

INTERIOR BOARD OF LAND APPEALS

Edwin L. Evans

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Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring mining and millsite claims abandoned and void. M MC-156571, M MC-156572 & M MC-22401.

Affirmed.

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

An applicant for a small miner exemption from payment of rental fees under the Act of Oct. 5, 1992, must file a certified statement by Aug. 31, 1993, for each of the assessment years (ending Sept. 1, 1993, and Sept. 1, 1994) for which the exemption is claimed including the information required by regulation at 43 CFR 3833.1-7(d). Where the applicant fails to pay the rental fee for either of the assessment years, the certificate of exemption includes only one year, and the record fails to indicate operations are being conducted pursuant to a notice or plan of operations, the claims are properly deemed abandoned and void.

APPEARANCES: Edwin L. Evans and Phyllis Evans, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

On November 10, 1993, Edwin L. and Phyllis Evans filed a notice of appeal from an October 11, 1993, decision of the Montana State Office, Bureau of Land Management (BLM), declaring the Moro and Helsing mining claims and the Moro Mill Site millsite claim, M MC-156571, M MC-156572, and M MC-22401, abandoned and void by operation of law pursuant to the Act of October 5, 1992 (Act), P.L. No. 102-381, 106 Stat. 1374, 1378-79. The basis for the decision was the failure to pay rental fees required by the Act or to file a qualifying certificate of a small miner's exemption prior to the August 31, 1993, deadline.

It appears from the case file that appellants filed with BLM on August 18, 1993, a certificate of exemption from payment of rental fees for the assessment year ending September 1, 1993, for the two mining claims and the millsite. The BLM decision found the certificate of exemption to be unacceptable for several reasons. First, BLM held that the form did not contain a showing that the mining claims were covered under a notice, plan of operations, or a permit as required by regulation at 43 CFR 3833.1-6(a)(4) (1993). Further, the BLM decision held that the implementing regulation at 43 CFR 3833.1-7(d) (1993) requires that the small miner file a separate certificate of exemption by August 31, 1993, supporting the claim of exemption for each assessment year that the exemption is claimed. Thus, separate certificates for exemption were held to be required for the assessment year ending September 1, 1993, and for the following assessment year beginning on that date. Finally, BLM held that millsites are not eligible for exemption from payment of rental fees, citing the requirement of the regulation at 43 CFR 3833.1-6 (1993) that a claimant be performing exploration work on his mining claims to disclose valuable mineralization and noting that millsites must be located on nonmineral land.

The relevant statute enacted by Congress provides in pertinent 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 an identical provision establishing rental fees for the following assessment year ending at noon on September 1, 1994, which required payment of an additional \$100 rental fee for each claim on or before August 31, 1993. 106 Stat. 1378-79. Implementing Departmental regulations provide in pertinent 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 CFR 3833.1-5(b) (1993). This requirement was deemed by Congress to be in lieu of the statutory requirements to perform assessment work on mining claims and to file either an affidavit of the performance of such work or a notice of intent to hold the claim. See 106 Stat. 1378; 43 CFR 3833.0-3(e), 3833.0-5(t), and 3833.1-5(g) (1993).

[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 CFR 3833.4(a)(2) (1993). The only exception provided from this annual rental requirement is the small miner exemption, available to claimants holding 10 or fewer mining claims, millsites, and/or tunnel sites on Federal lands. 106 Stat. 1378-79; 43 CFR 3833.1-5(d), 3833.1-6, 3833.1-7 (1993); see William B. Wray, 129 IBLA 173 (1994). 1/ The requirements of the statute and implementing regulations are explicit. First, the applicant must hold 10 or fewer mining and millsite claims on Federal lands. Further, the applicant, operating "under a valid notice or plan of operation," must either conduct exploration for possible valuable mineralization on or produce not less than \$1,500 and not more than \$800,000 gross revenues per year from his claims. Additionally, the applicant must have less than 10 acres of unreclaimed surface disturbance in connection with these operations. See 43 CFR 3833.1-6 (1993). Further, the applicant for a small miner exemption is required to file a separate certificate by August 31, 1993, for each of the two assessment years (ending September 1, 1993, and ending September 1, 1994) for which he is seeking an exemption. 43 CFR 3833.1-7(d) (1993).

Appellants sought to qualify for this exemption by filing with BLM on August 18, 1993, a certificate of exemption from payment of rental fee for the assessment year commencing September 1, 1992, and ending September 1, 1993. The certificate identified the three claims, but failed to indicate that the mining claims were being explored to disclose valuable mineralization under a notice or plan of operations. 2/ Further, no certificate of exemption was filed for the assessment year beginning September 1, 1993,

1/ Thus, the Act also provided that the claimant may, in certain circumstances, elect to either pay the rental fee or perform the assessment work, certify (by Aug. 31, 1993) the performance of such work (prospectively in the case of work for the assessment year ending Sept. 1, 1994), and meet the filing requirements of section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1988). See 106 Stat. 1378, 1379; 43 CFR 3833.1-7 (1993). In these circumstances, the claimant may avoid payment of the rental fee.

2/ The certificate, entitled "Certification of Exemption from Payment of Rental Fee," states that the small miner's exemption "is filed for the assessment year beginning at noon on September 1, 1992, and ending at noon on September 1, 1993." The underlined portions of this statement were filled in by appellants. Also, on the back of the certificate, it states that the "exemption is filed * * * for this assessment year." Thus, the certificate is applicable with respect to only one assessment year, i.e., ending Sept. 1, 1993. The certificate also contains a space where the claimant is to provide the "serial number or other designation of [the] Notice [or] Plan of Operations [under which his mining claims are operated]." The space on appellants' certificate is left blank. Finally, appellants checked the box indicating that they had performed or would perform the required exploration work on the claims.

and ending September 1, 1994. 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 CFR 3833.1-7(d) (1993); 43 CFR 3833.4(a)(2) (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. William B. Wray, supra at 175; 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. Id. 3/ In the absence of timely rental payments or an applicable exemption, BLM properly declared the claims abandoned and void. 43 CFR 3833.4(a)(2) (1993).

We note that the notice of appeal filed by appellants indicates the reason for appeal is a "misunderstanding of the new law." Appellants contend that their alleged failure to comply with the Act was due to the fact that the law is "beyond the understanding of a non-lawyer," and, further, they request reversal of the BLM decision so that they can file a plan of operations and correct any other errors they may have made. Unfortunately, any difficulty which appellants may have had in understanding the law does not establish error in the BLM decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the October 1993 BLM decision is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

3/ We find that this case is properly distinguished from a situation where the applicant failed to provide complete information required to support a certificate of exemption. See 43 CFR 3833.4(b) (1993) (providing notice and 30 days to cure incomplete information); William C. Harrison, 130 IBLA 225 (1994). There is nothing in the record to indicate that a notice or plan of operations is in effect with respect to the claims. Further, there was no submission for the assessment year ending Sept. 1, 1994.

In light of our analysis, we find it unnecessary to discuss the additional ground recited by BLM with respect to the millsite, i.e., that millsites are not subject to exemption from rental fees under the Act.