

INTERIOR BOARD OF LAND APPEALS

David F. Matuszak

138 IBLA 206 (February 21, 1997)

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DAVID F. MATUSZAK

IBLA 94-676

Decided February 21, 1997

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring two mining claims abandoned and void for failure to pay rental fees. ORMC 45715-ORMC 45716.

Affirmed.

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

A mining claimant seeking a small miner exemption from payment of rental fees for mining claims located on lands administered by the Bureau of Land Management had to be under a notice or an approved plan of operations on Aug. 31, 1993. If the record shows that claimant did not meet that requirement, the mining claims are properly declared abandoned and void where no rental was paid before the deadline date.

APPEARANCES: David F. Matuszak, Redlands, California, pro se.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

David F. Matuszak has appealed from a May 24, 1994, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Pacific Sunset I and II placer mining claims (ORMC 45715-ORMC 45716) abandoned and void for failure to pay the rental fees required by the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (the Act), P.L. 102-381, 106 Stat. 1378-79 (1992), or qualify for an exemption from the rental fee requirement.

One of the provisions of the Act established 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.

Congress further mandated 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.

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 claims in question were located prior to October 5, 1992.

The only exemption provided from the annual rental requirement was the so-called small miner exemption, available to claimants holding 10 or fewer mining claims, mill sites, and tunnel sites on Federal lands who met all the conditions set forth in 43 CFR 3833.1-6(a) (1993). Melvin J. Young, 135 IBLA 336, 337 (1996); Washburn Mining Co., 133 IBLA 294, 296 (1995). A claimant seeking such an exemption was required to file on or before August 31, 1993, a separate certification for each assessment year for which an exemption was claimed. 43 CFR 3833.1-7(d) (1993).

On August 23, 1993, appellant filed with BLM certifications of exemption from payment of rental fees for the assessment years 1992-93 and 1993-94 for the two claims in question. On those certifications, appellant indicated that his claims were operated under a notice or plan of operations, as described in 43 CFR 3833.1-6 (1993), issued by the "U.S. Forest Service, Sweet Home Dist., Willamette N.F., Sweet Home, OR." <sup>1/</sup>

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<sup>1/</sup> On the same day appellant filed with BLM separate certificates for exemption for three other claims (ORMC 45717-ORMC 45719), making the same representation regarding the notice or plan. However, evidence in the record indicates that only those three claims were located on National Forest lands administered by the U.S. Forest Service, as the surface management agency. The claims at issue in this case ORMC 45715 and ORMC 45716 are located on lands administered by BLM. See Memorandum to the State Director from the Salem District Manager, dated Mar. 16, 1994. Although appellant apparently filed a notice of intent with the Forest Service covering all five claims, that notice was only applicable as to claims on National Forest lands.

BLM's decision rejected the certificates for the two claims at issue and declared those claims abandoned and void because appellant did not have a notice or plan of operations on file with BLM's Salem District Office by August 31, 1993, as required "by regulation." The decision cited 43 CFR 3833.1-6(a)(4)(i) and 43 CFR 3809.1-3(a) (1993).

On appeal, appellant asserts that he has filed "notices of operations" only when requested to do so by the Forest Service. He contends that in years past he has performed minimum work on the claims which did not warrant the filing of a notice. Appellant does not address the fact that the claims in question are on lands administered by BLM, not the Forest Service.

The pertinent regulation, 43 CFR 3833.1-6 (1993), provided in part:

(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 Plan of Operations issued under parts 9 and 228 of title 36 of the Code of Federal Regulations for the National Park System lands and National Forest System lands respectively; \* \* \*.

43 CFR 3809.1-3(a) provides, in relevant part:

(a) All operators on project areas whose operations \* \* \* cause a cumulative surface disturbance of 5 acres or less during any calendar year shall notify the authorized officer in the District office of the Bureau of Land Management having jurisdiction over the land in which the claim(s) or project area is located.

[1] To qualify for a small miner exemption, appellant needed to have his two claims on BLM administered lands under a notice or approved plan of operations on August 31, 1993. Robert Limbert, 135 IBLA 364, 367 (1996). The regulation mandated one or the other if the requirements for an exemption were to be met. The record indicates that appellant filed a notice with the Forest Service for five claims. However, the two claims in question are on lands administered by BLM and there is no evidence that appellant filed a notice for those two claims with BLM on or before August 31, 1993. Therefore, appellant did not meet the regulatory requirements for

an exemption from payment of rental fees. <sup>2/</sup> BLM properly declared appellant's two claims located on BLM administered land abandoned and void.

Where a mining claimant fails to qualify for a small miner exemption from the rental fee requirement, failure to pay the fee in accordance with the Act and regulations results in a conclusive presumption of abandonment. William B. Wray, 129 IBLA 173 (1994); Lee H. & Goldie E. Rice, 128 IBLA 137, 141 (1994). The Department is without authority to excuse lack of compliance with the statutory filing requirements, 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. Id.

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 affirmed.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur:

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R.W. Mullen  
Administrative Judge

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<sup>2/</sup> We note that BLM provided by regulation at 43 CFR 3833.4(b) (1993) that the unintentional failure to file the complete information necessary to qualify for a small miner exemption would not result in a conclusive presumption of abandonment, but that the claimant would be provided notice and opportunity to cure the defect prior to a declaration of abandonment. That regulation is not applicable here, however, because there is no evidence of an unintentional failure. Appellant included on his certificates the information concerning a notice or plan of operations. It was inadequate for the two claims in question.