

INTERIOR BOARD OF LAND APPEALS

David B. Sinnott

141 IBLA 174 (November 7, 1997)

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DAVID B. SINNOTT

IBLA 95-95 Decided November 7, 1997

Appeal from a decision of the California State Office, Bureau of Land Management, declaring a placer mining claim abandoned and void. CAMC 28959.

Decision set aside and remanded.

1. Mining Claims: Plan of Operations--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

After BLM requests information whether a valid notice or plan of operations was in effect on a mining claim for which exemption from rental fee payment is sought, BLM must adjudicate the merits of data provided by the claimant before rejecting his claim of exemption.

APPEARANCES: David B. Sinnott, Camino, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

David B. Sinnott has appealed from an October 25, 1994, Decision of the California State Office, Bureau of Land Management (BLM), that declared the Siesta Placer mining claim, CAMC 28959, abandoned and void. The BLM Decision found that Sinnott failed to comply with regulations implementing the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), 106 Stat. 1378-79 (1992). It was determined that a statement filed by Sinnott claiming exemption from payment of a mining claim rental fee required by the Act "did not meet the requirements under 43 CFR 3833.1-6 and 3833.1-7." As a consequence of this finding, BLM declared CAMC 28959 abandoned and void.

The Act provides 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." Id. at 1379. A mining claimant must either make the rental fee payment or certify qualification for exemption from payment and election to perform the assessment work to the Secretary by August 31, 1993. Id. The Act provides for exemption

from rental fees for claimants holding 10 or fewer claims, the small miner exemption. 106 Stat. 1378-79; 43 C.F.R. §§ 3833.1-5(d), 3833.1-6, 3833.1-7 (1993). An applicant for a small miner exemption is required to file a separate certificate by August 31, 1993, for the 1993 and 1994 assessment years. 43 C.F.R. § 3833.1-7(d) (1993).

The two regulations cited by the BLM Decision here under review list qualifications that must be met by persons seeking to qualify for waivers of fee payments, 43 C.F.R. § 3833.1-6 (1993), and prescribe filing requirements for documents relating to fee waiver certification, 43 C.F.R. § 3833.1-7 (1993). The BLM Decision does not specify which requirements were not met by Sinnott; the case file does, however, contain correspondence between BLM and Sinnott concerning whether he owned the claim and asking for information concerning the existence of a notice or plan of operations on his claim during the 1993 and 1994 assessment years. Also in the case file, is a memorandum dated November 7, 1994, that states Sinnott's claim was "declared abandoned and void because the claimant failed to have an approved plan of operations or a notice when he filed for the small miner's exemption for the 1993 and 1994 assessment years." This memorandum records telephonic communications between BLM and Sinnott on November 4 and 7, 1994, during which Sinnott inquired about the basis for BLM's October 25 Decision and was informed that the reason his claim was declared abandoned and void concerned a notice or mining plan perceived by BLM to be defective, rather than the form of his exemption certificate, as indicated by BLM's Decision.

Sinnott contends that he has complied with all provisions of the Act and implementing regulations governing fee waiver certification and has also met all regulatory requirements governing notice and plans of operations for his claim. He states his claim is situated on land administered by the U.S. Forest Service, contains less than 10 acres of unreclaimed land, and requires no plan of operations under Forest Service regulations in effect during the 1993 and 1994 assessment years. The claim of mining claim fee exemption he filed with BLM on August 30, 1993, states:

I hereby claim the Small Miners Exemption for assessment years 1993 and 1994. I have completed the assessment work for 1993 (see attached "Affidavit of Assessment Work") and I will perform the required 1994 assessment work. I certify that I am performing exploration work under a valid notice and that I held only one claim with less than 10 acres of unreclaimed surface disturbance.

Attached to the above quoted claim of exemption is an affidavit of assessment work done on CAMC 28959 dated November 3, 1992. A deed dated August 19, 1991, transferring the claim to Sinnott appears in the case file.

[1] The claim of exemption from payment of rental for Sinnott's mining claim conforms facially to the requirements listed in 43 C.F.R. §§ 3833.1-6 and 3833.1-7. The November 1994 BLM memorandum to the file shows that the deficiency found by BLM in Sinnott's certification was a perceived failure to conform to Forest Service requirements concerning mining plans of operations, contrary to the assertion by Sinnott that he had complied with this aspect of the statutory mandate. While it was proper to inquire further about whether Sinnott had a valid notice or plan in effect for his claim during the years at issue, it was not proper to issue a decision as though no such information had been forthcoming after Sinnott had provided information concerning his activity on the claim. If, as BLM indicates in the November 1994 memorandum to the file, Sinnott was not in compliance with Forest Service regulations governing operations such as his, that fact should have been stated and explained in the decision denying his claim of exemption. The unrelated finding by BLM that Sinnott's operation was not in compliance with BLM regulations governing claims of exemption from fee payment must therefore be set aside as without foundation in the record.

In Leber Mining Co., 131 IBLA 275, 276 (1994), we dealt with a similar case in which the adequacy of a miner's notice or plan of operations on land administered by both BLM and the Forest Service was questioned. In that case, BLM was required to adjudicate whether, on the facts presented by the miner, there had been compliance with applicable regulations governing filing of mining plans. Id. at 277, 278. In this case too, BLM must adjudicate the question whether, on the facts presented by Sinnott, he complied with applicable regulations governing mining plans of operations for claims such as his on lands administered by the Forest Service in 1993 and 1994.

The BLM Decision before us on review fails to do so; neither 43 C.F.R. §§ 3833.1-6 nor 3833.1-7, the rules said by BLM to have been violated by Sinnott, provide any indication that his contention that he had a "valid notice" was not a correct conclusion, inasmuch as neither rule governs plans of operations on Forest Service lands. If Sinnott's operation was not in compliance with some Forest Service regulation governing the filing of mining plans of operations, see 36 C.F.R. Part 228, BLM must cite the regulation violated and describe the nature of the violation, see Leber Mining Co., supra, at 276, 277. Such adjudication is best handled, in the first instance, by BLM, rather than by this Board. Our decision in Leber Mining Co., supra is controlling here; we therefore return this case file to BLM for determination whether, considering the information he has furnished, Sinnott had provided a valid notice or plan of his operations in 1993 and 1994 in compliance with the Act and Forest Service regulations requiring plans of operations for unpatented mining claims.

Accordingly, 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 set aside and remanded for appropriate action by BLM.

Franklin D. Amess
Administrative Judge

I concur.

James L. Bymes
Chief Administrative Judge