

INTERIOR BOARD OF LAND APPEALS

Keith Lindsey

130 IBLA 346 (September 14, 1994)

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KEITH LINDSEY

IBLA 94-617

Decided September 14, 1994

Appeal from a decision by the California State Office, Bureau of Land Management, declaring five mining claims abandoned and void for failure to pay the annual rental fees required by the 1992 Department of the Interior Appropriations Act. CAMC 231865-CAMC 231869.

Affirmed.

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

The Department is without authority to excuse lack of compliance with the rental fee requirement of the Department of the Interior and Related Agencies Appropriations Act for Fiscal 1993, to extend the time for compliance, or to afford any relief from the statutory consequences.

APPEARANCES: Keith Lindsey, Newberry Springs, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Keith Lindsey has appealed a decision by the California State Office, Bureau of Land Management (BLM), dated May 20, 1994, declaring the St. John, Helen G., St. Arthur, Dividend, and St. Charles mining claims abandoned and void for failure to pay by August 31, 1993, annual rental fees of \$100 per claim per year for 1993 and 1994 or obtain a small miner exemption, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1374 (1992). The appeal states:

I consider this decision adverse to me, I believe it is incorrect, and I consider it illegal. Assessment was done on the above mentioned claims before the new rental fee was "forced" on us. Whether I oppose this or not, I'm sure you will find some way to "cram it down my throat".

No response has been filed by BLM.

Congress enacted the Appropriations Act at issue on October 5, 1992. In relevant part it provides:

That notwithstanding any other provision of law and effective upon the date of enactment of this Act, for fiscal year 1993, for 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 * * *.

P.L. 102-381, 106 Stat. 1374, 1378 (1992). The Act contains a substantially identical provision requiring claimants to pay, on or before August 31, 1993, a \$100 rental fee to hold an unpatented mining claim, millsite or tunnel site during the assessment year beginning September 1, 1993. Id. By the legislation, Congress also determined 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 * * *." Id. at 1379.

Congress, however, created an exemption for a mineral claimant with 10 or fewer claims who (1) has a valid notice or plan of operation, (2) has less than 10 acres of unreclaimed surface disturbance, and (3) is either producing "not less than \$1,500 and not more than \$800,000 in gross revenues per year as certified by the claimant" or "performing exploration work to disclose, expose, or otherwise make known possible valuable mineralization." Id. at 1379. Such a claimant

may elect to either pay the claim rental fee for such year or in lieu thereof do assessment work required by the Mining Law of 1872 (30 U.S.C. 28-28e) and meet the filing requirements of FLPMA (43 U.S.C. 1744 (a) and (c)) on such ten or fewer claims and certify the performance of such assessment work to the Secretary by August 31, 1993 * * *.

Id.

The Department published notice of the requirement to pay rental fees in the Federal Register, 57 FR 54102 (Nov. 16, 1992). It subsequently proposed regulations to implement the Act. 58 FR 12878 (Mar. 5, 1993). The final regulations were effective upon publication. 58 FR 38186 (July 15, 1993), correction 58 FR 41184 (Aug. 3, 1993), codified at 43 CFR Parts 3730, 3820, 3830, and 3850.

[1] Contrary to appellant's suggestion, the rental fee was not imposed by BLM but enacted as law by Congress. The language it chose to describe the consequence of failure to pay, "shall conclusively constitute an abandonment," is nearly identical to that used in section 314

of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1988), which the Supreme Court found to be "self-executing." United States v. Locke, 471 U.S. 84, 100 (1985). Presumably, Congress was aware of the Court's interpretation. Consequently, like the earlier statute, "the Department is without authority to excuse lack of compliance with the rental fee requirement, to extend the time for compliance, or to afford any relief from the statutory consequences * * *." Lee H. & Goldie E. Rice, 128 IBLA 137, 141 (1994).

In proposing regulations, BLM considered the possibility that some mineral claimants performed assessment work prior to passage of the legislation, as appellant asserts he did. BLM asked for comments on the option of allowing such claimants to certify that they had completed assessment work between September 1, 1992, and October 5, 1992. 58 FR 12878, 12879 (Mar. 5, 1993). The option was not adopted, in part because the Chairman and the Ranking Minority Member of the House Appropriations Subcommittee on Interior and Related Affairs informed the Department that such an exemption had been passed by the House but had been struck in the Senate and not restored by the House-Senate Conference Committee. 58 FR 38186, 38190-91 (July 15, 1993). Nevertheless, appellant could have avoided the choice of paying the rental fees or losing his claims by obtaining a small miner exemption as allowed by Congress. Procedures were established as part of the regulations. 43 CFR 3833.1-7. However, the record does not indicate that appellant applied for an exemption.

Having rejected appellant's arguments, we find that BLM correctly determined that, as a matter of law, the mining claims became abandoned and void for failure to pay the rental fees for the 1993 and 1994 assessment years by August 31, 1993. William B. Wray, 129 IBLA 173 (1994); Lee H. & Goldie E. Rice, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the California State Office is affirmed.

Gail M. Frazier
Administrative Judge

I concur:

David L. Hughes
Administrative Judge