

INTERIOR BOARD OF LAND APPEALS

William Harding, et al.

130 IBLA 90 (August 1, 1994)

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WILLIAM HARDING ET AL.

IBLA 94-639 et al.

Decided August 1, 1994

Appeals from a decision of the New Mexico State Office, Bureau of Land Management, declaring mining claims abandoned and void. NMMC 40151, et al.

Affirmed.

1. Mining Claims: Rental or Claim Management Fees: Small Miner Exemption--Rules of Practice: Appeals: Stay

No grace period is allowed by Departmental regulation 43 CFR 3833.0-5(m) in which to file the certificate required by 43 CFR 3833.1-7(b) of persons seeking the small miners exemption from payment of the annual claim rental fee. The claims at issue were extinguished automatically by operation of law by failure to timely file documentation establishing qualification for exemption from payment or pay the annual fee.

APPEARANCES: William Harding, Williamsburg, New Mexico, pro se; Margaret Miller Brown, Esq., Office of the Solicitor, Department of the Interior, Southwest Region Field Office, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

William Harding and others have appealed from a May 19, 1994, decision of the New Mexico State Office, Bureau of Land Management (BLM), that declared mining claims NMMC 40151, et al. abandoned and void for failure to timely file small miner's certificates of exemption from payment of rental fee pursuant to Departmental regulation 43 CFR 3833.1-7. 1/

1/ Notices of appeal, statements of reasons, and petitions for stay have been filed by William Harding for Missing Link Mines and Jenny Marie Harding (NMMC 40151, NMMC 91497, NMMC 110549-NMMC 110556), Doyle Hardin (NMMC 110542-NMMC 110548, NMMC 40162, NMMC 91464-NMMC 91465), James and Addie McCants (NMMC 91476-NMMC 91480, NMMC 110569-NMMC 110573), Bill King (NMMC 114630-NMMC 114637, NMMC 110563-NMMC 110564), Onecimo Z. Ortega (NMMC 91489-NMMC 91493, NMMC 91495-NMMC 91499), Scott and Marta Ryals (NMMC 110585-NMMC 110594), William and Rachel Harding (NMMC 40154-NMMC 40161, NMMC 91456-NMMC 91457), Ted Minert (NMMC 110577-NMMC 110584,

Appellants also seek a stay of the BLM decision, contending that there was a grace period for filing the late filed documents, and that by mailing them to BLM on the date they were due appellants achieved substantial compliance with applicable Departmental regulations, a circumstance which, when considered with other equitable considerations and the hardship that cancellation of the claims will cause, justifies issuance of a stay pending consideration of this appeal. BLM has moved to consolidate these appeals because they are related and involve identical issues. The motion is granted and these appeals are consolidated for decision.

[1] To be entitled to a stay of the BLM decision, appellants must demonstrate, among other things, that there is a likelihood they will prevail on the merits. See 43 CFR 4.21(b)(1)(ii). The record before us, however, establishes that they cannot prevail on appeal because the claims at issue were extinguished by operation of law when appellants failed to timely pay the mining claim rental fee or file qualifying certificates claiming exemption from the rental fee requirement on or before August 31, 1993. See Nannie Edwards, 130 IBLA 59, 60 (1994), and cases cited therein. Because evaluation of the stay request has established that this appeal must be rejected, no purpose would be served by delaying decision, and BLM's decision must therefore be affirmed. See Clay Worst, supra at 166.

The record on appeal shows that the certificates of exemption from payment of rental fee filed by appellants were received by BLM on September 3, 1993. They were required, however, to be filed not later than August 31, 1993. See 43 CFR 3833.1-7(b) and (d); see also 43 CFR 3833.1-5 and 3833.1-6. Contrary to the contention made by appellants, no grace period for filing late certificates of exemption has been provided by Departmental regulation; those documents must be received by BLM on or before the date required by regulation, in this case August 31, 1993. See 43 CFR 3833.0-5(m), which provides that the 15-day grace period "does not apply to filings made pursuant to * * * 3833.1-5, or 3833.1-7."

This strict filing requirement is imposed in recognition of the requirement imposed by Congress that, for every unpatented mining claim, "each claimant shall, except as otherwise provided 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." 106 Stat. 1378; see Nannie Edwards, 130 IBLA at 60. As the decision in Nannie Edwards explained:

fn. 1 (continued)

NMMC 110565-NMMC 110566), Leroy Luna (NMMC 91481-NMMC 91488), Irma and Mitchell Valdez (NMMC 110574-NMMC 110576, NMMC 114638-NMMC 114640, NMMC 110567-NMMC 110568), and Ricardo Ortega (NMMC 91466- NMMC 91475). The standing of these named appellants (other than William Harding) is questioned by BLM, as is the authority of William Harding to represent either Missing Link Mines or those named persons who are not members of his immediate family (cf. 43 CFR 1.3, limiting practice before the Department). Because disposition of the stay petitions necessarily also decides these appeals on the merits, the procedural questions raised by BLM are not addressed. See Clay Worst, 128 IBLA 165, 166 (1994).

While the quoted Act did provide for an exemption from payment of the required fee for small miners under specified conditions, appellant's failure to qualify for the small miner exemption or to pay the \$100 claim rental on or before August 31, 1993, resulted in extinguishment of the affected claims by operation of law notwithstanding her intention to continue to hold them. See Lee H. Rice, 128 IBLA 137, 141 (1994). Inasmuch as appellant admittedly had neither paid the claim rental fee nor qualified for an exemption from such payment by filing the necessary certificate on or before August 31, 1994, her claims were extinguished by operation of law despite her intention to maintain them, albeit there were compassionate arguments and equitable considerations in her favor. The record on appeal establishes that she failed to qualify for a small miners exemption on or before August 31, 1994, because she failed to timely apply for it; and because she also did not pay the \$100 claim rental fee on or before that date her claims then became abandoned and void by operation of law, and BLM correctly so found.

130 IBLA at 60.

The Nannie Edwards decision is controlling here; BLM therefore correctly found the claims at issue to be abandoned and void.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petitions for stay are denied and the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

August 23, 1994

IBLA 94-639 : NMMC 40151 et al.

WILLIAM HARDING ET AL. : Mining Claims

ERRATUM

When this case issued on August 1, 1994, the docket numbers for appeals docketed by appellants other than Jenny Marie Harding were omitted from the list of affected mining claims appearing in footnote 1 at 130 IBLA 90, 91. The footnote is amended to show the docket numbers for all the consolidated cases. IBLA 94-639 through IBLA 94-649, as follows:

1/ Notices of appeal, statement of reasons, and petitions for stay have been filed by William Harding for Missing Link Mines and Jenny Marie Harding (NMMC 40151, 91497 and 549-110556)(IBLA 94-639), Doyle Hardin (NMMC 110542-110548, 40162, 91464-91465)(IBLA 94-641), James and Addie McCants (NMMC 91476-91480, 110569-110573)(IBLA 94-642), Bill King (NMMC 114630-114637, 110563-110564)(IBLA 94-643), Onecimo Z. Ortega (NMMC 91489-91493, 91495-91499)(IBLA 94-644), Scott and Marta Ryals (NMMC 110585-110594)(IBLA 94-645), (William and Rachel Harding (NMMC 40154-40161, 91456-91457)(IBLA 94-640), Ted Minert (NMMC 110577-110584, 110565-110566)(IBLA 94-646), Lerou Luna (NMMC 91481-91488)(IBLA 94-648), Irma and Mitchell Valdez (NMMC 110574-110576, 114638-114640, 110567-110568)(IBLA 94-647), and Ricardo Ortega (NMMC 91466-91475)(IBLA 94-649).

Franklin D. Arness
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

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