

INTERIOR BOARD OF LAND APPEALS

Robert C. LeFavre

141 IBLA 310 (December 2, 1997)

Title page added by:  
[ibiadecisions.com](http://ibiadecisions.com)

ROBERT C. LeFAIVRE

IBLA 94-313

Decided December 2, 1997

Appeal from a determination of the Wyoming State Office, Bureau of Land Management, declaring certain unpatented mining claims and mill sites abandoned and void. WMC 142848-WMC 142854, WMC 204033-WMC 204040, and WMC 233531-WMC 233532.

Set aside and remanded in part; vacated and remanded in part; appeal dismissed as moot in part.

1. Mining Claims: Abandonment–Mining Claims: Rental or Claim Maintenance Fees: Generally–Notice: Generally–Regulations: Generally–Statutes

The responsibility for satisfying the requirements of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992), resided with the owners of the unpatented mining claim, mill site, or tunnel site, as Congress had mandated that, unless a claimant timely filed documents evidencing entitlement to a small miner exemption, failure to timely make the annual payment of the claim rental fee as required by the Act would conclusively constitute an abandonment of the unpatented mining claim, mill site, or tunnel site. Neither a claimant's lack of actual knowledge of the statutory requirement to either pay rental fees or submit evidence to qualify for the small miner exemption nor BLM's failure to advise the claimant of this statutory requirement excused the claimant's lack of compliance with the rental fee requirement since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

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

Where the transfer of ownership of a mining claim was effective under state law on or before Aug. 31, 1993, and a mining claimant thereafter files small miner certifications for 1993 and 1994, that claim is not properly counted against the small miner exemption's 10-claim limit for the transferor, regardless of when BLM is actually informed of the transfer.

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

Where BLM issues a decision declaring mining claims abandoned and void for failure to comply with the requirements of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992), but fails to serve a copy of that decision on the owner of the claims as shown by the Department's records, the decision is ineffective as a final determination of the status of the mining claims until such time as it is properly served on the owner of the claims.

APPEARANCES: Robert C. LeFavre, Rock Springs, Wyoming, pro se; Glenn F. Tiedt, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Robert C. LeFavre has appealed from a determination of the Wyoming State Office, Bureau of Land Management (BLM or the Bureau), dated December 21, 1993, declaring the Invisible Nos. 1 through 8 mill sites (WMC 204033-WMC 204040), and the Pumice Nos. 1 through 7 (WMC 142848-WMC 142854), the Flow Lava No. 1 (WMC 233531), and the Pumice No. 6a (WMC 233532) placer mining claims null and void for failure to comply with the rental fee requirements of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), Pub. L. No. 102-381, 106 Stat. 1378-79 (1992) and 43 C.F.R. § 3833.1-5.

In adopting the Act of October 5, 1992, supra, Congress directed 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 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. Additionally, the Act directed "[t]hat 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.

The Act further provided, subject to various conditions, for an exemption from the payment of rental fees for claimants holding 10 or fewer claims, normally referred to as the small miner exemption. Id. This exemption, by express statutory language, was only available to those who held 10 or fewer mining claims, mill or tunnel sites and required the filing of certifications by mining claimants by August 31, 1993.

On July 15, 1993, the Department promulgated regulations implementing the rental fee provisions of the Act. 58 Fed. Reg. 38186. These regulations required a claimant to pay, on or before August 31, 1993, a nonrefundable rental fee of \$100 for each mining claim, mill site, or tunnel site located on or before October 5, 1992, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental of \$200 per claim. 43 C.F.R. § 3833.1-5(b) (1993). The regulations included sections governing rental fee exemption qualifications and filing requirements. 43 C.F.R. §§ 3833.1-6, 3833.1-7 (1993). The regulations further provided, in language essentially paralleling the statutory mandate, that failure to pay the required rental fee or to timely file the required rental fee exemption documents "shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site, which shall be void." 43 C.F.R. § 3833.4(a)(2) (1993).

On July 19, 1993, in order to avail himself of the small miner exemption, LeFaivre filed 2 certifications of exemption from payment of rental fee: the first, filed for assessment year 1992-93, identified the Pumice Nos. 1 through 7, the Pumice No. 6a, and the Flow Lava No. 1 placer mining claims as the claims for which the exemption was sought, while the second, filed for assessment year 1993-94, added the Invisible Nos. 1 through 8 mill sites, noting that the mill sites were a "singular entity" exempt from assessment work. By notice dated August 2, 1993, BLM denied LeFaivre's exemption requests, stating that he did not qualify for the small miner exemption because BLM records indicated that he owned 17 claims, thus exceeding the 10-claim limit. The Bureau informed LeFaivre that, in order to qualify for the exemption, he needed to drop at least seven of his claims. The Bureau also advised LeFaivre that either all the owners of record of the claims had to sign the exemption certification forms or a

document containing the notarized signatures of all owners authorizing him, as their agent, to apply for the exemptions on their behalf had to be submitted. Any resubmitted exemption application, BLM explained, had to be filed on or before August 31, 1993.

On August 31, 1993, LeFaivre submitted four certifications of exemption from payment of rental fee. Two of the forms, one for the 1992-93 assessment year and another for the 1993-94 assessment year, identified the Pumice Nos. 1 through 7 placer mining claims as the claims for which the exemption was requested, indicated that the claims were operated under amended mine permit No. 503, issued to LeFaivre by the State of Wyoming, Department of Environmental Quality (DEQ), and certified that the requisite exploration work had been or would be performed on the claims. LeFaivre noted on these forms that, while he was the designated developer of the claims, he had transferred title to the Pumice Nos. 1 through 7 claims to his daughter, Jean M. LeFaivre, and he attached a copy of a deed dated August 31, 1993, documenting that transfer. <sup>1/</sup> The remaining two certifications, filed for the 1992-93 and 1993-94 assessment years, respectively, listed the Flow Lava No. 1 and the Pumice No. 6a placer mining claims as the subject claims, identified amended DEQ mine permit No. 503 as authority for the operations on the claims, and attested that the required exploration work had been or would be performed, referring parenthetically to his petition for deferral of assessment work <sup>2/</sup> and notice of intent to hold.

---

<sup>1/</sup> We must admit that it is unclear whether LeFaivre submitted a completely executed copy of this deed on Aug. 31, 1993, or merely provided BLM with a blank copy which showed no signs of completion. In any event, it is clear that no later than Nov. 1, 1993, BLM received a completed copy of the deed which showed that it had been recorded in Sweetwater County on Aug. 31, 1993. See BLM's Reply to Answer, Ex. 4. To further confuse matters, LeFaivre also submitted with his exemption applications a "Relinquishment of Mill Site Locations in Absence of Transfer of Title (Pumice Nos. 1-7)." In this document, LeFaivre purported to relinquish his eight mill sites and designated 5 acres embraced by those sites as the LeFaivre Millsite. LeFaivre asserted, however, that this relinquishment was only to be effective if the transfer of title to the Pumice Nos. 1 through 7 claims was held to be insufficient to qualify him for the small miner exemption.

<sup>2/</sup> The Bureau denied LeFaivre's petition for deferment of annual assessment work on Aug. 16, 1993. The Board affirmed that denial by Order dated Nov. 9, 1993 (IBLA 93-660). In so doing, we held that since there was no requirement that assessment work be performed for the benefit of mill sites, it was neither possible nor necessary to obtain a deferment of assessment work for mill sites; that LeFaivre could not obtain a deferment of assessment work for the Flow Lava No. 1 placer mining claim since that claim had been invalidated by an administrative law judge's decision, the effect of which the Board had refused to stay pending LeFaivre's appeal of that decision (IBLA 93-353); and that LeFaivre had failed to demonstrate the existence of any legal impediment preventing the performance of the assessment work on the remaining placer claims by denying him access to those claims.

LeFaivre submitted a quitclaim deed from one of the original locators of the Flow Lava No. 1 and Pumice No. 6a claims transferring her interest in the two claims to the remaining locators and notarized powers of attorney from the remaining owners of the Flow Lava No. 1 and Pumice No. 6a claims, including Jean M. LeFaivre, authorizing him to act on their behalves with respect to those two claims only.

In its December 21, 1993, determination, BLM concluded that LeFaivre did not qualify for the small miner exemption because he held 9 mining claims and 8 mill sites. The Bureau observed that, since mill sites counted towards the 10-claim limit, LeFaivre's ownership of a total of 17 claims and mill sites precluded him from qualifying for the exemption. The Bureau rejected the title transfer of the Pumice Nos. 1 through 7 claims because those claims had been declared abandoned and void and refused to accept LeFaivre's conditional relinquishment of the mill sites on the ground that alterations of the boundaries of mill sites could only be done through amending or relocating existing mill sites, not through relinquishment documents. The Bureau also found LeFaivre's exemption certification forms deficient because he had no approved plan of operation or notice on file with BLM, stating that exemptions could not be granted based on the DEQ mining permit since his claims were not located on privately-owned surface. Because LeFaivre had neither paid the required rental by the August 31, 1993, deadline nor established his qualifications for the small miner exemption, BLM declared all 17 mining claims and mill sites abandoned and void by operation of law. The Bureau also noted that LeFaivre could relocate his void claims, subject to valid intervening rights.

In his various submissions on appeal, LeFaivre addresses numerous matters. <sup>3/</sup> LeFaivre challenges the Act and regulations both generally and as specifically applied to him. He contends that the Act is an unconstitutional ex post facto law which retroactively denies him established property rights in his mining claims and mill sites. He objects to the requirement that rental fees be paid to hold mill sites, asserting that since mill sites are not dependent on assessment work, they cannot be subject to the payment of rental in lieu of such assessment work. He further avers that mill sites should neither be included in the 10-claim limit for the small miner exemption nor excluded from the benefit of that exemption from the rental payment requirements, asserting that the regulatory inclusion of mill sites in the claim count and exclusion of mill sites from the rental fee exemption conflict with the Act and other mining laws.

LeFaivre strenuously objects to BLM's denial of his request for a small miner exemption. He maintains that his status as a small miner under applicable Wyoming law conclusively establishes that he is entitled to that exemption. In any event, he insists that he fully qualifies for the exemption. He points out that he holds less than 10 claims even if BLM improperly counts his mill sites since he timely transferred title to the Pumice

---

<sup>3/</sup> Many of the issues raised have no relevance to the questions presented by this appeal, and we will limit our discussion to only those concerns pertinent to our resolution of the matters properly raised herein.

Nos. 1 through 7 placer claims, citing BLM Instruction Memorandum No. 94-220 as authority for accepting post-August 31, 1993, evidence of a transfer of interest in effect on or before the August 31 deadline. <sup>4/</sup> He submits that his DEQ mine permit should be recognized in lieu of a plan of operations or notice since it was issued in accordance with a cooperative agreement entered into by Wyoming and BLM under the authority of 43 C.F.R. § 3809.3-1. LeFaivre notes that he has timely filed his 1993 assessment year affidavit of annual assessment work for all the mining claims listed in his exemption requests. According to LeFaivre, the inclusion of his mill sites, which, he contends, form an integral part of his revenue generation plans, in the development authorized by his DEQ mine permit mandates that the mill sites also be exempt from the rental payment requirements. He further asserts that he had no subjective intent to abandon the claims and mill sites and that BLM failed to properly notify him of any deficiencies in his small miner application prior to declaring his mining claims and mill sites abandoned and void. <sup>5/</sup>

For its part, BLM maintains that its decision was proper under the Act, the constitutionality of which, BLM notes, the Board lacks the authority to adjudicate. Nevertheless, BLM disputes LeFaivre's objections to the validity of the Act, observing that the required rental fees are prospective, not retroactive, and that, since title to the lands embraced by LeFaivre's mining claims and mill sites is vested in the United States, any property rights he may have in such claims and mill sites have been granted by Congress and are subject to statutory requirements established by Congress. The Bureau counters LeFaivre's contention that mill sites are exempt from the rental fee payment by citing the statutory language explicitly directing the payment of such fees in order to hold unpatented mill sites. The Bureau argues that the small miner exemption from the rental fee requirements applies only to mining claims and that LeFaivre's failure to timely pay the statutory rental fees for his mill sites constitutes an abandonment of those sites as a matter of law.

In any event, BLM notes that LeFaivre does not qualify for the small miner exemption because he has not produced and is not producing from the claims the gross revenues required under the Act nor has he performed the

---

<sup>4/</sup> Although LeFaivre states that the transfer of title to the Pumice Nos. 1 through 7 claims is subject to the need to do so in order to meet the claim count limit, see Final Reasons for Appeal at 8, the deed documenting the transfer is unconditional.

<sup>5/</sup> Although LeFaivre has requested a hearing in this matter, we find that he has failed to present a material issue of fact requiring resolution through the introduction of testimony and other evidence not readily available through the ordinary appeal procedure. See Felix F. Vigil, 129 IBLA 345, 347 (1994), and authorities cited. Since no oral testimony is required and this appeal can be resolved relying on documentary submissions, we deny LeFaivre's hearing request. Id.

required exploration or assessment work. Simply holding a valid state mining permit, BLM submits, does not suffice if the claimant is not actually mining his claims. According to BLM, LeFaivre's failure to fulfill the other qualifications for the small miner exemption renders irrelevant the actual number of claims he owned as of August 31, 1993. Since LeFaivre neither paid the rental fees nor qualified for the small miner exemption from those fees by the August 31, 1993, deadline, BLM maintains that his mining claims were properly declared abandoned and void by operation of law. Accordingly, BLM seeks a decision affirming its actions in all respects.

At the outset we note that, subsequent to the filing of the instant appeal, the Board affirmed a decision of Administrative Law Judge Ramon M. Child declaring the Flow Lava No. 1 placer mining claim null and void, see United States v. LeFaivre, 138 IBLA 60 (1997), as well as a separate decision of Judge Child declaring the Invisible Nos. 1 through 8 dependent mill sites null and void. See United States v. LeFaivre, 138 IBLA 289 (1997). These claims are, thus, null and void regardless of the outcome of the present appeal. They do have a relevance, however, in determining LeFaivre's compliance with the rental and filing provisions of the 1992 Act.

To the extent that the mill sites are concerned, inasmuch as the Board had stayed the effectiveness of Judge Child's decision during the pendency of that appeal, see Order of June 25, 1993, IBLA 93-353, et al., they were subject to the provisions of the 1992 Act during the period at issue. On the other hand, since the Board had declined to stay the effect of the null and void determination as it related to the Flow Lava No. 1 mining claim, it is arguable whether or not LeFaivre was required to count this claim against the 10-claim limitation governing the availability of the small miner exemption with respect to his 1993 filings. We need not reach this question, however, since, as explained below, the status of the Flow Lava No. 1 as of August 31, 1993, is not critical to the issues raised in the present appeal.

[1] Certain legal principles are generally applicable to adjudications under the 1992 Act. As we have noted on a number of occasions, the Department has no authority to excuse lack of compliance with the rental fee requirement, to extend the time for compliance, or to afford any relief from the statutory consequences, regardless of any mitigating circumstances. See, e.g., Maurine M. Carpenter, 136 IBLA 266 (1996); Chester Wittwer, 136 IBLA 96 (1996). If a mining claimant did not timely request and qualify for a small miner exemption from the rental fee requirement in conformity with the statute and regulations, the failure to submit the fee gave rise to a conclusive presumption of abandonment. See William B. Wray, 129 IBLA 173, 175 (1994); Lee H. and Goldie E. Rice, 128 IBLA 137, 141 (1994). Moreover, while the Board is not an appropriate forum to consider the constitutionality of Federal legislation (see Idaho Mining and

Development Co., 132 IBLA 29, 34 (1995); Amerada Hess Corp., 128 IBLA 94, 98 (1993)), we have noted that a constitutional challenge to the imposition of rental fees was rejected by the United States Court of Appeals for the Federal Circuit in Kunkes v. United States, 78 F.3d 1549, cert. denied, 117 S. Ct. 74 (1996).

The initial question to be determined is whether or not LeFaivre violated the numerical limitation on the number of claims which an individual seeking the small miner exemption may hold. The Bureau determined, inter alia, that LeFaivre held a total of 17 claims and, accordingly, held that he could not avail himself of the small miner exemption. In this aspect of its decision, we believe that BLM erred. <sup>6/</sup>

[2] In a number of recent decisions, this Board has examined questions arising with respect to how an individual claimant who held more than 10 claims in the period immediately preceding August 31, 1993, properly divested himself of claims in excess of 10 so as to avail himself of the small miner exemption. In The Big Blue Sapphire Co., 138 IBLA 1 (1997), we noted that

so long as a claimant who sought a small miner exemption can establish that, with respect to any claim 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.

Id. at 5. See also Little Bear Mining & Exploration, Inc., 138 IBLA 304 (1997); William J. Montgomery, 138 IBLA 31 (1997).

While the above decisions dealt with the assertion by claimants that they had abandoned excess claims, the principle is equally applicable to cases in which mining claimants contend that they transferred their interest in excess claims to others. With respect to the present appeal, LeFaivre has established that, as of August 31, 1993, he had transferred ownership of the Pumice Nos. 1 through 7 to his daughter, Jean M. LeFaivre. As a result, neither Robert LeFaivre nor Jean LeFaivre held in excess of 10 claims at the time the certification was submitted, and to the extent that BLM purported to reject the two small miner certifications submitted for these claims on the basis that Robert LeFaivre held an interest in more than 10 claims, its decision cannot be sustained.

But, notwithstanding the fact that neither Robert nor Jean LeFaivre could be charged with holding claims in excess of the statutory minimum of

---

<sup>6/</sup> We note that BLM has, itself, subsequently recognized that its decision was wrong to the extent that it refused to recognize the transfer of the Pumice Nos. 1 through 7 placer mining claims from Robert LeFaivre to Jean M. LeFaivre. See BLM's Reply to Answer at 2-3.

10, 7/ this does not end the matter. As noted above, BLM made numerous other challenges to LeFaivre's entitlement to a small miner exemption. We will, therefore, examine the respective positions of Robert LeFaivre and his daughter Jean, seriatim.

As we noted above, as of August 31, 1993, Robert LeFaivre asserted ownership to a total of 10 claims. We note that nine of these claims (the Invisible Nos. 1 through 8 mill site claims and the Flow Lava No. 1 placer mining claim) have already been held to be null and void, independent of any consideration of compliance with the 1992 Act. To the extent, therefore, that he has appealed from a determination that these nine claims are abandoned and void, his appeal is dismissed as moot.

The sole remaining issue relating to Robert LeFaivre's claims involves the Pumice No. 6a placer mining claim. Insofar as the Pumice No. 6a placer mining claim is concerned, we note that, although BLM's decision found that LeFaivre's DEQ mining permit did not satisfy the requirement that the claims be under a notice or approved plan of operations, that mine permit apparently was issued pursuant to a cooperative agreement between Wyoming and BLM authorized by 43 C.F.R. § 3809.3-1, thus arguably falling within the parameters of 43 C.F.R. § 3833.1-6(a)(4)(i) as a "Notice or approved Plan of Operations pursuant to subparts 3802 or 3809 of this title." Furthermore, despite LeFaivre's December 22, 1993, filing of an affidavit of annual assessment work for the 1992-93 assessment year, the record does not establish whether LeFaivre has been performing the required active and diligent exploration work on the Pumice No. 6a claim. Accordingly, we set aside the determination that the Pumice No. 6a placer mining claim was abandoned and void and remand the case to BLM for a determination of the current status of LeFaivre's DEQ mining permit, that permit's adequacy as a valid notice or approved plan of operations under the Act and regulations, and the sufficiency of LeFaivre's work on the claim to fulfill the exploration component of the small miner exemption qualifications with respect to the Pumice No. 6a. See Edna Jarvis, 128 IBLA 143, 145 (1994).

[3] Turning to the issue of the validity of the Pumice Nos. 1 through 7 placer mining claims, we note that it is not possible for us to definitively resolve the issues raised with respect thereto at the present time.

---

7/ Thus, Jean LeFaivre would be charged with owning an interest in eight claims, the Pumice Nos. 1 through 7 and the Pumice No. 6a placer mining claims, while Robert LeFaivre would have an interest in nine claims, the Invisible Nos. 1 through 8 mill site claims and the Pumice No. 6a placer mining claim. Even if Robert LeFaivre could properly be charged with ownership of the Flow Lava No. 1 mining claim, notwithstanding the determination by Judge Child that it was null and void and this Board's refusal to stay the effectiveness of that determination, this claim would not be enough to put LeFaivre above the 10-claim limit.

We held above that Robert LeFaivre transferred title to these claims to Jean LeFaivre on August 31, 1993. The Bureau was duly informed of this fact, no later than November 1, 1993. See note 1, supra. Yet, when BLM issued its determination on December 21, 1993, which is the subject of the instant appeal, it served only Robert LeFaivre. There is no indication in the record that Jean LeFaivre, the owner of these mining claims under the August 31, 1993, deed, was ever served with this decision. While it is true that transfer of these claims may not have been officially noted on the records because the amount of money submitted (\$5) was adequate to record the transfer of only a single claim, see 43 C.F.R. § 3833.1-4(c) (1993), the applicable regulation made this a curable defect. See 43 C.F.R. § 2322.1-3(b)(2) (1993). Not only did BLM fail to afford Jean LeFaivre an opportunity to submit the additional money, the deed showing her as owner of the Pumice Nos. 1 through 7 placer mining claims was still in the record at the date of issuance. Notwithstanding the provisions of 43 C.F.R. § 3833.5(d) (1993), we hold that, under the facts of this case, BLM was required to serve its December 21, 1993, determination on Jean LeFaivre. Cf. Patsy A. Brings, 98 IBLA 385, 388-90 (1987) (failure to serve a contest complaint on owner of mining claim nullifies the contest).

While BLM did serve the decision on Robert LeFaivre and he could, as a theoretical matter, pursuant to 43 C.F.R. § 1.3(b)(3)(i), represent Jean LeFaivre's interest, there is nothing in the record which indicates that he had authority to act on her behalf with respect to the Pumice Nos. 1 through 7 placer mining claims. Indeed, the evidence is to the contrary. Thus, while Robert LeFaivre filed with BLM a power of attorney from Jean LeFaivre, this power was expressly limited to only the Flow Lava No. 1 and the Pumice No. 6a placer mining claims. We must conclude from the foregoing that Jean LeFaivre was not properly served with a copy of the December 21, 1993, determination and that determination, therefore, does not constitute a proper adjudication of her interests. We therefore vacate so much of the December 21, 1993, determination as purported to determine that the Pumice Nos. 1 through 7 placer mining claims were abandoned and void. This action is taken without prejudice to the reissuance of a future decision properly addressed to Jean LeFaivre.

In summary, we hold: (1) to the extent that Robert LeFaivre has challenged the determination that the Flow Lava No. 1 placer mining claim and the Invisible Nos. 1 through 8 mill sites are abandoned and void, his appeal is dismissed on the grounds of mootness; (2) to the extent that BLM held that the Pumice No. 6a mining claim is abandoned and void, the decision is set aside and the case remanded for further consideration; and (3) with respect to that part of the decision which held that the Pumice Nos. 1 through 7 placer mining claims are abandoned and void, the decision is vacated on the grounds that it was not served on the proper party in interest.

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 set aside and remanded in part, and vacated and remanded in part, and the appeal is dismissed as moot in part as explained above.

---

James L. Burski  
Administrative Judge

I concur.

---

James L. Bymes  
Chief Administrative Judge