

INTERIOR BOARD OF LAND APPEALS

Daniel D. Dooley

138 IBLA 352 (March 14, 1997)

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DANIEL D. DOOLEY

IBLA 94-594

Decided March 14, 1997

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring an unpatented mining claim abandoned and void. MMC 32310(SD).

Affirmed.

1. Mining Claims: Abandonment–Mining Claims: Rental or Claim Maintenance Fees: Generally–Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

Responsibility for compliance with the rental fee requirement of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992), resides with the owner of an unpatented mining claim, as Congress has mandated that failure to make the annual payment of the claim rental fee as required by the Act shall conclusively constitute an abandonment of the unpatented mining claim. An applicant for a small miner exemption from payment of rental fees under the Act had to file a certified statement on or before Aug. 31, 1993, for each of the assessment years (ending Sept. 1, 1993, and Sept. 1, 1994) for which the exemption was claimed including the information required by regulation at 43 C.F.R. § 3833.1-7(d) (1993). When the applicant failed to pay the rental fee for either of the assessment years and failed to timely file a certificate of exemption for each year for which the rental was not paid, the claim is properly deemed abandoned and void.

APPEARANCES: Daniel D. Dooley, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Daniel D. Dooley has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated June 2, 1994, declaring his Railroad Spar unpatented mining claim, MMC 32310(SD), abandoned and void. The BLM decision declared the claim abandoned and void because Appellant had not paid the rental fee or met the requirements for an exemption from payment, pursuant to the Department of the Interior and

Related Agencies Appropriations Act for Fiscal Year 1993 (Act), Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992). The BLM decision was issued subsequent to receipt by BLM of an affidavit of labor Appellant filed for this claim on October 6, 1993.

In his notice of appeal, Appellant asserts that he inquired of the local Register of Deeds and he wrote the BLM office in Billings for information about the rental fee, but because he received no information he filed his affidavit of assessment work in the usual manner. Appellant asserts that BLM should have provided him with a certificate of exemption form.

The relevant provisions of the statute provide in 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 a similar provision establishing rental fees for the following assessment year ending at noon on September 1, 1994, and requiring payment of an additional \$100 rental fee for each claim on or before August 31, 1993. Id. Implementing Departmental regulations provide in relevant 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 C.F.R. § 3833.1-5(b) (1993). ^{1/}

[1] 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 C.F.R. § 3833.4(a)(2) (1993). The Act provided only one exemption from this annual rental

^{1/} The regulations promulgated to implement the mining claim rental fee provisions of the Act are found in the 1993 codification of Title 43 of the Code of Federal Regulations at Subpart 3833.

requirement, the small miner exemption, available to claimants who hold 10 or fewer claims on Federal lands. 106 Stat. 1378-79; 43 C.F.R. § 3833.1-5(d), § 3833.1-6, and § 3833.1-7 (1993). To obtain a small miner exemption, a claimant had to meet all the conditions set forth in 43 C.F.R. § 3833.1-6(a) (1993). A claimant had to apply for the small miner exemption by filing separate certificates of exemption on or before August 31, 1993, supporting the claimed exemption for each assessment year claimed. 43 C.F.R. § 3833.1-7(d) (1993). This Board has held that in the absence of payment of the annual rental fee, the statute and the implementing regulations clearly required a timely filing, on or before August 31, 1993, of certificates of exemption for both assessment years (ending September 1, 1993, and September 1, 1994), referencing the notice or plan of operations under which exploration was conducted. John E. Baxter, 138 IBLA 129 (1997); Edwin L. Evans, 132 IBLA 103, 106 (1995); see 43 C.F.R. § 3833.1-7(d) (1993).

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. John E. Baxter, *supra* at 131; William B. Wray, 129 IBLA 173, 175 (1994); Lee H. 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. Lester W. Pullen, 131 IBLA 271, 273 (1994). This statute has survived constitutional challenges in court. Finding "Congress retains the affirmative power to change the conditions for continued ownership of mineral claims, assuming that power is reasonably exercised," the court in Kunkes v. United States, 32 Fed. Cl. 249 (Ct. Fed. Cl. 1994), *aff'd*, 78 F.3d 1549 (Fed. Cir. 1996), upheld the constitutionality of the Act stating:

Claimholders have always been subject to some ongoing proof of their interest in developing the mineral resources of their claims. Although the Act [Pub. L. No. 102-381] raised the ante, it did so in a way that cannot be considered substantially different in kind or degree from what had previously been required. It was plainly motivated by the same purpose, namely elimination of stale or worthless claims. H.R.Rep. No. 626, 102nd Cong., 2d Sess. 14 (1992). The Supreme Court has held that this is a legitimate governmental interest. [United States v. Locke, 471 U.S. [84 (1985)] at 105-06. [2/ [Additional citations omitted.]

32 Fed. Cl. at 254-55. On appeal, the Federal Circuit found:

^{2/} The Locke case involved judicial review of a Board decision, Madison D. Locke, 65 IBLA 122 (1982), finding mining claims to be abandoned and void as a consequence of the failure to timely file evidence of assessment work in accordance with section 314 of FLPMA and the implementing regulations. See 43 U.S.C. § 1744(a), (c) (1994).

It is entirely reasonable for Congress to require a \$100 per claim fee in order to assess whether the claim holders believe that the value of the minerals in their claims is sufficiently great to warrant such a payment; and whether claim holders have the resources and desire to develop these claims. If the claims are not valued by the claim holders sufficiently to warrant a \$100 fee payment, then the claim holders' decision not to pay the fee eliminates an unnecessary encumbrance on public lands and frees the land for a more valued use.

78 F.3d at 1556.

In the absence of payment of the annual rental fee, the statute and the implementing regulations clearly required a timely filing (by August 31, 1993) of a certificate of exemption for both assessment years (ending September 1, 1993, and September 1, 1994), as well as a reference to the notice or plan of operations under which exploration was conducted. See 43 C.F.R. § 3833.1-7(d) (1993); 43 C.F.R. § 3833.4(a)(2) (1993); Edwin L. Evans, supra at 106. As a consequence of the lack of timely rental payments or timely-filed certificates of exemption, BLM properly declared the claim abandoned and void. Because the claim was void, BLM properly declined to accept the affidavit of labor Appellant filed for this claim on October 6, 1993, pursuant to FLPMA.

Appellant challenged the adequacy of notice of the rental fee requirement. Notice of rulemaking pursuant to the statute was published in the Federal Register. 57 Fed. Reg. 54102 (Nov. 16, 1992) (notice of enactment and summary of the Act's requirements); 58 Fed. Reg. 12878 (Mar. 5, 1993) (proposed rules); 58 Fed. Reg. 38186 (July 15, 1993) (final rules). In addition, BLM made the effort to publish notice to claimants in newspapers and to send individual notice to claimants. See Dee W. Alexander Estate, 131 IBLA 39 (1994). ^{3/} On the issue of the adequacy of notice, we note that the language of Pub. L. No. 102-281 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) (1994), which provides that the failure to timely 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." ^{4/}

^{3/} While it is unfortunate that Appellant apparently never actually received a reply to his inquiry of BLM, it is clear that BLM made a strong effort to notify as many claimants as possible.

^{4/} The Board has consistently held that responsibility for complying with the recordation and filing requirements of FLPMA rests with the claimant and the failure to comply with time periods prescribed in section 314 of 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

In upholding the constitutionality of Pub. L. No. 102-281, the Federal Claims Court in Kunkes placed significant reliance upon the Supreme Court decisions in Texaco, Inc. v. Short, 454 U.S. 516 (1982), and United States v. Locke, *supra*. In Locke the Court upheld the constitutionality of section 314 of FLPMA, concluding that a mining claim for which timely filing is not made is extinguished by operation of law notwithstanding the claimant's intent to hold the claim. United States v. Locke, *supra* at 97. Regarding the adequacy of notice to claimants, the Locke 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. at 532. [Additional citations omitted.]

471 U.S. at 108. 5/ We find this analysis compelling and, accordingly, we reject Appellant's challenge to the BLM decision on the basis of notice.

fn. 4 (continued)

of these regulatory requirements. Armando Majalca, 48 IBLA 351 (1980); Charles Caress, 41 IBLA 302 (1979); Donald H. 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 the annual filing required by 43 U.S.C. § 1744 (1994). Gordon B. Copple, 105 IBLA 90, 95 Interior Dec. 219 (1988).

5/ 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. That case involved a constitutional challenge to the Indiana Dormant Mineral Interests Act which provides that a severed mineral interest that remains unused for 20 years 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. 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 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).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision of the Montana State Office is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur.

Gail M. Frazier
Administrative Judge