

INTERIOR BOARD OF LAND APPEALS

Richard W. Taylor, Lula B. Taylor, John Parker, and Roy Lynch

139 IBLA 231 (July 2, 1997)

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RICHARD W. TAYLOR, LULA B. TAYLOR
JOHN PARKER, AND ROY LYNCH

IBLA 95-153

Decided July 2, 1997

Appeal from a Decision by the California State Office, Bureau of Land Management, declaring seven claims (CAMC 59015 through CAMC 59018, CAMC 151413, CAMC 151414, and CAMC 164055) abandoned and void by operation of law.

Affirmed in part and reversed in part.

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

The regulatory provisions promulgated to implement the Department of the Interior and Related Agencies Appropriations Act for Fiscal 1993, Pub. L. No. 102-381, 106 Stat. 1374 (1992), which preclude a small miner exemption for claims not held under a valid notice or plan of operations, do not require a claimant to have all of the claims subject to approved notices or plans of operations to qualify for a small miner exemption. When a party holding 10 or fewer claims meets the requirements for a small miner exemption for some claims, the fact that not all of the claims qualify for a small miner exemption does not preclude exempting those that do.

APPEARANCES: Richard W. Taylor, Lula B. Taylor, John Parker, and Roy Lynch, pro sese.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Richard W. Taylor, Lula B. Taylor, John Parker, and Roy Lynch have appealed a November 4, 1994, Decision issued by the California State Office, Bureau of Land Management (BLM), declaring the Golden Key #1, #2, #3, and #4 placer mining claims (CAMC 59015 through CAMC 59018), the K & R #1 and #2 lode mining claims (CAMC 151413 and CAMC 151414), and the KPTL #1 lode mining claim (CAMC 164055) abandoned and void for failure to either pay the \$100 per claim annual rental fees for the 1993 and 1994 assessment

years or obtain a small miner exemption by August 31, 1993, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal 1993 (1993 Appropriations Act), Pub. L. No. 102-381, 106 Stat. 1374 (1992). ^{1/}

On August 30, 1993, Edmond Key, Raymond Mendosa, Richard W. Taylor and Lula B. Taylor, and Derrel L. Smith filed for exemptions from payment of rental fees pursuant to the requirements of Pub. L. No. 102-381 (small miner exemption) for assessment years 1993 and 1994. Key filed for exemption, listing the Golden Key #1 through Golden Key #4 (CAMC 59015 through CAMC 59018); K & R #1 and K & R #2 (CAMC 151413 and CAMC 151414); and KPTL #1 (CAMC 164055). ^{2/} Mendosa filed for exemption, listing the KPTL #1 (CAMC 164055) and Golden Key #3 (CAMC 59017) in his exemption certificate. Richard W. Taylor and Lula B. Taylor filed for exemption, listing the KPTL #1 (CAMC 164055) and the Golden Key #3 (CAMC 59017); and Derrel L. Smith filed for exemption listing the KPTL #1 (CAMC 164055) and the Golden Key #3 (CAMC 59017). ^{3/}

The regulations in effect when the claimants filed their small miner exemption certificates provided that "[t]o qualify for an exemption from the rental fee requirements, a small miner shall [hold] * * * mining claims * * * under * * * [o]ne or more Notices or approved Plans of Operations pursuant to parts 3802 or 3809 of this title * * *." 43 C.F.R. § 3833.1-6 (a)(4)(i); 58 Fed. Reg. 38199 (July 15, 1993); 58 Fed. Reg. 41184 (Aug. 3, 1993).

^{1/} The BLM's Nov. 4, 1994, Decision identifies the ownership interests in the seven claims as follows: Golden Key #1 through #4 placers (CAMC 59015 through CAMC 59018), Edmond Key and Harold Snider; K & R #1 and #2 (CAMC 151413 and CAMC 151414), Clifford Key; KPTL #1 lode (CAMC 164055), Edmond Key, Harold Snider, Richard Taylor and Roy Lynch. Richard W. Taylor identifies his partner on the KPTL #1 as Roy Lynch, not Ron Lynch as stated in BLM's Decision. (SOR at 3.)

^{2/} The record contains assessment work notices for the 1991 and 1992 assessment years. Those notices identified John E. Parker and Clifford Key as the owners of the K & R #1 and the K & R #2 claims. Parker was not identified as a claimant in the Nov. 4, 1994, BLM Decision, but has appeared as an appellant in this case.

^{3/} The small miner exemption certifications filed by Mendosa, Smith, and Richard and Lula Taylor also sought small miner exemption status for claims identified as Tingley's Ledge (CAMC 190404) and Triple T (CAMC 231043), which are not at issue in this appeal. Smith was not named in BLM's Decision of Nov. 4, 1994, was not served with a copy of the Decision, and has not appeared in the appeal. Because Smith is not a party to the Decision or this appeal, his interests are not affected by BLM's Nov. 4, 1994, Decision. Patsy A. Brings, 98 IBLA 385 (1987); see also Hiram B. Webb, 105 IBLA 290, 310-12, 95 Interior Dec. 242, 255-56 (1988), aff'd sub nom. Webb v. Lujan, 960 F.2d 89 (9th Cir. 1992).

In its Decision, BLM acknowledged that when Key, Mendosa, Smith, and the Taylors filed their small miner exemptions, the Golden Keys and KPTL claims were subject to approved plans of operations. No plan or notice of operations had been approved for the K & R claims. (Decision at 2.) The Decision noted that the claimants failed to file an affidavit of assessment work notice for the K & R #1 and #2 lode mining claims (CAMC 151413 and CAMC 151414) with BLM on or before December 30, 1993, pursuant to 43 C.F.R. § 3833.1-7(b)(1). (Decision at 3.) Additionally, BLM states that the claimants did not pay the \$100 per claim rental fees for the 1993 and 1994 assessment years for any of the claims. (Decision at 3.)

The BLM first found the Appellants ineligible for the small miner exemption because the K & R #1 and #2 claims were not subject to an approved plan of operations. It then found all of the claims abandoned and void for failure to either pay annual rental fees or obtain a small miner exemption. (Decision at 2.)

In their statement of reasons (SOR), Appellants raise a number of arguments. We have examined each and find most not to be relevant. However, the assertion that BLM incorrectly rejected the small miner exemption for all seven claims because only five of those claims were subject to an approved plan of operations has merit.

Under the 1993 Appropriations Act a mining claimant was required to pay annual rental fees of \$100 per claim for the 1993 and 1994 assessment years or obtain a small miner exemption by August 31, 1993. In relevant part, the 1993 Appropriations Act provided that

for fiscal year 1993, 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 * * *.

Pub. L. No. 102-381, 106 Stat. 1374, 1378 (1992). A substantially identical provision required mineral claimants to pay, on or before August 31, 1993, a \$100 rental fee to hold an unpatented mining claim, mill site, or tunnel site during the assessment year ending at noon on September 1, 1994. Id. The legislation provided 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 * * *." Id. at 1379.

The 1993 Appropriations Act provided for an exemption from the \$100 per claim fee if a claimant held 10 or fewer claims and was "producing under a valid notice or plan of operation not less than \$1,500 and not more than \$800,000 in gross revenues per year" or is "performing exploration work to disclose, expose, or otherwise make known possible valuable mineralization * * * under a valid notice or plan of operation; and * * * has less than ten acres of unreclaimed surface disturbance from such mining activity or such exploration work." *Id.* at 1379. A qualifying claimant could "elect to either pay the claim rental fee * * * or * * * do assessment work, * * * meet the requirements of 43 U.S.C. § 1744(a) and (c) (1994), and certify the performance of * * * assessment work to the Secretary by August 31, 1993." *Id.* An identical provision allowed an exemption for the 1993-94 assessment year. *Id.* at 1378-79.

The record contains Appellants' exemption certificates for the 1993 and 1994 assessment years. The record also shows, and BLM's Decision acknowledges, that five of the seven claims (Golden Key #1 through #4 and the KPTL #1) were subject to approved plans of operation when Appellants filed their small miner exemption certificates. Two of the seven claims (K & R #1 and #2) were not under an approved plan of operations, and no rental fees were paid and no assessment work affidavits were filed for those claims.

[1] In *Richard W. Taylor*, 136 IBLA 299, 302, 303 (1996), we examined the regulatory provisions implementing the 1993 Appropriations Act to determine whether a claimant holding 10 or fewer claims was required to have all of the claims under a notice or plan of operations to qualify for a small miner exemption. At issue was the question of whether the claimant could qualify for a small miner exemption for those claims under a valid notice or plan of operations and pay rental fees for those which were not. We concluded that the regulations allowed a claimant holding 10 or fewer claims to qualify for a small miner exemption for claims subject to an approved plan of operations and to pay rental fees for claims not named in an approved plan of operation. *Id.* at 303.

When analyzing the 1993 Appropriations Act, we noted that there was

nothing in the 1993 Appropriations Act preventing a claimant holding 10 or fewer claims from paying rental on a portion of them and seeking an exemption on the balance. This act does not mandate that a claimant hold all of the claims as a group. Some of the claims may be miles apart, or even in another state. So long as the aggregate number of claims is 10 or fewer, each claim should be considered separately. The regulation provides that "[f]ailure * * * to pay the rental fee * * * or file the [certified statement] * * * within the time periods prescribed therein shall be deemed conclusively to constitute abandonment of the mining claim * * *." 43 C.F.R. § 3833.4(a)(2) (1993) (emphasis added).

Id. at 303. As can be seen, the determination that a claim is to be deemed abandoned and void for failure to comply with the 1993 Appropriations Act is to be made on a claim-by-claim basis. The requirement that the claimant hold 10 or fewer claims is applicable to the claimant. The approved mining plan of operations and payment of \$100 requirement are applicable to the claim, not the claimant. Failure of one claim to meet the requirements of the 1993 Appropriations Act is neither fatal nor contagious to other claims. ^{4/}

There is no evidence that any of the claimants held more than 10 claims. Small miner exemption certifications were filed for the Golden Key #1 through #4 claims and the KPTL #1 claim (CAMC 164055). Those claims were under approved plans of operation at the time Appellants submitted their small miner exemption certifications, and claimants qualified for a small miner exemption for those five claims.

The K & R #1 and #2 claims were not named in an approved plan of operation. Key neither paid the required rental fees nor filed the 1993 and 1994 assessment work affidavits for those claims. The K & R #1 and #2 claims were not maintained as required by the 1993 Appropriations Act and those claims are properly deemed abandoned and void.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, that portion of the November 4, 1994, BLM Decision finding the K & R #1 and K & R #2 lode mining claims (CAMC 151413 and CAMC 151414) abandoned and void is affirmed, and the portion of the Decision finding the Golden Key #1 through Golden Key #4 placer mining claims (CAMC 59015 through CAMC 59018) and the KPTL #1 lode mining claim (CAMC 164055) abandoned and void is hereby reversed.

R.W. Mullen
Administrative Judge

I concur.

Franklin D. Amess
Administrative Judge

^{4/} If the logic applied in BLM's Decision was correct, it could also be said that if one claim meets the requirements, that fact could rehabilitate another claim that does not.