

INTERIOR BOARD OF LAND APPEALS

Junior L. Dennis

133 IBLA 329 (August 31, 1995)

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JUNIOR L. DENNIS

IBLA 95-300, 95-532

Decided August 31, 1995

Appeals from decisions of the Oregon State Office, Bureau of Land Management, declaring mining claims null and void (ORMC 2387, ORMC 15704, ORMC 15705, ORMC 15706, and ORMC 33019) and rejecting amended notices of location (ORMC 15702 and ORMC 15703).

Affirmed in part, as modified; reversed in part and remanded—IBLA 95-300; Affirmed—IBLA 95-532.

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

Where a mining claimant informs BLM that he does not wish to pay claim maintenance fees to hold certain claims as required by the Omnibus Budget Reconciliation Act of 1993, P.L. 103-66, 107 Stat. 312, 405-06, 30 U.S.C.A. § 28f (1995), a BLM decision declaring the claims null and void is proper when no fees are paid within the statutory time.

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

Where evidence in the record supports a mining claimant's assertion that he paid the claim maintenance fee within the statutory time, a BLM decision declaring the claim null and void will be reversed, and the claimant is entitled to an opportunity to resubmit the mistakenly refunded fee in order to hold his claim.

3. Mining Claims: Generally—Mining Claims: Location

BLM properly rejected amended notices of location which sought to enlarge mining claims from 20 acres to 160 acres as such action would be adverse to the initial location and constitute a relocation or a new location of the claims.

APPEARANCES: Junior L. Dennis, pro se.

## OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Junior L. Dennis has appealed two decisions by the Oregon State Office, Bureau of Land Management (BLM), dated February 8, 1995, and March 20, 1995. The appeals are docketed as IBLA 95-300 and IBLA 95-532.

A review of the case files shows that the two appeals have a common history and involve some of the same claims. While BLM issued separate decisions, there are facts common to each that justify consolidation of these appeals for disposition.

## IBLA 95-300

On March 10, 1995, Dennis filed a notice of appeal of a decision issued February 8, 1995, by the Oregon State Office, BLM, declaring the Hard Times #1, Forget Me Not Placer #3, Hard Times Fraction #1, Hard Times Placer, and the Hard Times Fraction #2 mining claims (ORMC 2387, ORMC 15704, ORMC 15705, ORMC 15706, and ORMC 33019) null and void for failing to pay on or before August 31, 1994, a \$100 maintenance fee for each claim, or to file on or before August 31, an application of maintenance fee payment waiver certification (small miner's exemption) as required by the Act of August 10, 1993, the Omnibus Budget Reconciliation Act of 1993, P.L. 103-66, 107 Stat. 312, 405-06, 30 U.S.C.A. § 28f (1995) (the 1993 Act). Also, because the claims were null and void, BLM rejected for filing that part of appellant's 1994 proof of labor submitted for these claims, and advised that the \$5-per claim service fee payment received for the claims on August 31, 1994, would be refunded in accordance with 43 CFR 3833.1-1(b). <sup>1/</sup>

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<sup>1/</sup> We note that on Aug. 30, 1993, in accordance with the Interior Department and Related Agencies Appropriations Act of 1993, P.L. 102-381, 106 Stat. 1374, enacted on Oct. 5, 1992 (the 1992 Act), Dennis filed the appropriate rental fees (\$3,400) for 17 mining claims. On Dec. 29, 1993, Dennis filed a proof of labor with BLM for the same mining claims and one additional claim. With that filing, he enclosed a check for \$90 to cover the \$5-per claim service fee. However, 43 CFR 3833.1-5(g) (1993) provides that payment of the required rental fee "satisfies the requirement to file a notice of intent to hold pursuant to § 3833.2." Although the regulatory language is limited to a notice of intent, 43 CFR 3833.2 sets forth the requirements for filing not only a notice of intent to hold, but also an affidavit of assessment work or proof of labor. Clearly, payment of the rental fee is a substitute for filing either a notice of intent to hold or an affidavit of assessment work. See 43 CFR 3833.1-5(f) (1994). As such, there was no requirement for Dennis to file the proof of labor in December 1993 or to pay the accompanying service charges. On remand, BLM shall determine if such charges are refundable.

On appeal, appellant challenges the requirement to pay maintenance fees for his mining claims, submits documentation allegedly showing that he paid the maintenance fee for ORMC 33019 for 1995, and requests that all rental fees paid prior to the effective date of the 1993 Act be reimbursed.

Section 10101(a) of the Act, 30 U.S.C.A. § 28f(a) (1995), provides that the

holder of each unpatented mining claim, mill or tunnel site \* \* \* shall pay to the Secretary of the Interior, on or before August 31 of each year, for years 1994 through 1998, a claim maintenance fee of \$100 per claim. Such claim maintenance fee shall be in lieu of the assessment work requirement contained in the Mining Law of 1872 \* \* \* and the related filing requirements contained in section 1744(a) and (c) of Title 43.

Section 10104 of the Act, 30 U.S.C.A. § 28i (1995), provides that failure to pay the claim maintenance fee "shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law." These provisions of the Act are implemented by 43 CFR 3833.1-5 and 3833.4(a)(2), 59 FR 44860 and 44862 (Aug. 30, 1994), respectively. The first paragraph of 43 CFR 3833.1-5 provides:

Except as provided in §§ 3833.0-3(f), 3833.1-6, and 3833.1-1(d) and (e), each claimant shall pay a nonrefundable maintenance fee of \$100 for each mining claim, mill site, or tunnel site to the proper BLM office for each specified assessment year for which the claimant desires to hold the mining claim, mill site, or tunnel site. The assessment years covered by the Act of August 10, 1993, begin at 12 o'clock noon on September 1, 1994, and end at 12 o'clock noon on September 1, 1999.

43 CFR 3833.1-5(b) provides: "The first payment will be due on or before August 31, 1994 \* \* \*."

43 CFR 3833.4(a)(2) provides that "failure to pay the maintenance \* \* \* fees required by \* \* \* 3833.1-5 \* \* \* shall be deemed conclusively to constitute a forfeiture of the mining claim, mill site, or tunnel site."

[1, 2] The record on appeal shows that appellant paid the 1995 maintenance fee for the Hard Times Fraction #2 (ORMC 33019) on August 31, 1995, and that he failed to pay either rental fees or maintenance fees for the other four claims. On August 30, 1993, when appellant paid rental fees for 17 claims, the accompanying proof of labor listed 18 claims, but he stated thereon "#5 not paying for this claim." That claim is identified on the proof of labor as "Hard Times Placer ormc 15706." Under the 1992

Act, failure to pay the rental fee conclusively constituted an abandonment of the claim and a determination that it was void. 43 CFR 3833.4(a)(1) (1993). Accordingly, BLM should have properly declared ORMC 15706 abandoned and void for failure to pay rental fees. BLM's decision is modified in that regard.

Although he paid the appropriate rental fees in 1993 for the other three claims at issue, the record establishes that appellant intended not to pay maintenance fees to hold these claims in 1994, and BLM properly declared them null and void when no fees were paid within the time established by the 1993 Act. 2/

The record contains a BLM Temporary Receipt, #99329, dated August 31, 1994, for \$1,100 and a proof of labor, dated stamped August 31, 1994, by BLM with directions to BLM that the payment was to cover maintenance fees on "check marks." The names of 12 claims are checked on the proof of labor, one of which is the Hard Times Fraction #2 (ORMC 33019). On August 29, 1994, appellant paid \$115 as reflected on a BLM Temporary Receipt, #99303, to cover service charges for filing of proof of labor and the 1995 maintenance fee for mining claim ORMC 15703, and to pay service charges to file amended notices of location for mining claims ORMC 15702 and ORMC 15703. ORMC 15703 was also one of the 12 claims checked on the proof of labor filed on August 31, 1994.

The two receipts evidence that within the time provided in the Act and the regulations, appellant identified and paid maintenance fees for 12 mining claims. At some point the receipts were consolidated; however, rather than credit the 12 claims identified, BLM determined that a duplicate payment was made for the Forget Me Not Placer #2 (ORMC 15703), and authorized a refund pursuant to 43 CFR 3833.1-1(b).

When appellant made his filing on August 29, 1994, he indicated that \$100 of the \$115 submitted was for the maintenance fee for the Forget Me Not Placer #2 (ORMC 15703). When he filed \$1,100 on August 31, 1994, and checked 12 claims, he had already complied with the maintenance fee requirement for ORMC 15703. Therefore, his \$1,100 check covered the fees for the other 11 claims checked on his proof of labor, including ORMC 33019. 3/

However the confusion occurred, what is apparent from the record is that appellant timely paid the maintenance fee for 12 claims and that

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2/ Between Aug. 29 and Aug. 31, 1994, appellant paid \$1,200 in maintenance fees to hold 12 claims. The accompanying documents did not identify the Hard Times #1, Forget Me Not Placer #3, Hard Times Fraction #1, or the Hard Times Placer (ORMC 2387, ORMC 15704-ORMC 15706) for payment of fees.

3/ There is no documentation in the record to explain why BLM selected ORMC 33019 as the claim for which it concluded that no maintenance fee had been paid.

BLM, in issuing its decision, erroneously declared the Hard Times Placer #2 (ORMC 33019) null and void. Because BLM returned the timely paid claim maintenance fee for ORMC 15703, on the assumption that there had been a duplicate payment, appellant must be provided the opportunity to resubmit his payment, which should then be credited to ORMC 33019. <sup>4/</sup>

## IBLA 95-532

On April 10, 1995, Junior L. Dennis filed a notice of appeal of a decision by the Oregon State Office, BLM, dated March 20, 1995, which rejected amended notices of location filed for the Forget Me Not Placer #1 and the Forget Me Not Placer #2 mining claims (ORMC 15702 and ORMC 15703), and authorized a refund of the \$5-per claim service fee pursuant to 43 CFR 3833.1-1(d).

On August 29, 1994, appellant submitted amended notices of location for the Forget Me Not Placer #1 (ORMC 15702) and the Forget Me Not Placer #2 (ORMC 15703) mining claims to increase the size of the claims "from 20 acres to 160 acres." <sup>5/</sup> Citing Charles H. Head, 40 L.D. 135 (1911), BLM rejected the amended notices advising that "[a] placer location for 20 acres cannot, by means of an amended location, be enlarged to cover 160 acres, as such would constitute a new location." These claims were originally located on September 3, 1968, and amended notices of location for each claim, each dated December 29, 1970, were recorded with BLM pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1988), and the implementing regulations, on June 15, 1979. The amended notice of location for ORMC 15702 described the claim as containing 20 acres, more or less, in the E $\frac{1}{2}$  NW $\frac{1}{4}$  NE $\frac{1}{4}$  sec. 12, T. 33 S., R. 5 W., Willamette Meridian. The amended notice of location for ORMC 15703 stated that the claim was 20 acres, more or less, in the E $\frac{1}{2}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$  sec. 12.

On appeal, Dennis challenges the BLM decision, asserting that under the 1872 mining law, he has a right to amend his claims.

[3] Departmental regulations recognize that a location of a mining claim may be amended. Thus, 43 CFR 3833.0-5(p) defines an amended location as:

a location that is in furtherance of an earlier valid location and that may or may not take in different or additional unappropriated ground. An amendment may:

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<sup>4/</sup> To the extent appellant seeks refund of all his previously paid rental fees, that request is denied. Those fees were required by the 1992 Act and applicable regulations.

<sup>5/</sup> Each amended location notice contained the signatures of appellant and seven other co-locators.

- (1) Correct or clarify defects or omissions in the original notice or certificate of location; or
- (2) Change the legal description, mining claim name, position of discovery or boundary monuments, or similar items.

An amended location notice relates back to the original location notice date.

Appellant's stated purpose is to amend the location notices to enlarge the acreage for the claims. This he cannot do. An amended location cannot enlarge the rights appurtenant to the original location. Fairfield Mining Co., 66 IBLA 115, 117 (1982). Therefore, rather than amending the original claims, appellant is, in reality, creating new association placer claims. The new mining claims of 160 acres would be adverse to the original 20-acre claims, requiring a relocation or a new location. American Resources, 44 IBLA 220, 223 (1979). Relocation or locating new claims, however, would require appellant to abandon whatever rights he may have in the original claims for the new location. See Jon Zimmers, 90 IBLA 106, 110 (1985). The expressed intention of appellant in this instance is to amend the claims, not to relocate them or file new claims. Accordingly, BLM properly rejected the amended notices of location.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision in IBLA 95-300 is affirmed in part, as modified, and reversed and remanded in part; the decision in IBLA 95-532 is affirmed.

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Gail M. Frazier  
Administrative Judge

I concur.

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Bruce R. Harris  
Deputy Chief Administrative Judge