

INTERIOR BOARD OF LAND APPEALS

Janet Cochran

140 IBLA 390 (October 15, 1997)

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JANET COCHRAN

IBLA 94-712

Decided October 15, 1997

Appeal from a Decision of the Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. IMC 35183-IMC 35189 and IMC 35192-IMC 35193.

Affirmed.

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

An applicant for a small miner exemption from payment of rental fees under the Act of Oct. 5, 1992, must file a certified statement by Aug. 31, 1993, for each of the assessment years (ending Sept. 1, 1993, and Sept. 1, 1994) for which the exemption is claimed. When the applicant fails to pay the rental fee for either of the assessment years and the certificate of exemption includes only 1 year, the claims are properly deemed abandoned and void.

APPEARANCES: Janet Cochran, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Janet Cochran has appealed from a Decision of the Idaho State Office, Bureau of Land Management (BLM), dated June 21, 1994, declaring nine mining claims 1/ abandoned and void. The basis for the holding was the failure to either pay the mining claim rental fees or to file for a small miner exemption for the 1993 assessment year (i.e., September 1, 1992, through September 1, 1993) as required by the Act of October 5, 1992 (the Act), Pub. L. No. 102-381, 106 Stat. 1374, 1378. 2/

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1/ The mining claims identified by serial numbers IMC 35183-IMC 35189 and IMC 35192-IMC 35193, were named, respectively, I Don't Know #1-#5; Pony View #1, #2; and Independence #1, #2.

2/ The BLM Decision also declared seven other claims, the Pony View #3, #4, Independence #3, and TRE #1-#4, abandoned and void for failure to file either rental fees or a small miner exemption by Aug. 31, 1993. Unlike the other claims, no filing was received by Aug. 31, 1993, for these claims. It appears that these claims have been abandoned by claimants, and Appellant has not contested the BLM Decision as to these claims.

Appellant filed this appeal on behalf of herself and partners Jim Bacon and Nancy Bacon. In her notice of appeal and statement of reasons for appeal, Appellant asserts that in 1993, she did not receive any information about the need to file "two forms at one time" to comply with the new legal requirements. She states that the claimants want to retain the group of nine claims, and they have sought to follow the regulations and comply with the regulatory changes.

In the Act, Congress provided:

[F]or 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 \* \* \*.

106 Stat. 1378 (emphasis added). The Act contained a similar provision establishing rental fees for the following assessment year ending at noon on September 1, 1994, and requiring payment of the additional \$100 rental fee for each claim on or before August 31, 1993. Id. Implementing Departmental regulations provided in pertinent part 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 C.F.R. § 3833.1-5(b) (1993). <sup>3/</sup>

[1] The statute further 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." 106 Stat. 1379; see 43 C.F.R. § 3833.4(a)(2) (1993). The Act provided only one exception to this annual rental requirement, the small miner exemption, available only to claimants who hold 10 or fewer claims on Federal lands. 106 Stat. 1378-1379; 43 C.F.R. § 3833.1-5(d) (1993); 43 C.F.R. § 3833.1-6 (1993) (qualifications); and

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<sup>3/</sup> The regulations promulgated to implement the mining claim rental fee provisions of the Act are found in the 1993 codification of Title 43 of the Code of Federal Regulations (C.F.R.) at Subpart 3833.

43 C.F.R. § 3833.1-7 (filing requirements) (1993). Thus, the Act provided that the claimant may, in certain circumstances, elect to either pay the rental fee or perform the assessment work, certify (by August 31, 1993) the performance of such work (prospectively in the case of work for the assessment year ending September 1, 1994), and meet the filing requirements of section 314 of FLPMA, 43 U.S.C. § 1744 (1994). See 106 Stat. 1378, 1379; 43 C.F.R. § 3833.1-7 (1993). The applicant for a small miner exemption is required, however, to file a separate certificate by August 31, 1993, for each of the assessment years (ending September 1, 1993, and ending September 1, 1994) for which he is seeking an exemption. 43 C.F.R. § 3833.1-7(d) (1993); Daniel D. Dooley, 138 IBLA 352, 354 (1997); Jim Wright, 138 IBLA 297 (1997); Richard L. Shreves, 132 IBLA 138, 140 (1995); Edwin L. Evans, 132 IBLA 103 (1995). <sup>4/</sup> Therefore, in the absence of payment of annual rental fees, claimant must, in addition to compliance with the annual assessment work requirements under FLPMA, 43 U.S.C. § 1744 (1994), submit the exemption forms on or before August 31, 1993, for both the 1993 and 1994 assessment years.

The record before us discloses that claimants timely filed with BLM (on August 24, 1993) a certification of exemption for the assessment year beginning September 1, 1993, and ending September 1, 1994. No certification of exemption was filed, however, for the assessment year ending September 1, 1993, as required by regulation. <sup>5/</sup> In the absence of payment of the annual rental fee, the statute and the implementing regulations clearly require a timely filing (by August 31, 1993) of a certificate of exemption for each of the assessment years (ending September 1, 1993, and September 1, 1994). See 43 C.F.R. § 3833.1-7(b), (d); 43 C.F.R. § 3833.4(a)(2) (1993); Daniel D. Dooley, *supra*, at 354; Richard L. Shreves, *supra*, at 140; Edwin L. Evans, *supra*, at 106. 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. Daniel D. Dooley, *supra*, at 354; Jim Wright, *supra*, at 299. In the absence of timely rental payments or an applicable exemption, BLM properly declared the claims abandoned and void. 43 C.F.R. § 3833.4(a)(2) (1993).

We note that appellant has made many diverse arguments in support of her position on appeal. To the extent that other arguments raised by appellant have not been specifically addressed herein, they have been considered and rejected.

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<sup>4/</sup> While Appellant asserts that she did not receive any information about filing more than one form at the same time, we note that the statute and implementing regulations have been upheld against challenges based on lack of notice. See Daniel D. Dooley, *supra*, at 355.

<sup>5/</sup> An affidavit of annual assessment work for the assessment year ending Sept. 1, 1993, was filed with BLM on Dec. 13, 1993, pursuant to section 314 of FLPMA, 43 U.S.C. § 1744 (1994).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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C. Randall Grant, Jr.  
Administrative Judge

I concur.

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John H. Kelly  
Administrative Judge