a)(1) (1994) to have been filed in the office of the Rio Blanco County recorder by October 22, 1979, had not been filed.

While it is Judge Sweitzer's decision in Contest No. 752 that is here under review, some history of Contest No. 510, an earlier contest involving Sand Asphaltum Nos. 141 through 150, is pertinent. On September 14, 1972, BLM filed a complaint in Contest No. 510, identifying over 50 contestees and the heirs, known and unknown, of certain deceased persons. In that contest BLM challenged the validity of the "Sand Asphaltum" mining claim group, which included Sand Asphaltum Nos. 141 through 150. The complaint contained six allegations of invalidity, including lack of discovery and that annual assessment work had not been performed pursuant to 30 U.S.C. § 28 (1994). By decisions dated June 8 and August 14, 1973, BLM declared the interests of numerous contestees to be null and void because they had failed to file answers to the contest complaint. No appeals were taken from the BLM decisions (BLM Prehearing Conference Brief, May 27, 1992). All the mining claims challenged by Contest No. 510 except Sand Asphaltum Nos. 141 through 150 have been declared null and void (BLM Response to Motion to Dismiss July 1, 1991, at 3). Because the heirs of E. J. Wilson and the heirs of D. W. Black filed answers in Contest No. 510, for Sand Asphaltum Nos. 141 through 150, the matter was referred to Judge Sweitzer for disposition. Out of deference to oil shale mining claim cases pending in the Federal courts, Judge Sweitzer continued the contest by order dated April 30, 1976, awaiting the outcome of those cases. The contest remained on Judge Sweitzer's docket until he remanded the matter to BLM by order dated October 31, 1984, and returned the files to BLM stating it was to be retransmitted to him "at such time as it should be heard, or other appropriate action taken by this office."

Approximately 4 years after Contest No. 510 was initiated, Congress passed the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 (1994). Section 314(a) of FLPMA required recordation

of mining claims, within 3 years of passage of FLPMA, by filing in the "office where the location notice or certificate is recorded" and "in the office of the Bureau designated by the Secretary." 43 U.S.C. § 1744(a)(1) and (a)(2) (1994). On October 17, 1979, Homer Wilson recorded with BLM the Sand Asphaltum Nos. 141 through 150 mining claims on behalf of Myrtle Hix and "all other successors to the interest of D. W. Black, deceased." BLM assigned serial numbers CMC 129482 through CMC 129491 to these claims. On the same day, Wilson also recorded Sand Asphaltum Nos. 141 through 150 with BLM on behalf of the heirs of E. J. Wilson and D. W. Black. BLM assigned serial numbers CMC 129589 through CMC 129598. On December 2, 1987, BLM declared CMC 129589 through CMC 129598 abandoned and void for failure to timely file either evidence of assessment work performed or a notice of intention to hold the claims with BLM for the filing periods ending December 30, 1985, and 1986 as required by FLPMA. 43 U.S.C. § 1744 (1994). The Board affirmed that decision by order issued June 23, 1989.

While Contest No. 510 was still pending, BLM initiated Contest No. 752 by a complaint dated April 21, 1991, charging that Sand Asphaltum Nos. 141 through 150 were not valid because they had "not been maintained by the annual expenditure of \$100 per claim in labor or improvements upon, or for the benefit of the claims for the purpose of developing valuable mines." On May 31, 1991, appellants moved to dismiss Contest No. 752, arguing that the allegations in Contest No. 752 duplicated those in Contest No. 510 and that indispensable parties, who were co-owners of the claims named in Contest No. 752, were not named in Contest No. 752. In a prehearing brief, BLM argued that Contest No. 510 should be dismissed because all but 10 of the claims involved in Contest No. 510 had been abandoned as a matter of law. On June 10, 1992, BLM moved to amend the complaint in Contest No. 752 to allege that the owners of the claims had failed to file or record on or before October 21, 1979, in the office of the Rio Blanco County Clerk and Recorder, the documents required by section 314(a)(1) of FLPMA, 43 U.S.C. § 1744(a)(1) (1994). BLM asserted that the claims were extinguished, because failure to comply with the filing recording requirements of section 314(a)(1) results in a conclusive presumption of abandonment and the statute is self-operative. By order dated November 16, 1992, Judge Sweitzer granted the motion to dismiss Contest No. 510, denied the motion to dismiss Contest No. 752, and granted BLM's motion to amend the complaint in Contest No. 752.

In his decision of Contest No. 752, Judge Sweitzer concluded that the determinative issue was whether the filing requirement of section 314(a)(1) was satisfied for the contested claims. He determined that it was not and declared the claims void. Appellants have not shown error in Judge Sweitzer's decision. The record before us supports his findings, and his opinion dealt with most of the arguments now raised on appeal. We therefore affirm and adopt his decision as the opinion of the Board of Land Appeals and attach it hereto as Appendix A.

[1] Appellants contend that Judge Sweitzer erred by ignoring undivided ownership interests in the claims. They maintain that, because any owner could have filed the documents required by section 314(a)(1), Judge

Sweitzer's decision should be reversed and remanded. Appellants argue that on remand BLM should be required to identify all parties interested in the Sand Asphaltum claims by reason of having registered their interests under CMC 129589 through CMC 129598, or otherwise appearing of record with BLM, as for example, by appearing and answering in Contest No. 510. They assert that all co-owners of unpatented mining claims are indispensable parties because under section 314(c) it is not a failure to file "if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim * * *." 43 U.S.C. § 1744(c) (1994). They contend that this means a mining claim may not be found to be abandoned if any owner has made the filings required by law and, since any owner could make the required filing, all owners are indispensable parties. Appellants reason that because their stipulation (that they did not make the required filings with the county) cannot bind all the owners of record with BLM, the stipulation is of no effect in this appeal.

This argument fails for several reasons. Appellants have shown no relationship with the unnamed parties they seek to have declared indispensable. Since neither appellants nor their counsel claim to represent these unknown parties they are forestalled from arguing that the alleged failure to serve these other parties compels reversal of the decision with respect to either their own interests or those of others. See Robert McGoldrick, 115 IBLA 242, 247 (1990).

Appellants' argument must also fail because the statute requires that the document filed with BLM be a copy of that filed with the county. Section 314(a)(2) states that the owner of an unpatented claim must file with BLM "a copy of the official record of the instrument filed or recorded" with the county. 43 U.S.C. § 1744(a)(2) (1994). Appellants have provided no evidence that such a document was filed. Indeed, appellants stipulated that they did not file with the county. Therefore, any document they filed with BLM is not that required by the statute.

While appellants concede that failure to timely record the Sand Asphaltum claims with the United States under FLPMA section 314(b) would result in a declaration the claims were abandoned and void, they argue that Judge Sweitzer could not declare the claims void for failure to file the instruments as required by section 314(a)(1). It is true that the result announced, on page 6, Appendix A, was incomplete, in that he simply declared the claims void, thereby omitting a finding, in conformity to the statutory language, that the claims were abandoned as a result of the failure to file. Nonetheless, earlier in his opinion, he correctly found that appellants' failure to file as required in section 314(a)(1) resulted in abandonment of the claims, pursuant to section 314(c). See Appendix A at 3. This is a self-operative statute; claim invalidity does not depend upon a declaration by anyone, but is imposed by the statute itself. Lynn Keith, 53 IBLA 192, 196, 88 I.D. 369, 371 (1981). The Supreme Court has held that section 314(c) "explicitly provides that failure to comply with the applicable filing requirements leads automatically to loss of the claim." United States v. Locke, 471 U.S. 84, 102 (1985). Section 314(c)

applies to both subsections (a) and (b). 43 U.S.C. § 1744(c) (1994). Judge Sweitzer's use of the word "void," in place of the complete statement of result contained in the more comprehensive phrase "abandoned and void" does not change his result or undermine the prior finding that the claims became abandoned when required filings were not made.

Appellants maintain that the law is and has always been that failure to file maintenance evidence for record in the local recording office is a matter for adjudication between mining claimants in courts with jurisdiction; that the Hearings Division was not empowered by FLPMA to usurp the jurisdiction of the Colorado courts to decide what has and has not been filed for record in the offices of Colorado recorders. This argument ignores the fact that Congress established the requirement that filing must be done in the local recording office as well as with BLM in order to maintain a claim on the public lands; Congress gave the Department authority to administer the statute which, of necessity, includes determining whether the proper document was filed in the proper office. 43 U.S.C. §§ 1701(a) and 1744(a) (1994). Moreover, this case is not a dispute between mining claimants; instead, it presents a question whether requirements of Federal law involving public land were satisfied. Judge Sweitzer acted within his jurisdiction when he found that those requirements had not been met by appellants.

[2] Appellants contend that BLM is estopped from asserting that the claims are invalid; that "even if 43 U.S.C. § 1744 (1994) is self-executing, the Federal Government is estopped to assert that the claims are invalid" (Statement of Reasons (SOR) at 10). Judge Sweitzer discussed this argument thoroughly in his decision. He correctly stated that estoppel does not lie if there is no affirmative misconduct by the Government or when the effect of such action would be to grant an individual a right not authorized by law. Appellants have shown there was inaction by the Government, but provided no evidence of wrongful action by Government employees. There is nothing in the record that might be termed affirmative misconduct. To find estoppel when the record reveals that a claim was abandoned by operation of law would result in the granting of a right not authorized by law to the detriment of the rights of the public which the Department is charged to protect. In such circumstances estoppel cannot be found. See, generally, Utah Power & Light Co. v. United States, 243 U.S. 389, 409 (1917). Because section 314(c) is self-operative, appellants' claims became abandoned by operation of law when the required filing was not made, not when Judge Sweitzer issued his decision. Appellants' right to the claims was forfeited in 1979, regardless of any action or inaction by BLM, and to allow estoppel would grant them a right not authorized by law. The fact that assessment work was done or that timely filings have been made in other years has no effect on the conclusive presumption of abandonment that attached upon their failure to make the required filings prior to October 22, 1979. See, e.g., Earl Kremiller, 55 IBLA 28, 29 (1981).

Finally, appellants assert that BLM's effort to invalidate the claims is based upon the "flimsy and insubstantial ground that there is a single defect in the record of title to the claims * * * that no maintenance evidence was recorded in Rio Blanco County within the three-year period beginning October 21, 1976, and ending October 22, 1979" (SOR at 10-11), and that BLM is attacking the claims because they are oil shale claims and because it attacks every oil shale claim. Nonetheless, the failure to make the required filing with the county is not a flimsy single defect, it is a failure to meet a statutory requirement; it is Congress that determined that such failure results in loss of the claims. See United States v. Locke, supra. Whatever BLM's original motives might have been in filing the contest need not be considered because the conclusive presumption of abandonment in section 314(c) is self-operative and does not depend upon any act or decision of an administrative official. 43 U.S.C. § 1744(c) (1994). Congress did not invest the Department with authority to waive or excuse noncompliance with the statute. See Lynn Keith, supra.

Responsibility for complying with recordation requirements of FLPMA rests with owners of unpatented mining claims, because Congress provided that failure to file the proper documents in the proper offices within the time set by section 314 of FLPMA conclusively constitutes an abandonment of the claims. 43 U.S.C. § 1744(c) (1994). Filings must be made both in the county recorder's office and in the proper BLM office. 43 U.S.C. § 1744(a), (a)(1), and (a)(2) (1994). Thomas G. Mason, 64 IBLA 104, 107 (1982). A claimant challenging a determination of abandonment has the burden of presenting evidence of timely filing. Id. Appellants have admitted they did not file with the county and, therefore, they failed to meet the requirement of section 314(a)(1). Because they did not file with the local recording office they also failed to meet the requirement of section 314(a)(2) that the document filed with BLM prior to October 22, 1979, be a copy of the document filed with the local recording office. Therefore, the claims are properly deemed to be abandoned and void. See 43 U.S.C. § 1744(a)(2) (1994). Judge Sweitzer properly so found.

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 adopted as the opinion of this Board.

Franklin D. Arness
Administrative Judge

I concur.

James L. Byrnes
Chief Administrative Judge

March 18, 1993

UNITED STATES OF AMERICA,	:	COLORADO 752
Contestant	:	
	:	
v.	:	Involving the Sand
	:	Asphaltum Nos. 141 through
	:	150 oil shale placer
	:	mining claims situated in
MYRTLE HIX, BEULAH B. BLACK	:	Sec. 6, T. 2 S., R. 94 W.
and SAMUEL D. QUEEN,	:	Secs. 1 through 6, T. 3
Contestees	:	S., R. 95 W., and Secs. 1,
	:	2, and 3, T. 3 S., R. 96
	:	W., Sixth Principal
	:	Meridian, Rio Blanco
	:	County, Colorado

DECISION

Appearances: Lowell Madsen, Esq., Denver, Colorado, for
contestant;

Don H. Sherwodd, Esq., Denver, Colorado, for
contestees.

Before: Administrative Law Judge Sweitzer.

By a complaint dated April 26, 1991, the contestant, by and through the Bureau of Land Management (BLM), U.S. Department of the Interior, initiated this contest charging contestees with failure to comply with the annual assessment work requirement of \$100 per claim in order to maintain the contested claims described in the caption above. By Order dated November 16, 1992, BLM was granted leave to amend its complaint to include the charge that contestees abandoned the claims by failing to comply with the filing requirement of 43 U.S.C. § 1744(a)(1). ^{1/}

^{1/} In the November 16, 1992, Order, I denied contestees' motion to dismiss this contest proceeding and granted contestant's motion to dismiss Contest No. 510. Contestees, by posthearing brief, challenge the propriety of these rulings, but provide no convincing reason for reconsidering or changing them. The rulings are, therefore confirmed.

On December 31, 1992, a letter executed by both counsel was filed stating that "no evidentiary hearing need be conducted," because the parties had entered into a Stipulation of the Parties ("Stipulation") regarding certain facts. Based upon this letter and the Stipulation, the Stipulation was accepted, the hearing scheduled for January 4, 1993, was vacated, and the parties were informed that a decision in the matter would be made following consideration of the parties posthearing briefs (order dated January 6, 1993).

The parties have now submitted posthearing briefs in support of their respective positions. Having reviewed these briefs, the pleadings, and the Stipulation, and for the reasons set forth below, I must conclude that the contested claims are void.

Statement of Facts

The following facts are established by the Stipulation or admissions in contestees' Answer:

1. The contested claims are the Sand Asphaltum Nos. 141 through 150 mining claims situated in Section 6, T. 2 S., R. 94 W.; Sections 1 through 6, T. 3 S., R. 95 W.; and Sections 1, 2, and 3, T. 3 S., R. 96 W., Sixth Principal Meridian, Rio Blanco County, Colorado.
2. The contested claims were located in 1908 and are unpatented.
3. A notice of intention to hold, an affidavit of assessment work, or a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1), being the documents listed in 43 U.S.C. § 1744(a)(1) (1988), was not filed for record after October 21, 1976, and before October 22, 1979, in the Rio Blanco County Clerk and Recorder's Office for any of the contested claims.
4. Notices of intent to hold the contested claims have been recorded in the office of the Rio Blanco County Clerk and Recorder each year since 1980 and notices of intent to hold the contested claims have been filed in the appropriate office of the United States Department of Interior's Bureau of Land Management (BLM) since 1979.

Discussion

The determinative issue in this case is whether the filing requirement of 43 U.S.C. § 1744(a)(1) was satisfied for the

contested claims. That statute requires the owner of an unpatented mining claim located before October 21, 1976, to file for record on or before October 22, 1979, in the office where the location notices are recorded, either (1) a notice of intention to hold the mining claim, (2) an affidavit of assessment work performed on the claim, or (3) a detailed report provided by 30 U.S.C. § 28-1.

The pertinent office anent these claims is the county recorder's office for Rio Blanco County, Colorado. Based upon the facts set forth above, that filing requirement of 43 U.S.C. § 1744(a)(1) clearly applies to the contested claims and has not been satisfied.

Such failure to satisfy the filing requirement of 43 U.S.C § 1744(a)(1) is deemed conclusively to constitute an abandonment of the claims. See 43 U.S.C. § 1744(c). In other words, the claims are rendered void and forfeited by such failure. See United States v. Locke, 471 U.S. 84, 100-102 (1985); Topaz Beryllium Co. v. United States, 470 F.Supp. 309, 315 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981); Ptarmigan Co., Inc., 91 IBLA 113, 118 (1986); Thomas G. Mason et al., 64 IBLA 104, 107 (1982).

The claims are rendered void, despite contestees' assertion that their compliance with the requirement of 43 U.S.C. § 1744(a)(2), regarding the filing of similar documents in the proper BLM office, satisfies the purposes of the statute. This assertion is contrary to relevant decisions of the Interior Board of Land Appeals (the "Board") , holding that the filing requirement of 43 U.S.C. § 1744(a)(2) is separate and distinct from, the filing requirement of 43 U.S.C. § 1744 (a)(1). Thomas G. Reason, 64 IBLA at 107; Enterprise Mines, Inc., 58 IBLA 372, 375 (1981). Compliance with one does not constitute compliance with the other. Id.; Thomas C. Mason, 64 IBLA at 107.

As noted by the Board,

The filing requirements . . . are mandatory, not discretionary. . . . This Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences.

Id.; Enterprise Mines, Inc., 58 IBLA at 375. See also Locke, 471 U.S. at 100, 103 ("The failure to file on time in, and of itself, causes a claim to be lost. . . . [T]he statute simply and conclusively deems such claims to be forfeited.")

Contestees also appear to argue, in reliance upon Hickel v. Oil Shale Corp., 400 U.S. 48 (1970), that they substantially complied with the filing requirement of 43 U.S.C. § 1744(a)(1), because notices of intent to hold the claims were filed with BLM from 1979 onward and with the county recorder from 1980 onward. This argument must be rejected in light of the Supreme Court's holding that "Hickel's discussion of substantial compliance is . . . inapposite to the statutory scheme [of 43 U.S.C. § 1744.]" Locke, 471 U.S. at 102.

Contestees also raise arguments of estoppel and unreasonable delay pertaining to BLM's challenge of their claims upon the ground of noncompliance with 43 U.S.C. § 1744(a)(1). The Board rejected similar arguments in Ptarmigan Co. Inc., 91 IBLA 113 (1986), regarding claimant's failure to comply with the filing requirements of 43 U.S.C. § 1744(a) applicable to mining claims located after October 21, 1976. I find the Board's analysis therein equally applicable to the facts of this case and therefore reject contestees' arguments.

In Ptarmigan, the Board reasoned:

~~Appellant's arguments that BLM should be estopped~~

This Board has well established rules governing our consideration of estoppel issues. First, we have adopted the elements of estoppel described by the Ninth Circuit Court of Appeals in United States v. Georgia Pacific Co., 421 F.2d 92 (9th Cir. 1970):

Four elements must be present to establish the defense of estoppel: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the facts; and (4) he must rely on the former's conduct to his injury.

Id. at 106 (quoting Hampton v. Paramount Picture Corp., 279 F.2d 100, 104 (9th Cir. 1960)). See State of Alaska, 46 IBLA 12, 21 (1980); Henry E. Reeves, 31 IBLA 242, 267 (1977). Second, we have adopted the rule of numerous courts that estoppel is an extraordinary remedy, especially as it

relates to the public lands. Harold E. Woods, 61 IBLA 359, 361 (1982); State of Alaska, *supra*. Third, estoppel against the Government in matters concerning the public lands must be based upon affirmative misconduct, such as misrepresentation or concealment of material facts. United States v. Ruby Co., 588 F.2d 697, 703 (9th Cir. 1978); D. F. Colson, 63 IBLA 121 (1982); Arpee Jones, 1 IBLA 149 (1982). Finally, we have noted that while estoppel may lie where reliance on Governmental statements deprived an individual of a right which he could have acquired, estoppel does not lie where the effect of such action would be to grant an individual a right not authorized by law. See Edward L. Ellis, 42 IBLA 66 (1979).

Under these standards, estoppel does not apply in the present case. Assuming the first two requirements described in Georgia Pacific were met, appellant could not have been ignorant of the "true facts." The requirement to file (prior to the specified deadline), is statutory and is repeated in the Department's regulations. Persons dealing with the Government are chargeable with knowledge of statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Ptarmigan knew that it had not filed its affidavits by the deadline. It could only have hoped that BLM would not notice its failure to meet the requirement or would, for some reason, treat the filings as timely. Thus, to the extent that appellant's dealings with Departmental personnel can be construed as implied representations that the claims were not void, such did not concern facts unknown to the appellant. See Tom Hurd, 80 IBLA 107 (1984); John Murphy, 58 IBLA 75, 80-81 (1981); Coronado Oil Co., 52 IBLA 308, 312 (1981). For the same reason, reliance on any representations attributable to the Department was not justified. Ptarmigan may have spent considerable funds developing its claims, but it knew that its affidavits had not been filed within the deadline. Any injury incurred must be viewed as based on a calculated risk that the defect in the filings would not bear the statutory consequence. See United States v. Georgia Pacific Co., *supra* at 96 n.4.

Nor does there appear to have been any affirmative misrepresentation or concealment of facts by Departmental officials. No allegation has been

made that appellant was ever told that his claims were not void or that the assessment work affidavits for 1982 were properly filed. That such implicit representation might be ascribed to the Department based on appellant's contacts with its personnel does not constitute affirmative misconduct. See Schweiker v. Hansen, 450 U.S. 78 (1981).

91 IBLA at 116-118. Contestees' attempts to distinguish Ptarmigan frankly are disingenuous and merit no response other than stating that they are hereby rejected.

Contestees also appear to argue that BLM is treating oil shale claims unequally in comparison to its treatment of other claims and that such unequal treatment somehow absolves the contested claims from operation of the statute's self-executing abandonment provision. I find nothing in BLM's action of contending that contestees' mining claims are void that was either arbitrary or based on different standards than applied to other mineral locators. To the contrary, BLM's action conformed to the requirements of the statute that such claims be deemed void upon failure to file the required documents.

Conclusion

Based upon the foregoing, the contested claims are hereby declared void.

Harvey C. Sweitzer
Administrative Law Judge

Appeal Information

Any party adversely affected by this decision has the right of appeal to the Interior Board of Land Appeals. The appeal must comply strictly with the regulations in 43 CFR Part 4 (see enclosed information pertaining to appeals procedures).