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Locke v. U.S., Substantive Due Process, Compulsory Abandonment and Forfeiture of Mining Interests; Claimants Locked Out

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NOTE

Locke v. U.S., Substantive Due Process, Compulsory Abandonment and Forfeiture of Mining Interests; Claimants Locked Out

STATEMENT OF THE CASE

Madison and Rosalie Locke, et al. (Lockes), brought suit in United States District Court in the District of Nevada[1] to protest extinguishment of their mining claims pursuant to the Federal Law Policy and Management Act of 1976 (FLPMA).[2] The Lockes purchased the ten unpatented placer mining claims in 1960 and 1966.[3] They actively mined the claims, producing over $4,000,000 worth of sand and gravel between 1960 and 1980.[4] Production from the mine during the 1979/1980 assessment year totaled over $1,000,000.[5]

The Bureau of Land Management (BLM) declared the claims abandoned and void for failure to make timely annual filing required under § 314 of (FLPMA).[6] The Lockes complied with the initial filing requirement of § 314 for claims located before October 21, 1976 by properly filing notice of location on October 19, 1979 with the BLM.[7] However, the Locke's failure to comply with § 314(a)'s requirement that annual filings be made in the office of the BLM prior to December 31 of each year after the initial filing provides the basis for the dispute in this case.[8]

In order to determine their filing obligations under FLPMA for 1980,[9] the Lockes sent their daughter, who worked in their business office, to the local BLM office in Ely, Nevada.[10] A BLM employee stated that the annual documents should be filed in the Reno office "on or before December 31, 1980."[11] The Lockes subsequently made the 700 mile trip to

1. *Locke v. United States*, 573 F.Supp. 472 (D.Nev. 1983).
2. 90 Stat. 2743, 43 U.S.C.A. §§ 1701-1784 (1985).
3. The claims were located for sand and gravel mining prior to enactment of the Multiple Use Mining Act of 1955 (1955 Act); 69 Stat. 367, 30 U.S.C.A. §§ 601-615 (1985). The 1955 Act provides that common varieties of sand and gravel are no longer valuable mineral deposits subject to location under the Mining Act of 1872 (1872 Act); 17 Stat. 91, (codified as amended) 30 U.S.C.A. §§ 21 *et seq.* (1985). Thus, the Lockes could not relocate the gravel claims and the claims escheated to the United States.
4. 573 F.Supp. at 474.
5. *Id.*
6. Section 314 of FLPMA is codified at 43 U.S.C.A. § 1744.
7. 573 F.Supp. at 474.
8. 43 U.S.C.A. § 1744.
9. 1980 was the first year that annual filings were required under FLPMA for claims located before October 21, 1976. 43 U.S.C.A. § 1744.
10. 573 F.Supp. at 474.
11. *Id.*

Reno[12] on December 31, 1980, and hand-delivered the annual proof of assessment notices required by §314. The local BLM official accepted the assessment notices.[13]

On April 4, 1981, three months after the BLM had accepted the notice, the Lockes received mailed notice from the BLM Nevada State Office informing them that their claims had been declared abandoned and void because they had not been filed *before* December 31.[14] The Lockes appealed the declaration of abandonment to the Interior Board of Land Appeals (IBLA) on May 1, 1981.[15] On June 25, 1981, the IBLA ruled that the Lockes missed the December 30, 1980 deadline and thus the claims were forfeited.[16]

The Lockes instituted action in United States District Court in the District of Nevada challenging the constitutionality of Section 314 as a deprivation of procedural due process under the Fifth Amendment.[17] The district court held that the statute violated the due process clause of the Fifth Amendment.[18] Alternatively, the district court held that even if the statute was constitutional, the Lockes had substantially complied with their statutory duties under §314 by filing their assessment notices one day late.[19]

The United States Supreme Court noted probable jurisdiction under 28 U.S.C. §1252.[20] The Supreme Court reversed and remanded in *United States v. Locke*.[21] This note will analyze the Supreme Court decision. Following a brief introduction to federal mining law, the note examines each of the Court's four reported opinions.[22] The opinions are then analyzed in light of the purposes of FLPMA's recordation requirements. Finally the note concludes with predictions of the impact of this decision on owners of unpatented mining claims.

12. *See* U.S. v. Locke, 105 S.Ct. 1785, 1810 (1985).

13. 573 F.Supp. at 474.

14. *Id.*

15. *Id.*

16. *Id.* The IBLA refused to address the Lockes' constitutional arguments.

17. *Id.*

18. *Id.* at 478. The court granted the Lockes' motion for summary judgment. The court's holding was based on violation of procedural due process due to the creation of an irrebuttable presumption of abandonment for failure to file the annual assessment notice. *Id.*

19. *Id.* at 479. The district court grounded its substantial compliance analysis on Supreme Court decisions under the assessment provision, 30 U.S.C.A. §28. *Cf.* the leading case is Hickel v. Oil Shale Corp., 400 U.S. 48 (1970).

20. *U.S. v. Locke,* 467 U.S. 1225, 104 S.Ct. 2677 (1984). Jurisdiction under 28 U.S.C. §1252 is invoked when a United States District Court holds an Act of Congress unconstitutional in a civil suit to which the United States is a party.

21. 105 S.Ct. 1785 (1985).

22. The majority opinion was written by Justice Marshall. Justice O'Connor filed a concurring opinion. There are two dissenting opinions, one by Justice Powell and the other by Justice Stevens in which Justice Brennan joined.

23. 17 Stat. 91, 30 U.S.C.A. §§21 *et seq.*

BACKGROUND

The General Mining Act of 1872 (1872 Act)[23] allows United States citizens to prospect for and develop certain minerals[24] on unappropriated, unreserved public land.[25] "Discovery" of a "valuable" mineral deposit, followed by "location" of the claim, gives the claimant a right to exclusive possession of the claim for mining purposes.[26] Claimants may, after meeting certain statutory requirements, purchase the fee simple title to the claimed land from the United States through the patent process.[27]

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24. 30 U.S.C.A. § 22 provides:

> Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, . . . , shall be free and open to exploration and purchase, . . . , by citizens of the United States. . . .

Congress withdrew "deposits of coal, phosphate, sodium, potassium, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), or gas" from location under the 1872 Act and provided for their disposition under the Mineral Leasing Act of 1920 (1920 Act) 30 U.S.C.A. §§ 187-287 (1985). Common varieties of sand, stone, gravel, pumice, pumicite, cinders, and clay were withdrawn from location under the 1872 Act by amendment of the Multiple Use Mining Act of 1955, 69 Stat. 367 (1955); 30 U.S.C.A. §§ 601-615. *See also* Andrus v. Charlston Stone Products Co., Inc., 436 U.S. 604 (1978), wherein the supreme Court held that water was not a valuable mineral subject to location under the mining laws.

25. This includes national forest land and the public domain. The present procedure for withdrawals is provided in FLPMA at 43 U.S.C.A. § 1714. *See* United States v. Midwest Oil, 236 U.S. 459 (1915), which upheld the President's power to make temporary withdrawals of national forest and public domain land from mineral entry and location for petroleum deposits. The Wilderness Act of 1964 16 U.S.C.A. §§ 1131-36, 1133(a)(3) provides for withdrawal of minerals from appropriation and disposition in wilderness areas after January 1, 1984.

26. 30 U.S.C. § 26 provides that:

> The locators of all mining locations . . . so long as they comply with the laws of the United States, and with State, territorial, and local regulations . . . governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations. . . .

The 1872 Act does not provide definitions of these key terms. That task has been left to the BLM and the courts. *See* Castle v. Womble, 19 L.D. 455, 457 (1894) which construed the statutes to require that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine; *see also* United States v. Coleman, 390 U.S. 599 (1968), which adopted a marketability test that upheld the Secretary's use of market factors to complement the *Castle* "prudent-man test" in determinations under 30 U.S.C.A. § 22.

27. Three different types of mining claims may be patented; lode claims, placer claims, and millsites. 30 U.S.C.A. § 29 provides the general procedure applicable to each type of claim:

> A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person . . . having claimed and located a piece of land [for mining purposes] may file . . . an application for patent, under oath, showing such compliance, together with a plat . . . , made by or under the direction of the Director of the Bureau of Land Management, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of the plat, together with notice of such application for patent, in a conspicuous place on the land embraced in such plat. . . . The register of the land office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days. . . . The claimant . . . shall file . . . a certificate [with the Bureau] that $500 worth of labor has been expended or improvements made upon the claim by himself or grantors; . . . . If no adverse claim shall have been filed [with the Bureau] at the expiration of the sixty days of publication, it shall be assumed that the applicant is

However, the claimant is not required to patent his unpatented claim. Minerals may be extracted and sold from unpatented mining claims without payment of any royalty to the United States.[28] Further, the Supreme Court has held that unpatented mining claims are a possessory mineral interest in land, as well as "property in the fullest sense of that term."[29]

Congress enacted FLPMA to establish public land policy. FLPMA established guidelines for the administration of public lands in an attempt to provide for the management, protection, development, and enhancement of the public lands.[30] The Act provides the BLM, and to a limited extent the Forest Service, with guidelines and authority to carry out statutory goals for the public lands.[31] Additionally Congress enacted FLPMA to eliminate "those statutes and parts of statutes that are obsolete in light of today's national goals."[32]

Before FLPMA was enacted, federal law did not require recording or filing of information about unpatented mining claims located on federal lands.[33] FLPMA recordation requirements for unpatented mining claims

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entitled to a patent, upon the payment to the proper officer of $5 per acre, and that no adverse claim exists; and thereafter no objection . . . to the issuance of the patent shall be heard.

30 U.S.C.A. § 35, adopted as an amendment to the 1872 Act on March 3, 1891, provides that placer claims "shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims." 30 U.S.C.A. § 37 provides that placer claims shall be paid for at the rate of $2.50 per acre. Patents for millsites are provided for in 30 U.S.C.A. § 42.

28. Although the patent requirements have remained virtually unchanged since 1872, the number of patents issued has declined from an average of 624 claims per year between 1872 and 1968 to an average of 25 per year between 1968 and 1975. Part of this decline can be attributed to the fact that over 64,000 patents have been issued covering over 3,000,000 acres of mineral lands. There has also been a trend for the United States to be more strict in determinations of what constitutes discovery of a valuable mineral deposit.

29. Cole v. Ralph, 252 U.S. 286, 295 (1919); *see also* Best v. Humboldt Mining Co., 371 U.S. 334 (1963). *Best* involved a condemnation action by the United States. There were unpatented mining claims within the area to be condemned. The Court recognized that title to the land remained in the United States. However, the claims were valid against the United States if there was a valid mineral discovery within the claim. The Court held that due process in such a case implies notice and a hearing.

30. H.Rep. No. 1163, 94th Cong. 2nd Sess. 1 (1976).

31. Before enactment of FLPMA, BLM lacked a comprehensive, statutory grant of authority from Congress to manage the public domain. Thus FLPMA is the BLM's Organic Act, adopted more than 40 years after the BLM was formed in 1934. Before FLPMA's adoption the BLM had operated under the Taylor Grazing Act of 1934 (1934 Act), 68 Stat. 151, 43 U.S.C.A. § 315-315 (r) (1985). Congress intended that FLPMA would provide the BLM with the tools to manage the public domain for the multiple use of resources on a sustained yield basis. H.Rep. No. 1163, 94th Cong. 2nd Sess. 2. The forest service is managed by the Secretary of Agriculture under the National Forest Management Act of 1976 (1976 Act), 90 Stat. 2949, 16 U.S.C.A. §§ 1600-16 (1985). FLPMA applies to reserved forest land with respect to, *inter alia*, mining claims. H.Rep. No. 1163, 94th Cong. 2nd Sess. 4.

32. H.Rep. No. 1163, 94th Cong. 2nd Sess. 2. *See e.g.*, Pickett Act of 1910, 36 Stat. 847, 43 U.S.C.A. §§ 141-142 (1985). The Pickett Act was adopted in response to United States v. Midwest Oil, 236 U.S. 459. The Pickett Act was replaced by 43 U.S.C.A. § 1714.

33. *Topaz Beryllium Co. v. United States*, 649 F.2d 775, 776 (10th Cir. 1981). *See* 43 U.S.C.A. § 1744. Claimants were required to comply with state and local recordation requirements.

may be traced to recommendations made by the Public Land Law Review Commission (PLLRC) in its 1970 Report.[34] The PLLRC Report called for the elimination of long dormant claims[35] and for notice to the federal government of active claims.[36] Congress enacted the FLPMA recordation requirements to implement the declared Congressional policy that the public lands be periodically and systematically inventoried.[37]

Direct constitutional attacks on FLPMA's recordation requirements resulted in two United States Court of Appeals decisions and one United States District Court decision previous to the Locke litigation. A brief analysis of these decisions will help to set the stage for the Supreme Court's interpretation of the recording requirements.

The Ninth and Tenth Circuit Courts of Appeals in *Western Mining Council v. Watt*,[38] and *Topaz Beryllium Company v. United States*,[39] respectively, held FLPMA filing requirements constitutional. In *Topaz*[40] the court held that violation of the statutory filing requirements would result in a conclusive presumption of abandonment of the claim.[41] In *Western Mining Council v. Watt*,[42] the court refused to strike down FLPMA filing requirements as unreasonable and arbitrary.[43] The court held that "on their face the filing requirements are neither an arbitrary nor irrational way of realizing permissible governmental objectives."[44]

In *Rogers v. United States*,[45] the United States District Court for the District of Montana held the initial filing requirements, as applied to a

34. Public Land Law Review Commission, ONE THIRD OF THE NATION'S LAND: A report to the President and to the Congress by the public Land Law Review Commissioners. (June 1970) [hereinafter cited as PUBLIC LAND REPORT]. The bipartisan commission was formed by Congress in 1964 to conduct a review of existing public land laws and to recommend necessary revisions. For an analysis of the Commission's recommendations. See also Sherwood, *Mining Law at the Crossroads*, 6 LAND & WATER L. REV. (1970).

35. PUBLIC LAND REPORT, *supra* note 34, at 126.

36. *Id.*

37. S.Rep. No. 583, 94th Cong. 2nd Sess. 65 (1976).

38. 643 F.2d 618 (1981).

39. 649 F.2d 775 (1981).

40. *Id.*

41. Plaintiffs argued that regulation 43 C.F.R. § 38833.5(d) (1980) promulgated pursuant to FLPMA, 43 U.S.C.A. § 1701(a)(5), was invalid because it deemed conclusively that an unpatented mining claim is abandoned and void for failure to file documents that were not specifically required under 43 U.S.C.A. § 1744's recordation system. The court found that violation of supplemental regulations promulgated by the Secretary of Interior was a "curable defect." *Topaz*, 649 F.2d at 779.

42. *Id.* at 775.

43. The court rejected plaintiffs' argument that the forfeiture provisions of 43 U.S.C.A. § 1744(c) were unreasonably harsh. The court cited the Utah federal district court opinion in Topaz Beryllium Co. v. United States, 479 F.Supp. 309 (D.Utah 1979) for the proposition that § 1744(c) "fairly frees up the public domain from dormant and antiquated claims in which no one expresses a current and ongoing interest." *Western Mining Council*, 643 F.2d 629. The court would "venture no opinion as to notice requirements or other questions which may arise in connection with any particular application or enforcement of these provisions." *Id.* at 630 n.18.

44. *Id.* at 629.

45. 575 F.Supp. 4 (1981).

pre-FLPMA claimant whose claims were declared abandoned for failure to timely file,[46] violated procedural due process rights of the claimant. The violation of procedural due process occurred as a result of the statute's irrebuttable presumption of abandonment, resulting in the destruction of a valuable property right without affording the owner a right to hearing.[47]

THE COURT'S OPINION

The Supreme Court's majority opinion begins with a review of the nonconstitutional ground analyzed by the district court. The plain meaning and purpose of § 314 compel the Supreme Court to reject the district court's irrebuttable presumption analysis.[48] Instead, the Court reads Section 314(c) as a strict forfeiture provision.[49] The Court requires strict compliance with the "prior to" December 31 annual filing deadline if forfeiture is to be avoided.[50] Further, claimants do not substantially comply with the statute by filing one day late.[51] The Court, after disposing of the nonconstitutional issues, determines that the statute is constitutional.

The Court's constitutional analysis centers on its reading of § 314(c) as a strict forfeiture provision.[52] The Court finds no violation of either substantive[53] or procedural[54] due process. The Court concludes that FLPMA's recordation requirements are a rational way of reaching permissible Congressional objectives.[55]

46. The ten unpatented lode mining claims at issue in *Rogers* were located and recorded in Broadwater County, Montana between 1950 and 1967. On September 24, 1979, Rogers filed maps with the BLM showing the location of each of the claims. Plaintiff received a letter from the BLM on October 26, 1979, informing him that according to Section 1744 he was required to file a copy of the official record of the notice of location. BLM received the correct documents on November 2, 1979. As the filing deadline was October 21, 1979, BLM refused to recognize the claims. *Id.* at 5, 6.

47. *Id.* at 9. The court recognized considerable censure of the irrebuttable presumption analysis by legal commentators. "Nonetheless, the irrebuttable presumption analysis continues to be used by the courts as one method to assess whether a party's rights of procedural due process have been violated." *Id.* the court held that "43 U.S.C.A. § 1744(c)(1976) is an unconstitutional violation of due process insofar as it creates an irrebuttable presumption of abandonment." *Id.* at 11. *See* J. King, *The Validity and Interpretation of Section 314 of FLPMA*, 28 ROCKY MT. MIN. L. INST. 571, 577-89 (1982).

48. *Locke*, 105 S.Ct. at 1797.

49. *Id.*

50. *Id.* at 1793.

51. *Id.* at 1796.

52. *Id.* at 1797.

53. *Id.* at 1799.

54. *Id.* at 1799, 1800

55. *Id.* at 1800.

The Court's Analysis of Nonconstitutional Issues

Plain meaning and purpose of "prior to December 31"

The Court first interprets the plain meaning and purpose of § 314(a)'s requirement for filing "prior to December 31."[56] The court finds the language to be a clear statement that Congress wanted notice filed by December 30 and that a literal reading of the statute would require a December 30 filing.[57] "Moreover, BLM regulations have made it absolutely clear since the enactment of FLPMA that prior to December 31 means what it says."[58]

The Court recognizes that while the phrase "prior to" is clumsy, "its meaning is clear."[59] The Court is willing to take a "cautious step" behind the plain meaning of the statute. However, where "nothing in the legislative history remotely suggests a congressional intent contrary to Congress' chosen words,"[60] the Court indicates that further steps would result in an impermissive move from interpretation to legislation.[61] The Court

56. FLPMA. § 314(a) provides that:

> The owner of an unpatented lode or placer mininig claim located prior to the date of this Act [October 21, 1976], shall, within the three-year period following the date of the approval of this Act [October 21, 1976], and *prior to December 31 of each year thereafter,* file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after the date of this Act [October 21, 1976], *shall prior to December 31 of each year* following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:
>
> (1) File for the record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1), relating thereto.
>
> (2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground. (emphasis added).

57. *Locke,* 105 S.Ct. at 1792. The Court quoted the appellees at oral argument, "[a] literal reading of the statute would require a December 30th filing." *Id.*

58. *Id.* The Court cites every version of the FLPMA filing regulations. For the first two years, 1977-1978, the regulations mirrored the statute's "prior to December 31" language. The 1979 version, and every version thereafter, changed the language to read "on or before December 30." *Id.* Justice Stevens, in dissent, interprets the change in language by BLM as evidence that the meaning of § 314(a) is not so plain. *Id.* at 1807. Stevens also cites a pamphlet, published by the BLM in 1978, entitled "Staking a Mining Claim on Federal Lands." The pamphlet provided that proof of annual assessment work must be filed "on or before December 31 of each subsequent year." *Id.*

59. *Id.* at 1793.

60. *Id.*

61. *Id.*

must defer to the "supremacy of the legislature and recognize that Congressmen vote on the language of the bill."[62]

The Court cites *United States v. Boyle*,[63] to make it incumbent upon the Lockes to have checked the regulations or to have consulted an attorney for legal advice.[64] The Court concludes its analysis of the plain meaning and purpose of the "prior to December 31" language by holding that the BLM did not act *ultra vires* in concluding that the Locke's filing was untimely.[65]

Plain meaning and purpose of "deemed conclusively to constitute an abandonment"

The second nonconstitutional issue addressed by the Supreme Court is the plain meaning and purpose of the statutory phrase, "shall be deemed conclusively to constitute an abandonment of the mining claim."[66] The district court opinions in *Rogers*[67] and *Locke*[68] construed this language to form an unconstitutional irrebuttable presumption of abandonment.[69] The Court rejects this reading, consequently negating the lower courts' irrebuttable presumption analysis. The Supreme Court's definition of abandonment does not incorporate the common law distinction between abandonment and forfeiture.[70] The Court concludes that Congress meant forfeiture, finding that any other reading of the phrase would make the language "deemed conclusively" mere surplusage.[71] Specific evidence of

62. *Id.*

63. 105 S.Ct. 687 (1985).

64. Boyle was executor of his deceased wife's estate. He filed suit to recover a penalty imposed due to late filing of an estate tax form. His defense to payment of the statutory penalty was his reliance on the hiring of an experienced tax attorney. The Seventh Circuit Court of Appeals affirmed summary judgment for Boyle. Boyle v. U.S., 710 F.2d 1251 (1983). The Supreme Court reversed holding that the failure to make a timely filing of a tax return is not excused by the taxpayer's reliance on an agent. *Boyle*, 105 S.Ct. at 693.

65. *Locke*, 105 S.Ct. 1794.

66. FLPMA § 314(c) provides that:

> The failure to file such instruments as required by subsections (a) and (b) *shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner:* but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site. (emphasis added).

67. 575 F.Supp. 4.

68. 573 F.Supp. 472.

69. *See* KING, *supra* note 47. In a portion of his article, King outlines the irrebuttable presumption analysis and its application to § 314. *Id.* at 578.

70. *Locke*, 105 S.Ct. 1794. *See generally* 2 Am. Law Min., § 46.01[2], [3], 46-5, 46-6 (2 ed. 1985). Abandonment is a voluntary act that consists of the subjective intent to abandon coupled with a objective act by which the intent is conveyed. In effect there cannot be an abandonment without an intent to abandon. However, forfeiture does not involve any question of intent. The individual's action, or failure to act, in itself determines whether the forfeiture has occurred.

71. *Locke*, 105 S.Ct. 1795. The district court had tried to avoid this statutory construction problem by finding that failure to make the initial filing would result in forfeiture while failure to make subsequent timely annual filings would not necessarily result in forfeiture. The Court rejected the distinction between initial and annual filings. *Id.*

intent to abandon is "simply made irrelevant by §314(c); the failure to file on time, in and of itself, causes a claim to be lost."[72]

Substantial compliance analysis

The third and final statutory question, resolved in the Court's majority opinion before addressing the constitutional issues, responds to the district court's holding that the Lockes substantially complied with the statute. The district court relied on *Hickle v. Shale Oil Corporation*,[73] for its alternative holding of substantial compliance. The Court disagrees with the district court's reading of *Hickle*.

First, the Supreme Court reads *Hickle* as suggesting, not holding, that failure to meet the annual assessment work requirements of 30 U.S.C. §28 would not render a claim automatically void.[74] Further the Court sees a significant difference between failure to comply with a requirement that a certain amount of work be performed each year and "a complete failure to file on time documents that federal law commands be filed."[75]

The Court's Constitutional Analysis

The Court first notes that much of the district court's constitutional analysis falls with the reading of §314(c) as a forfeiture provision.[76]

72. *Id.* at 1796.

73. 400 U.S. 48. *Hickel* concerns a challenge by the Secretary of Interior to the validity of oil shale claims located under the 1872 Act. Subsequent to location of the oil shale claims, Congress enacted The Mineral Leasing Act of 1920; 30 U.S.C.A. §§ 181-287 (1985). Under the 1920 Act, certain fossil fuel lands, including oil shale lands, were withdrawn from mineral location under the 1872 Act in favor of a lease program. The 1920 Act contained a savings clause for claims located before enactment. The defendant in *Hickel* argued that its claims qualified under the 1920 Act's savings clause. The United States argued that because the claimants had not performed the required assessment work the claims were void and not subject to relocation after enactment of the 1920 Act. The Supreme Court in *Hickel* agreed with Wilber v. U.S. ex rel. Krushnic, 280 U.S. 306, 50 S.Ct. 103 (1930) and Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639, 55 S.Ct. 888 (1935) that "every default in assessment work does not cause the claim to be lost." 400 U.S. at 57. The Court disagreed with dicta in both opinions that failure to complete assessment work would only benefit relocators and not the United States. The *Hickel* court read § 37 of the 1920 Act to make the United States the beneficiary of all claims made invalid for lack of assessment work or otherwise. 400 U.S. at 58. The Court reversed and remanded for determination of *inter alia* the adequacy of the assessment work and the claimant's intent to abandon the claim. *Id.* at 59.

74. *Locke*, 105 S.Ct. at 1796. The Court in *Hickel* did "hold that token assessment work, or assessment work that does not substantially satisfy the requirements of 30 U.S.C.A. §28, is not adequate to 'maintain' the claims within the meaning of §37 of the [Mineral] Leasing Act." 400 U.S. at 57. The *Hickel* court concluded that the *Krushnic* and *Virginia-Colorado* decisions, not allowing the United States to benefit from failure to do assessment work, should be "confined to situations where there had been substantial compliance with the assessment work requirements of the 1872 Act, so that the 'possessory title' of the claimant, granted by 30 U.S.C.A. §26, will not be disturbed on flimsy or insubstantial grounds." 400 U.S. at 57. The district court in *Locke* based their substantial compliance analysis on this portion of the *Hickel* opinion. 573 F.Supp. at 478.

75. *Locke*, 105 S.Ct. at 1796. Again the Court looks to the language of the statute to conclude that Congress left "no room to inquire whether substantial compliance is indicative of the claimant's intent—intent is simply irrelevant if the required filings are not made. *Hickel's* discussion of substantial compliance is therefore inapposite to the statutory scheme at issue here." *Id.*

76. *Locke*, 105 S.Ct. at 1797.

Because the subjective intent of the claimant is irrelevant under a forfeiture provision, the Court concludes that there is no need for the individualized hearings required in the irrebuttable presumption cases.[77] The Court found "nothing to suggest that, in enacting § 314(c), Congress was in any way concerned with whether a particular claimant's tardy filing or failure to file indicated an actual intent to abandon the claim."[78]

Substantive due process analysis

The Court relies on *Texaco, Inc. v. Short,*[79] for the framework of analysis "in both its substantive and procedural dimensions."[80] Following the analysis set out in *Texaco,* the Court first determines that Congress has the affirmative power to regulate the property rights at issue in this case.[81]

Unpatented mining claims are a "unique form of property right"[82] that the Court finds especially susceptible to legislative regulation. The United States retains substantial regulatory power over unpatented mining claims by virtue of its ownership of the underlying fee title.[83]

The Court finds the property right in this case analogous to a vested economic right, "the right here is the right to a flow of income from production of the claim."[84] Congress, thus, has an affirmative right to

77. *Locke,* 573 F.Supp. 478; *see also Locke,* 105 S.Ct. at 1797.

78. *Locke,* 105 S.Ct. 1797. The district court would have required notice and a pre-forfeiture hearing on whether the claim was still active after the initial filing requirement was met. The court felt that: "[W]ithout these procedural safeguards, 43 U.S.C.A. § 1744 no longer serves its intended purpose of clearing public lands of abandoned claims. Instead, it becomes a convenient device for the government to reclaim established mines for profit at the expense of unprotected and unwary miners. This is true even though those miners have attempted in good faith to comply with every letter of the statute." 573 F.Supp. at 477.

79. 454 U.S. 516 (1982). *Texaco* involved *inter alia* a due process challenge to a state statute; The Mineral Lapse Act, INDIANA CODE, § 32-5-11-1 (1976). The Indiana act deemed certain split estate mineral interests extinguished if left unused for a 20-year period. The United States Supreme Court, in a 5 to 4 decision, affirmed the Indiana Supreme Court, holding the statute constitutional. 454 U.S. at 541. Justice Brennan filed a dissenting opinion in which Justices White, Marshall, and Powell joined. *Id.* The dissent characterized the Act as "an unfair and irrational use of state power." *Id.* at 543.

80. *Locke,* 105 S.Ct. at 1797.

81. *Id.* at 1798.

82. *Id.* The uniqueness of unpatented mining claims was expressed by the Court in Best v. Humboldt Mining, 371 U.S. at 335.

83. *Id.* Ownership of the underlying fee, through operation of the Fourth Amendment's property clause, gives Congress "broad powers over the terms and conditions upon which the public lands can be used, leased, and acquired." *Id.* The Court then cites to Kleppe v. New Mexico, 426 U.S. 529, 539 (1976). This is the point in *Kleppe* where the Court notes repeated observations that "[t]he power over the public land thus entrusted to Congress is without limitations." *Id.*

84. *Locke,* 105 S.Ct. at 1798. Characterization of unpatented mining claims as purely economic property allows the court to apply the rational relationship standard to their analysis of FLPMA § 314's constitutionality. KING, *supra* note 46, notes that pure economic rights are not subject to the irrebuttable presumption analysis.

impose constraints and duties on the initial receipt of unpatented mining claims and can apply the regulations retroactively under a theory of legitimate legislative purpose furthered by rational means.[85] Section 314(c) is a "reasonable, if severe, means of furthering these goals."[86]

Once the Court finds an affirmative legislative power to regulate unpatented mining claims, the substantive due process analysis is easily completed. The decision in *Texaco* is cited to explain why the Fifth Amendment's proscription against taking private property without just compensation does not apply when the taking results from the owner's neglect.[87] The property loss was caused by the owner's failure to file on time as opposed to loss imposed by virtue of legislative action.

Procedural due process analysis

Procedural due process is the final constitutional issue addressed by the Court. The Court finds that FLPMA was properly enacted by Congress thus providing adequate constitutional process.[88] The Act's three-year grace period between enactment and initial filing deadline allowed private interests reasonable opportunity to become familiar with their obligations for compliance.[89]

The Court rejects the district court's finding that individualized notice of filing deadlines is required.[90] Even though individualized notice may be a sound means of administering the Act, as long as the legislative scheme is a rational way of reaching Congress' objectives, "the Court has no warrant to inquire into whether some other scheme might be more rational."[91]

Concurring Opinion

Justice O'Connor, in her concurring opinion, agrees that the lower court's decision must be reversed.[92] However, she shares "many of the same concerns expressed in the dissenting opinions."[93] She agrees that

85. *Locke* 105 S.Ct. at 1798. The Court identifies two legitimate legislative purposes for § 314; 1) a need to rid public lands of stale claims; and 2) a need for up-to-date information on the status of unpatented mining claims in order to make informed land-use decisions. *Id.*

86. *Id.*

87. *Id.* It should be noted that the statute at issue in *Texaco* provided for forfeiture only after 20 years of abandonment of the mineral estate.

88. *Id.* at 1800.

89. *Id.* The fact that the Lockes had made their initial filing, as required by § 314(a), is cited as evidence that they knew or should have known of the Act and their need to inquire into its demands. Also, the three-year grace period compared favorably to the two-year period upheld in *Texaco*.

90. *Locke*, 105 S.Ct. at 1798.

91. *Id. at 1800.*

92. *Id.* at 1801.

93. *Id.*

§ 314(c) comports with procedural due process requirements,[94] and that the district court's substantial compliance holding was in error. Nonetheless, "[i]f the facts are as alleged by the appellees, allowing the Bureau of Land Management (BLM) to extinguish active mining claims that appellees have owned and worked for more than 20 years would seem both unfair and inconsistent with the purposes underlying FLPMA."[95]

Justice O'Connor points to the Lockes' good faith effort to comply with the filing requirements, coupled with BLM's misinformation, to suggest estoppel against the United States "to obliterate a property interest that has provided a family's livelihood for decades."[96] She notes that previous decisions by the Court, including *Heckler v. Community Health Services of Crawford County,*[97] "do not preclude application of estoppel in this context."[98] Justice O'Connor leaves it for the district court to determine if the Lockes "reasonably relied on communications from the BLM in making their annual filing on December 31, 1980."[99]

Dissenting Opinions

Justice Powell

Justice Powell, while agreeing with much of Justice Steven's dissent, reasoned that Congress' actual intent in drafting § 314 was irrelevant under the "special circumstances of this case."[100] Justice Powell finds the language "prior to December 31" creates an unconstitutional uncertainty when applied to a yearly filing requirement imposed on pre-existing property rights.[101] He "would find a forfeiture imposed for filing on December 31 to be invalid."[102]

Justice Stevens

Justice Stevens' dissenting opinion, joined by Justice Brennan, finds the majority opinion "contrary to the intent of Congress, engages in

94. *Id.* Justice O'Connor would limit the irrebuttable presumption analysis of *Vlandis v. Kline,* 412 U.S. 441 (1973), to the facts of that case. She cites *Weinberger v. Salfi,* 422 U.S. 749 (1975), as providing a more appropriate due process analysis.

95. *Locke,* 105 S.Ct. at 1801.

96. *Id.*

97. 104 S.Ct. 2218 (1984).

98. *Locke,* 105 S.Ct. at 1801.

99. *Id.* at 1802. The *Locke* majority, refers to the advice from the BLM employee and the BLM's erroneous 1978 pamphlet as possible grounds for an equitable estoppel claim against the United States. The majority, noting that the district court did not consider the estoppel claim, left "treatment of this issue, including fuller development of the record, to the District Court on remand." *Id.* at 1790, n. 7.

100. *Id.* at 1802.

101. *Id.* "It [§ 314] simply fails to give property holders clear and definite notice of what they must do to protect their existing property interests." *Id.*

102. *Id.* at 1804.

unnecessary constitutional adjudication, and unjustly creates a trap for unwary property owners."[103] Justice Stevens, after a careful reading of § 314, finds instances of "inartful draftsmanship"[104] and "garbled"[105] language such that the "text cannot possibly reflect the actual intent of Congress."[106]

Stevens does not believe Congress intended the literal reading of "prior to December 31" adopted by the majority. He observes that:

> No one has suggested any rational basis for omitting just one day from the period in which an annual filing may be made, and I would not presume that Congress deliberately created a trap for the unwary by such an omission. It would be fully consistent with the intent of Congress to treat any filing received during the 1980 calendar year as a timely filing for that year.[107]

Stevens observes that the BLM was at all times fully aware of the active mining claims and the Lockes' intention to continue mining operations. The Lockes lose "their entire livelihood for no practical reason, and because of the hypertechnical construction of a poorly drafted statute."[108] Stevens is confident that had Congress' attention been fixed on the precise issue, it would have allowed annual filings to take place by the end of the calendar year.[109]

Stevens agrees with the district court's reading of *Hickle v. Oil Shale Corporation*[110] to require substantial compliance analysis in this case.

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103. *Id.* at 1805.

104. *Id.* at 1806.

105. *Id.*

106. *Id.* First, the description of what to file makes no sense unless the word "or" is substituted for "on" in § 314(a)(2). *see* FLPMA § 314(a)(1). Second, the express language of the statute requires filing in the office of the Bureau. However, the BLM's regulations allow mail box filing. *See* 43 CFR § 3833.0-5(m) (timely filed means within the time period prescribed by law, or received by January 19 in an evelope bearing a postmark affixed within the period prescribed by law). Third, Stevens rejects the majority's finding of obviousness in the plain meaning of the language "prior to December 31" when applied to a statutory scheme that requires periodic filings on a calendar-year basis.

107. *Locke,* 105 S.Ct. at 1808.

108. *Id.* Justice Stevens notes that almost 20,000 active unpatented mining claims were lost due to the technical rigors and conclusive presumption of § 314. Additionally, Stevens notes letters from BLM State Offices in Utah, Montana, Wyoming, and Arizona documenting invalidation of over 2,000 unpatented mining claims between 1979 and 1983 because filings were made on December 31 instead of prior to December 31. *Id.* at n. 12.

109. The majority opinion had concluded its analysis of the plain meaning of "prior to December 31" by noting instances in the United States Code where action is required "prior to" some date. *Id.* at 1794, n. 12. Justice Stevens points out that all of the cited statutes refer to a "one-time specific date; the provision at issue here requires specific action on a continual annual basis, thus involving a much greater risk of creating a trap for the unwary." *Id.* at 1809, n. 5. Further, the specific date referred to in the statutes, except one providing that no transfer of the Panama Canal shall take place prior to December 31, 1999, had expired. *Id.*

110. *Hickel,* 400 U.S. 48; *see also* discussion of substantial compliance, *supra* note 72.

Further, Stevens agrees "that appellees substantially complied with the statute."[111]

> In sum, this case presents an ambiguous statute, which, if strictly construed, will destroy valuable rights of appellees, property owners who have complied with all local and federal statutory filing requirements apart from a one-day "late" filing caused by the Bureau's own failure to mail a reminder notice necessary because of the statute's ambiguity and caused by the Bureau's information to appellees that the date on which the filing occurred would be acceptable.[112]

ANALYSIS

The Court identifies two Congressional purposes in § 314. One purpose is to rid federal lands of stale mining claims.[113] The other purpose is "to provide federal land managers with up-to-date information that allows them to make informed management decisions."[114] Further, these purposes are legitimate legislative ends, sufficent to support prospective and retroactive application of FLPMA recordation requirements.[115]

The Court's opinion is open to the criticism that neither identified purpose is served by the decision. The Lockes' unpatented mining claims were not "stale" in any sense of the word.[116] Further, it took BLM over three months to notify the Lockes that their claims, the activity of which was well known by BLM,[117] were deemed abandoned and void.[118] It is difficult to see how either statutory purpose is served by the forfeiture of an active mining operation.

Arguably the holding frustrates the ability of federal land managers to know "with certainty and ease whether a claim is currently valid"[119] thus allowing "informed management decisions"[120] to be made. Before the Lockes' technical violation of § 314's filing deadline, federal land managers would have based their management decisions on continued mining operations. The informed nature of these land management decisions is surely compromised by the decision to declare an operating mine abandoned for failure to meet a clearly arbitrary filing deadline.

111. *Locke*, 105 S.Ct. at 1810.

112. *Id.*

113. The dissenters do not question the intent of Congress to cope with the problem of stale claims. *Id.* at 1806; *see also id.* at 1802.

114. *Id.* at 1789.

115. *Id.* at 1798.

116. *See*, text and accompanying notes, *supra* notes 3, 4.

117. The Lockes had complied with § 314's initial filing requirements. 573 F.Supp. at 474.

118. *Id.* The BLM accepted the filing in Reno on December 31, 1980. The Lockes received notice of their abandonment of the claims on April 4, 1981.

119. *Locke*, 105 S.Ct. at 1799.

120. *Id.*

The majority's reliance on its statutory analysis in *Texaco, Inc. v. Short,*[121] is subject to criticism. The majority ignores fundamental distinctions between the two statutes in finding §314 constitutional. Unlike §314, the statute in *Texaco*[122] provided three methods to avoid forfeiture of the mineral estate. The methods included engaging in actual production, paying taxes, or filing a written statement with the county recorder's office. Further, the statute provided for a twenty year period, during which none of the three alternatives were exercised, before the estate was terminated.[123] The majority in *Texaco* analogized to abandonment statutes which involve intentional relinquishment of a known right in their characterization of the statute.[124] Thus, reliance on abandonment case law to sustain a statutory forfeiture provision seems misplaced.

The majority in *Texaco* relied on the statute's reasonableness, in providing three alternative methods to avoid termination, coupled with its 20-year period of abandonment before termination occurred, to find the statute was constitutional.[125] Notwithstanding these due process safeguards four Justices dissented[126] on the ground that the statute's lack of a notice provision was an unconstitutional violation of the Due Process Clause of the Fourteenth Amendment.

Section 314(c) does not provide the same measure of reasonableness evident in *Texaco*. There are no alternatives. The claimant must file required documents "prior to December 31" or the claim is void.[127] Further, the majority abandons the *Texaco* analysis at the critical point concerning the reasonableness of the §314(c) as retroactively applied to vested property interests. Instead, the *Locke* court chooses to focus on the nature of the property right affected.

The Court finds that unpatented mining claims are simply "a right to a flow of income,"[128] similar to vested economic rights "held subject to the Government's substantial power to regulate for the public good the conditions under which business is carried out and to redistribute the benefits and burdens of economic life."[129] No longer are unpatented

121. 454 U.S. 516.

122. The statute is entitled the Dormant Mineral Interests Act, and is more commonly known as the Mineral Laspe Act. IND. CODE 32-5-11-1, 32-5-11-8 (1976).

123. Section 32-5-11-1 of the Indiana Mineral Laspe Act provides: "Any mineral interest in coal, oil, and gas, and other minerals, shall, if unused for a period of 20 years, be extinguished, unless a statement of claim is filed. . . ." Use of the mineral interest includes actual or attempted production, payment of rents or royalties, or payment of any taxes. 454 U.S. at 520.

124. 454 U.S. at 527.

125. *Id.* at 530. The Court found it clear that the state had not exercised its power in an arbitrary way because the statute provided three ways to avoid forfeiture and each of the three actions furthered a legitimate state goal to encourage mineral development.

126. 454 U.S. 516.

127. *Locke*, 105 S.Ct. at 1796.

128. *Locke*, 105 S.Ct. at 1798.

129. *Id.*

mining claims to be considered "property in the fullest sense of the term."[130]

Likewise, the Court's reliance on *United States v. Boyle*,[131] seems misplaced. *Boyle* is a tax case in which the taxpayer failed to file his return in accordance with the applicable statute.[132] There, the federal government was not adopting new rules necessary to maintain ownership of a property interest. Furthermore, the taxpayer's defense against paying the statutory penalty, was his reliance on an experienced tax attorney. The Ninth Circuit affirmed summary judgment for Boyle.[133] The Supreme Court reversed, holding that failure to make timely filing of a tax return is not excused by reliance on an agent.[134] The Lockes did not depend on an agent to determine the proper filing date; rather they depended on the information given to them by the BLM in response to a direct inquiry. Further, *Locke* is not a tax case.

CONCLUSION

The courts' opinion is instructive to claimants of unpatented mining claims both as to the level of statutory awareness demanded and as to the nature of the property interest represented by unpatented claims. Claimants are characterized as business people, and charged with an exact knowledge of the law. The interest represented by unpatented claims is strictly economic and thus very susceptible to Congress' regulation.

The *Locke* decision has practical significance for every owner of unpatented mining claims or mill sites. The Court will read FLPMA requirements strictly. All owners are deemed to know the requirements and will be held strictly responsible for filing the correct document, in the correct manner, at the correct time. Failure to comply, in every particular, with the literal language of § 314 will result in forfeiture of the property interest.

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130. *See* 252 U.S. 286, and 371 U.S. 334.

131. *Boyle*, 105 S.Ct. at 687.

132. 26 U.S.C. § 6075(a), provides that the estate must file a federal estate tax return within nine months of the decedent's death. Boyle's wife died September, 14, 1978. Boyle retained an attorney for the estate. The attorney did not file the return until September 13, 1979, three months late, due to a clerical oversight in omitting the filing. *Boyle*, 105 S.Ct. at 689.

133. 710 F.2d 1251 (1983).

134. *Boyle*, 105 S.Ct. at 693.