

INTERIOR BOARD OF LAND APPEALS

Bonnie M. Brown

132 IBLA 393 (June 14, 1995)

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Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring a mining claim abandoned and void for failure to pay rental fees. NMC 682319.

Affirmed as modified.

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

Under the Interior Department and Related Agencies Appropriations Act of 1993, P.L. 102-381, 106 Stat. 1374, enacted on Oct. 5, 1992, and 43 CFR 3833.1-5 (1993), a claimant who locates a claim on Aug. 27, 1993, and files a notice of location for the claim with BLM on Oct. 6, 1993, in accordance with sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1988), must pay rental fees for both the 1992-93 and the 1993-94 assessment years on the date of filing the notice of location.

APPEARANCES: Bonnie M. Brown, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Bonnie M. Brown has appealed the March 21, 1995, decision of the Nevada State Office, Bureau of Land Management (BLM), declaring the Hi Hope #2 mining claim, NMC 682319, abandoned and void by operation of law because "rental fees or small miners exemption certificates have not been filed in this office for the claim" for the 1993 and 1994 assessment years, as required by the Interior Department and Related Agencies Appropriations Act of 1993, P.L. 102-381, 106 Stat. 1374, enacted on October 5, 1992 (the Act) and 43 CFR 3833.1-5, 3833.1-6, and 3833.1-7. We issued a stay of BLM's decision pursuant to 43 CFR 4.21 and have expedited consideration of this appeal in order to clarify an issue under the Act that has caused some confusion. See Marathon Oil Co., 90 IBLA 236, 239, 93 I.D. 6, 8 (1986).

Appellant located the claim on August 27, 1993. Acting on advice from BLM, appellant submitted \$35 for service charges and \$100 for the 1993-94 assessment year rental fee when she filed her notice of location with BLM on October 6, 1993. ^{1/} Not until BLM's March 1995 decision was she informed that she was required to pay rental fees for both the 1992-93 and 1993-94 assessment years, appellant states. BLM's decision stated:

[I]n order to maintain a mining claim or site, mining claimants were required to pay rental fees in the amount of \$100.00 per claim or site or submit a Certification of Exemption from Payment of Rental Fees (small miners exemption) for both the 1993 and 1994 assessment years. The rental fees and/or the small miners exemption must have been filed in the proper office of the Bureau of Land Management (BLM) on or before August 31, 1993. [Emphasis in original.]

(Decision at 1).

When appellant inquired about the decision, BLM reportedly told her

they should have returned my check to me in 1993 to allow me to perfect my claim (pay the \$200.00) as I should have paid for both 1992-1993 and 1993-1994 at the time of filing because the claim was filed [^{2/}] on August 27, 1993. * * * I explained that I had followed their advice and complied with all their requests but [BLM] stated that ignorance of the Law was no excuse as the burden of understanding was on the miner, not the BLM."

(SOR at 2). "In summary," appellant states:

I filed my claim, paid the claim location fee and the rental fee within the time frame given to me by the Bureau of Land Management staff. I filed the Proof of Labor and the Small miners exemption claim in a timely manner [in August 1994] and feel this decision should be vacated.

^{1/} Appellant states:

"BLM Reno was asked for procedure needed to comply with Federal Regulations. I was told that when first filed according to the Act of October 5, 1992, a small miners exemption was not available. I needed to send them a check in the amount of \$135.00 to cover the \$100.00 rental fee for 1993-1994 and a \$35.00 location fee. I asked the time frame and was told that, on a new claim, it was due before the end of the year."

(Statement of Reasons (SOR) at 1).

^{2/} We presume appellant means "located" when she states "filed."

[1] The Act requiring rental fees was approved on October 5, 1992. The Act provides

[t]hat for every unpatented mining claim * * * located after the date of enactment of this Act through September 30, 1994, the locator shall pay \$100 to the Secretary of the Interior or his designee at the time the location notice is recorded with the Bureau of Land Management to hold such claim for the year in which the location was made.

106 Stat. 1379.

The Act also provides that "the Secretary of the Interior shall promulgate rules and regulations to carry out the purposes of this section as soon as practicable after the effective date of this Act." *Id.* BLM published notice on November 16, 1992, that the Act had been signed into law and that "[c]laimants holding mining claims * * * located on or after October 6, 1992, must pay the \$100 rental fee at the time of recording with BLM." 57 FR 54102 (Nov. 16, 1992). The regulations in 43 CFR Part 3833 implementing the Act were proposed in March 1993 (58 FR 12878 (Mar. 5, 1993)) and promulgated in final form in July 1993 (58 FR 38186 (July 15, 1993)).

Regulation 43 CFR 3833.1-5(a) (1993) is entitled "[m]ining claim * * * located on or after October 6, 1992 * * *." The first sentence of this regulation provides that the "\$100.00 non-refundable rental fee, for the assessment year in which the mining claim was * * * located, shall be paid * * * at the time of recording of the mining claim * * * in addition to the service charge required by § 3833.1-4(a)." (Emphasis supplied.) ^{3/}

43 CFR 3833.1-5(a)(2) provides that

[f]or all mining claims * * * located within the assessment year beginning September 1, 1992, and for which the notice of location is filed in a timely manner [i.e., within 90 days of the date of location of the claim] in the proper BLM Office pursuant to section 314(b) of FLPMA [Federal Land Policy and Management Act of 1976] and § 3833.1-2 after August 31, 1993, the \$100 rental fee for the assessment year beginning September 1, 1993, shall be paid at the time of filing in addition to the requirements of paragraph (a) of this section and the service charge required by § 3833.1-4(a). [Emphasis supplied.]

^{3/} In the preceding paragraph the regulation states: "The assessment years specified in the Act * * * begin on September 1, 1992, and September 1, 1993."

Thus, under the circumstances of this case, *i.e.*, location of the mining claim on August 27, 1993 (near the end of the 1992-93 assessment year), and timely filing of a copy of the official record of the notice or certificate of location that was filed under State law with BLM on October 6, 1993 (after the beginning of the 1993-94 assessment year), appellant was required to pay both a \$100 rental fee for the 1992-93 assessment year in which the claim was located and a \$100 rental fee for the 1993-94 assessment year on the date of filing the notice of location, *i.e.*, October 6, 1993 (not on August 31, 1993). ^{4/} Failure to pay the rental fee is deemed conclusively to constitute an abandonment of the mining claim. 43 CFR 3833.4(a)(2).

Under the Act the only exemption provided from the annual rental fee requirement was the so-called small miner exemption, available to claimants holding 10 or fewer mining claims, millsites, or tunnel sites on Federal lands who met all the conditions set forth in 43 CFR 3833.1-6(a) and 43 CFR 3833.1-7 (1993). *William B. Wray*, 129 IBLA 173 (1994). An exemption was not available for the 1992-93 assessment year for a claimant who located a claim on or after October 6, 1992, and before September 1, 1993. However, for a claim located during that period, a certificate for exemption from the 1993-94 assessment year had to be filed on or before August 31, 1993. The regulations governing filing requirements for rental fee exemptions, 43 CFR 3833.1-7, provide:

(c) For mining claims located on or after October 6, 1992, and before September 1, 1993, to claim the small miner's exemption for the year beginning September 1, 1993, the affidavit of assessment work for the period September 1, 1993, through September 1, 1994, shall be filed on or before December 30, 1994, in the proper State Office of the BLM. The certified statement required by paragraph (d) of this section shall be filed in the proper State Office of the BLM on or before August 31, 1993, and shall contain all of the information required in paragraph (d) of this section.

Thus, in order to pursue an exemption for the 1993-94 assessment year, a claimant who located a claim on August 27, 1993, had to do three things

^{4/} The preamble to the regulations states:

"One comment stated that there is a duplication between the fee due upon location of a new claim in the first assessment year and the fee due on August 31, 1993, for the second assessment year. There is no duplication because a fee paid for location in the first year holds the claim until September 1, 1993, at which point the the second payment holds the claim for the second assessment year. The first payment upon location is not prorated if the location occurs mid-year."
58 FR 38189 (July 15, 1993).

on or before August 31, 1993: (1) record the claim with BLM, (2) pay the rental fee required by 43 CFR 3833.1-5(a), and (3) file the certificate of exemption for the 1993-94 assessment year.

By waiting until October 6, 1993, to file her claim for recordation with BLM, appellant bypassed any opportunity to file for an exemption for the 1993-94 assessment year. Accordingly, she was required to file the necessary rental fees for both assessment years on the date of filing for recordation.

"[T]he 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, and the Board may not consider special facts or provide relief in view of mitigating circumstances." Lee H. & Goldie E. Rice, 128 IBLA 137, 141 (1994). In the absence of a small miner exemption, appellant was required to pay the rental fees for both assessment years on the date of filing. Because there is no evidence in the record that she did so, BLM's decision is properly affirmed as modified. Id. at 141.

Appellant is presumed to know the contents of Federal laws and regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 385 (1947). Even if BLM provided appellant the erroneous information she reports, she is therefore deemed to have knowledge of the true facts and estoppel will not lie against the Government. See James W. Bowling, 129 IBLA 52, 54-56 (1994).

Therefore, in accordance with the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's March 21, 1995, decision is affirmed as modified.

Will A. Irwin
Administrative Judge

I concur.

Bruce R. Harris
Deputy Chief Administrative Judge