

INTERIOR BOARD OF LAND APPEALS

The Big Blue Sapphire Company, Inc.

138 IBLA 1 (January 27, 1997)

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THE BIG BLUE SAPPHIRE CO., INC.

IBLA 94-607

Decided January 27, 1997

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring certain mining claims abandoned and void. MMC 116291 through MMC 116300.

Reversed.

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

A decision rejecting a small miner exemption and declaring claims abandoned and void for failure to pay rental fees on the ground that the claimant owned more than 10 claims is properly reversed where the claimant shows that it filed certifications of exemption for the 1993 and 1994 assessment years on Aug. 23, 1993, listing only 10 claims and other evidence demonstrates that it had abandoned any additional claims previously held as of the date of the submission of its certifications of exemption.

APPEARANCES: David L. Peterson, President, The Big Blue Sapphire Company, Inc., Spokane, Washington.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

The Big Blue Sapphire Company, Inc. (Big Blue), has appealed from so much of a decision of the Montana State Office, Bureau of Land Management (BLM), dated June 15, 1994, as declared unpatented mining claims MMC 116291 through MMC 116300 abandoned and void for failure to timely pay the rental fees required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), P.L. 102-381, 106 Stat. 1378-79 (1992) and 43 CFR 3833.1-5 (1993) for the 1993 and 1994 assessment years. For the reasons set forth below, we reverse.

On August 25, 1993, claimants filed certifications of exemption from the rental fees imposed by the Act for each of the assessment years ending September 1, 1993, and September 1, 1994. These certifications were filed in lieu of submission of annual rental payments of \$100 for each claim for each assessment year under a provision of the Act known as the small miner exemption which waived rental payments upon a showing, inter alia, that the claimant held no more than 10 mining claims. Both certifications

listed only 10 mining claims. ^{1/} By notice dated May 12, 1994, BLM informed claimants that it was revoking its previous acceptance of the certification of exemption since its records indicated that Big Blue held 13 mining claims when the exemption application had been filed. BLM afforded claimants an opportunity to establish that they had reduced their holdings to 10 or fewer claims as of August 31, 1993.

By letter dated May 31, 1994, Big Blue's President responded. This letter noted that, though Big Blue objected to being required to separately count lode claims and placer claims even where they covered the same ground, it had decided to abandon its three lode claims in order to comply with the Act. As claimant explained:

We filed our "Affidavit of Annual Representation of Mining Claims" on just our claims MMC 116292 thru MMC 116300 with the Judith Basin County Courthouse on August 19, 1993 at 10:20 A.M. We purposely abandoned our three lode claims, MMC 179134 thru MMC 117136, at this [time], which was our first opportunity to do so, to stay in compliance with the 10 or fewer claims limitation for the small miners exemption.

In its June 15 decision, BLM acknowledged that it had timely received certifications of exemption from the claimant for the assessment years ending September 1, 1993, and 1994, which listed only the 10 placer mining claims held by appellant. BLM reiterated, however, that its records as of August 31, 1993, showed that claimant owned 13 mining claims. BLM rejected claimant's proffered justification of its filings, based on this Board's decision in Lee H. & Goldie E. Rice, 128 IBLA 137 (1994). BLM interpreted the Rice decision as requiring that "[i]n order for The Big Blue Sapphire Company, Inc., to meet the 10-claim requirement to qualify for the exemption, it was necessary that notification of the abandonment of mining claims be received in this office on or before August 31, 1993" (Decision at 2 (emphasis in original)). Accordingly, since claimant had failed to notify BLM that it had abandoned the three additional claims, BLM rejected Big Blue's certifications of exemption and held all 13 claims abandoned and void for failure to comply with the Act.

In its statement of reasons for appeal, Big Blue asserts that it had abandoned the three lode claims (MMC 179134 through MMC 179136) prior to August 31, 1993, and had informed BLM of this fact by its intentional failure to list the three lode claims in the affidavits of labor for the 1993 assessment year, which it had enclosed with the certifications of exemption filed on August 25, 1993. Appellant argues that, since it abandoned those claims prior to the August 31 deadline, it possessed only 10 claims when it filed the certifications of exemption.

^{1/} The claims listed were the Yogo Cliff VIII (MMC 116291), Top IX (MMC 116292), Top IV (MMC 116293), Top VII (MMC 116294), Top VIII (MMC 116295), Top X (MMC 116296), Top XII (MMC 116297), Blue Sky 11 (MMC 116298), Blue Sky 12 (MMC 116299), and Blue Sky 13 (MMC 116300).

[1] The relevant provisions of the Act, enacted by Congress on October 5, 1992, provide, 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 * * *. [Emphasis added.]

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

The Act further provided, subject to various conditions, for an exemption from the payment of rental fees for claimants holding 10 or fewer claims, a provision generally referred to as the small miner exemption. *Id.* On July 15, 1993, the Department promulgated regulations implementing the rental fee provisions of the Act, *see* 58 FR 38186, including sections governing rental fee exemption qualifications and filing requirements, later codified at 43 CFR 3833.1-6 and 3833.1-7 (1993). Those regulations stipulated that a small miner choosing not to pay the rental fee was required to file a separate statement on or before August 31, 1993, for each assessment year the exemption was claimed. The regulations also delineated various items that each statement was required to contain. *See* 43 CFR 3833.1-7(d) (1993).

In the instant case, claimant timely filed certifications of exemption for both years which satisfied the requirements of 43 CFR 3833.1-7(d) (1993), but BLM rejected the certifications because it concluded that the claimant held more than 10 unpatented mining claims. As noted above, claimant asserts that it decided to drop three claims and maintain only 10 in order to satisfy the small miner exemption requirements. This assertion finds corroboration in its affidavit of labor for the 1993 assessment year, which it recorded with the Judith Basin County Recorder on August 19, 1993, and included with its certification of exemption which it filed with BLM on August 25, 1993, in which only the 10 placer claims for which the small miner exemption was sought were listed as claims upon which the assessment work had been performed.

BLM rejected claimant's showing based on its interpretation of this Board's decision in *Lee H. & Goldie E. Rice*, *supra*. Our review of the *Rice* decision, however, convinces us that BLM has misinterpreted the scope of our holding therein. In relying on our opinion in the *Rice* case, BLM

emphasized the language of the headnote which declared that a BLM decision would be affirmed "[w]here BLM records disclosed that on Aug. 31, 1993, a mining claimant held in excess of 10 mining claims on such lands * * *." Id. at 137. We believe, however, that BLM failed to give sufficient weight to the qualifying language which appeared immediately after the statement quoted above. Thus, the headnote continued "and where on appeal the claimant failed to provide any evidence to show otherwise." This modifying language is critical to understanding our holding in Rice.

The Rice case did not involve a situation in which claimants had contended that they had abandoned claims in excess of the statutory maximum for the purpose of qualifying for the small miner exemption. On the contrary, the claimants in Rice did not even assert that they had abandoned any of their claims as of the time of the submission of the certifications. Rather, the entire thrust of their appeal was that they were provided insufficient time to adequately comply with the filing requirements of the Act, an assertion expressly rejected by the Board in the Rice decision. Id. at 140. The ratio decidendi of the Board's decision was not that the mere fact that BLM's records indicated that mining claimants held more than 10 claims was sufficient to require rejection of an exemption certification but rather that this fact, coupled with the claimants' failure to provide any evidence to the contrary, supported BLM's rejection of a requested exemption. Such, indeed, has been this Board's subsequent interpretation of the Rice decision.

Thus, in both Calvin W. Barrett, 134 IBLA 356 (1996), and Washburn Mining Co., 133 IBLA 294 (1995), claimants had timely filed certifications of exemption for both years, but BLM denied the exemption after concluding that they owned more than 10 claims. On appeal, the claimants in both cases argued that they had abandoned other claims for the purpose of meeting the requirements for obtaining the small miner exemption. In both cases, these assertions were corroborated by statements of annual assessment work which had been recorded locally before the August 31 deadline and which covered only the claims listed on their certifications of exemption. The Board found these showings sufficient to establish that the claimants had owned 10 or fewer claims as of the date they filed their certifications seeking the small miner exemption.

We note that, similar to the claimants in Barrett and Washburn, Big Blue had recorded locally proofs of labor omitting certain claims prior to August 31, 1993, and had, in fact, submitted copies of these proofs of labor to BLM before that date. Clearly, under our precedents, Big Blue has established that BLM's decision was in error. We wish to emphasize, however, that receipt by BLM of such corroboration prior to August 31, 1993, is not an essential prerequisite to establishing that previously existing claims which were not recorded in a certification of exemption were timely abandoned.

Abandonment, as we have noted in the past, "is a concept well known to mining law, but its basis is the traditional law of abandonment—relinquishment of possession together with the subjective intent to abandon."

Department of the Navy, 108 IBLA 334, 338 (1989) quoting Oregon Portland Cement Co., 66 IBLA 204, 207 (1982). The relevance of the local filings in Barrett and Washburn was not that they effected an abandonment of the claims ^{2/} but rather that they provided evidence of the subjective intent of the claimants to abandon the claims. So long as a claimant who sought a small miner exemption can establish that, with respect to any claims in excess of 10, the elements of abandonment predated August 31, 1993, he or she has met the statutory and regulatory requirements with respect to the limitation on claim ownership, regardless of the point in time at which these facts are communicated to BLM.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

James L. Burski
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

^{2/} In point of fact, they did not. Failure to perform assessment work did not, at least prior to the adoption of the 1992 Act, result in an abandonment of the claim under either 30 U.S.C. § 28 (1994) or 43 U.S.C. § 1744(a) (1994). As we noted in United States v. Haskins, 59 IBLA 1, 88 I.D. 925, 975 (1981), historically, failure to perform assessment work did not automatically invalidate a mining claim under 30 U.S.C. § 28 (1994) but rather made it subject to relocation by a third party or withdrawal by the Government. Failure to record annual assessment work or notices of intention to hold, as required by section 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1994), would result in a conclusive statutory presumption of abandonment, but this would not arise until the end of the calendar year when it could be determined that the claimant had failed to file evidence of such work on or before Dec. 30. Thus, the relevance of the local filings in Barrett and Washburn was not that they constituted an abandonment of all claims not listed thereon but rather that they provided evidence of a preexisting intent to abandon those claims.