

INTERIOR BOARD OF LAND APPEALS

Robert Limbert

135 IBLA 364 (June 5, 1996)

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ROBERT LIMBERT

IBLA 94-374

Decided June 5, 1996

Appeal from decision of the Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. IMC 62967 et al.

Affirmed.

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

A claimant seeking a small miner exemption for mining claims located on National Forest lands must be under a notice or a plan of operations issued under 36 CFR Part 228 on Aug. 31, 1993. If the claimant does not meet this requirement for an exemption, mining claims are properly declared abandoned and void where no rental has been paid before the deadline date.

APPEARANCES: Robert Limbert, pro se.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Robert Limbert has appealed from the February 17 and 18, 1994, decisions of the Idaho State Office, Bureau of Land Management (BLM), declaring 11 unpatented mining claims abandoned and void. 1/ BLM declared the claims abandoned and void because the claimant had failed to timely qualify for an exemption from the rental fee requirements under the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (the Act), P.L. 102-381, 106 Stat. 1378-79 (1992).

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1/ Three BLM decisions, two dated Feb. 17 and one dated Feb. 18, 1994, are before the Board in this appeal. The Feb. 18 decision adjudicated seven claims: Decker #2 (IMC 62968), Decker #4 (IMC 62970), Decker #5 (IMC 62971), Decker #6 (IMC 62972), Decker #3 (IMC 62973), Queen #1 (IMC 79471), and The Basin (IMC 91625). One of the Feb. 17 decisions adjudicated the Gold Dust (IMC 146277), Golden Nugget (IMC 146279), and Idaho Gold (IMC 146280) claims. The other Feb. 17 decision adjudicated the Decker Magnum (IMC 66549) claim.

One of the provisions of the Act establishes that

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 \* \* \*.

106 Stat. 1378. The Act also contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of an additional \$100 rental fee on or before August 31, 1993. 106 Stat. 1378-79.

Implementing Departmental regulations provided 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).

The only exemption provided from this rental fee requirement is the so-called "small miner exemption," available to claimants holding 10 or fewer claims on Federal lands who meet all the conditions set forth in 43 CFR 3833.1-6(a) (1993). Washburn Mining Co., 133 IBLA 294, 296 (1995). The regulations require that a claimant must apply for the small miner exemption by filing separate certificates of exemption on or before August 31, 1993, supporting the claimed exemption for each assessment year claimed. 43 CFR 3833.1-7(d) (1993). That regulation provides, "[t]he small miner shall file a separate statement on or before August 31, 1993, supporting the claimed exemption for each assessment year a small miner exemption is claimed."

Appellant timely filed certificates of exemption for both years, 2/ including an approved "Recreational Dredging" permit issued him by the

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2/ On his exemption forms, appellant listed 10 of the above 11 claims. He did not list the Decker #2 claim (IMC 62968). In his statement of reasons (SOR), appellant also lists 10 claims; in this list, however, he includes the Decker #2 claim, and excludes the Queen #1 claim (IMC 79471). In its decisions herein, BLM adjudicated appellant's 11 claims without addressing whether appellant did not qualify for an exemption under 43 CFR

State of Idaho Department of Water Resources. The permit allows the permittee to operate a suction or vacuum dredge or power sluice equipment in a stream channel.

On December 16, 1993, BLM wrote to appellant notifying him that his small miner exemption forms for 1993 and 1994 had been received in BLM's office. BLM pointed out, however, that one of the requirements for obtaining an exemption was that appellant be "under an approved Notice to Operate, Plan of Operations or special use permit issued by the Forest Service, or a Notice or Plan of Operations from BLM." BLM advised that the dredging permit from the State of Idaho "will not qualify you for the small miner's exemption." Nevertheless, BLM gave appellant 30 days from the date of receipt of its letter to file "additional information identifying the agency (BLM, Forest Service, National Park Service, etc.) that has issued you a Notice, Plan of Operations, or other qualified permit \* \* \*." <sup>3/</sup> BLM advised appellant that failure to file the requested information would result in rejection of the requested exemptions, and that his claims would be deemed abandoned and void.

On January 10, 1994, appellant filed a notice of intent to operate with BLM. Appellant described his access route, the nature of his operation (placer dredging), and estimated start-up and completion dates. The notice had been approved and authorized by a U.S. Forest Service (Forest Service) official on January 10, 1994.

The file contains a memorandum from the Forest Service official who authorized appellant's notice of operations, stating:

On January 10, 1994, Mr. R. Limbert of Boise, Idaho called me urgently requesting a meeting to negotiate a Notice of Intent he said the BLM had required of him. I told him that I thought those were to be turned in prior to August 31, '93 and he insisted that he still needed a plan. I told him to come to Idaho City which he did and we filed a Notice of Intent for recreational dredging on the Middle Fork of the Boise River, dated January 10, 1994.

I have no memory or record of Mr. Limbert having filed any Notice of Intent or Plan of Operation in 1993 on the Idaho City Ranger District.

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fn. 2 (continued)

3833.1-6(a), requiring a claimant to hold 10 or fewer mining claims. As appellant failed to meet other requirements for the exemption, it is unnecessary for us to consider that question.

<sup>3/</sup> By so doing, BLM effectively treated the claimant's failure to provide proof of such notice on or before Aug. 31, 1993, as a curable defect. It is unnecessary to consider whether this was proper.

[1] BLM's decisions rejected appellant's 1993 and 1994 certificates of exemption from payment of rental fee because appellant "had no Notice or plan of Operations with the BLM or the Forest Service on or before August 31, 1993," for the claims, as required by 43 CFR 3833.1-6(a)(4)(i) or (ii) (1993). We affirm.

The cited regulation provides:

(a) In order to qualify for an exemption from the rental fee requirements, a small miner shall meet all the following conditions:

\* \* \* \* \*

(4) The mining claims shall be under:

(i) One or more Notices or approved Plans of Operations pursuant to subparts 3802 or 3809 of this title; or

(ii) A Notice or a Plan of Operations issued under parts 9 and 228 of Title 36 of the Code of Federal Regulations for National Park System lands and National Forest System lands respectively; or

(iii) A special use permit issued by a Federal agency for the mining or removal of locatable minerals; or

(iv) A State or local authority mining or reclamation permit if the surface estate of the mining claim is not in Federal ownership.

43 CFR 3833.1-6(a)(4). Ronald E. Milar, 133 IBLA 214 (1995).

To qualify for a small miner exemption, appellant needed to have his claim "under [an] approved [Plan] of Operation" on August 31, 1993. 43 CFR 3833.1-6(a)(4) (1993); Ronald E. Milar, 133 IBLA at 217-18. It is clear, as BLM held, that appellant did not have his claim under an approved plan of operations on August 31, 1993. Nor has appellant established that he falls within any of the other circumstances set out in 43 CFR 3833.1-6(a)(4).

Appellant asserts in his SOR that he did not "find out the new law until the middle of August 1993." Appellant asserts that he tried "several times" prior to the deadline to get a notice of operations but was told by the Idaho City Ranger District that they were unable to give him a notice of operations "until after the deadline." He then obtained the dredging permit from the State of Idaho which he filed with BLM on August 31, 1993. Appellant asserts that he was told the dredging permit "might work," but heard no more from BLM until December, at which time he was told that "everything was fine with our claims." He alleges that in January 1994,

BLM told him that a notice of operations would be necessary after all. Appellant asserts that he then went to Idaho City and "filed a notice [of operations] with the Forest Service \* \* \* [and] then filed the notice with BLM."

BLM's file contains no indication that appellant attempted to file the notice of operations until after the deadline. Although appellant states that he endeavored to obtain a notice prior to the deadline, he has provided nothing showing that he actually tendered such a document for filing, or that such a tender was refused.<sup>4/</sup> Under the regulatory scheme, appellant's notice of intent to operate, accepted on January 10, 1994, was inadequate to establish that appellant was under a notice on August 31, 1993, the date specified by the Act. The Idaho dredging permit does not meet regulatory requirements, as the surface estate is apparently in Federal ownership.

We are aware that claimants who were not under notices of operations were placed in a position where they had to quickly obtain them in order to qualify for the small miner exemption. However, we find no flexibility in either the statute or implementing regulations that would allow a claimant additional time beyond August 31, 1993, to secure the required authorization. The small miner exemption was available in such circumstances; the only option to preserve the claims was to pay the rental fees.

Where a mining claimant fails to qualify for a small miner exemption from the rental fee requirement, failure to pay fees in accordance with the Act and regulations results in a conclusive presumption of abandonment. 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. There is no evidence of payment in the record. In the absence of rental or exemption, BLM properly declared the claims abandoned and void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

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David L. Hughes  
Administrative Judge

I concur:

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Will A. Irwin  
Administrative Judge

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<sup>4/</sup> In any event, to be effective, the notice would have had to be tendered sufficiently in advance of the deadline to allow the receiving agency adequate time to review it. See Ronald E. Milar, 133 IBLA at 217-18.