

INTERIOR BOARD OF LAND APPEALS

Paul F. Swartwout

142 IBLA 82 (December 30, 1997)

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PAUL F. SWARTWOUT

IBLA 95-207

Decided December 30, 1997

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring nine mining claims abandoned and void. IMC 129414 et al.

Affirmed.

1. Mining Claims: Abandonment–Mining Claims: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold–Mining Claims: Rental or Claim Maintenance Fees: Generally–Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

When a small miner timely filed a certification of exemption from the payment of rental fees for the 1993 assessment year covering nine mining claims and thereafter, on or before Dec. 30, 1993, filed with BLM a notice of intention to hold those claims, those claims are properly declared abandoned and void because of a failure to file an affidavit of assessment work for the 1993 assessment year with BLM on or before Dec. 30, 1993. Under 43 C.F.R. § 3833.1-7(a) (1993), one seeking an exemption from the payment of rental fees was required to file an affidavit of assessment work with the proper BLM State Office on or before Dec. 30, 1993.

APPEARANCES: Roy L. Fine, Esq., Neenah, Wisconsin, for Paul F. Swartwout.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

On December 16, 1994, the Idaho State Office, Bureau of Land Management (BLM), declared the Rainbow A & B, Rainbow 5-7, and the Rainbow #1-#4 (IMC 129414-IMC 129415, IMC 129416-IMC 129418, and IMC 145387-IMC 145390) unpatented mining claims abandoned and void by operation of law because an affidavit of assessment work for the 1993 assessment year was not timely filed with BLM. It also rejected and returned an affidavit of assessment work for the 1994 assessment year. Paul F. Swartwout filed a timely appeal.

On October 5, 1992, Congress passed the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (the Act), Pub. L. No. 102-381, 106 Stat. 1378-79 (1992), a provision of which 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.

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 C.F.R. § 3833.1-5(b) (1993). Swartwout's claims were all located prior to October 5, 1992.

The only exemption provided from this annual rental requirement was the so-called small miner exemption, available to claimants holding 10 or fewer mining claims, mill sites, or tunnel sites on Federal lands who meet all the conditions set forth in 43 C.F.R. § 3833.1-6(a) (1993). William B. Wray, 129 IBLA 173 (1994). The regulations expressly provided that a small miner, who met the various conditions of the regulations, could "perform the assessment work required under 30 U.S.C. 28-28e and record it pursuant to section 314(a) of FLPMA and § 3833.2 in lieu of paying the rental fee." 43 C.F.R. § 3833.1-6 (1993). The regulations further directed: "The affidavit of assessment work performed by a small miner claiming a rental fee exemption shall be filed with the proper State Office of the BLM pursuant to [43 C.F.R.] § 3833.2 and meet the requirements of [43 C.F.R.] § 3833.2-4." 43 C.F.R. § 3833.1-7(a) (1993).

On August 31, 1993, Swartwout filed with BLM separate certificates of exemption from payment of the rental fee covering the nine claims in

question for the 1993 and 1994 assessment years. On December 20, 1993, Swartwout filed with BLM a Notice of Intention to Hold those claims.

Swartwout does not deny that he failed to file timely an affidavit of assessment work for 1993. In the statement of reasons, Swartwout's counsel asserts that he was advised by a BLM official on December 10, 1993, that "an Affidavit of Annual Assessment Work in conjunction with a Maintenance Fee Waiver Certification, or * * * a Notice of Intention to Hold," would suffice to preserve Swartwout's claims.

Counsel asserts that Swartwout failed to file the 1993 affidavit of assessment work because he was confused about the regulations which became effective on August 30, 1993, and "because of the erroneous interpretation of those regulations given to him by the [BLM]." In addition, counsel argues that the regulations, before they were amended in 1993, "contemplated the filing in 1993 of an Intention to Hold," and for this reason the claims were preserved.

In this case, instead of paying the rental fee, Swartwout chose the alternative of claiming the small miner exemption. At that time, the regulations provided, at 43 C.F.R. § 3833.1-6:

A small miner may, under certain conditions described in this section and in § 3833.1-7, perform the assessment work required under 30 U.S.C. 28-28e and record it pursuant to section 314(a) of FLPMA and § 3833.2 in lieu of paying the rental fee. Assessment work shall be the nature described in paragraph (b) of this section.

Having chosen the small miner alternative, Swartwout was required to "perform the assessment work" and "record it" pursuant to section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1994). The regulations at 43 C.F.R. § 3833.1-7(a) (1993), expressly provided that "[t]he affidavit of assessment work performed by a small miner claiming a rental fee exemption shall be filed with the proper BLM State Office pursuant to [43 C.F.R.] § 3833.2 and meet the requirements of [43 C.F.R.] § 3833.2-4." The regulation at 43 C.F.R. § 3833.2-4 sets forth the requirements for the filing of annual assessment work.

Thus, for the assessment year ending on noon September 1, 1993, Swartwout was required to perform assessment work and to file an affidavit of assessment work with BLM "on or before December 30, 1993." See 43 C.F.R. § 3833.1-7(b)(1) (1993). In the absence of this filing, Swartwout's claims were properly declared abandoned and void. See 43 C.F.R. § 3833.4(a)(1) (1993); Arlin D. Walkup, 137 IBLA 259, 260 (1996); Melvin J. Young, 135 IBLA 336, 338 (1996).

Swartwout contends that he was confused about the regulations and that BLM provided erroneous advice. Neither of these circumstances provides a basis for excusing the failure to comply with the law, since all

persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Arlin D. Walkup, *supra*; Lester W. Pullen, 131 IBLA 271, 273 (1994).

It is well settled that the United States is not bound by the acts of its employees when they "cause to be done what the law does not sanction or permit." 43 C.F.R. § 1810.3(b). Therefore, assuming counsel for Swartwout received erroneous advice from a BLM employee, that fact does not support overturning BLM's Decision. Reliance upon information or opinion of a BLM employee "cannot operate to vest any right not authorized by law." 43 C.F.R. § 1810.3(c); Walter C. Eager, 138 IBLA 45, 48 (1997); Jack J. Grynberg, 114 IBLA 225, 229 (1990).

The Department has no authority to excuse lack of compliance with the rental fee requirements, to extend the time for compliance, or to afford any relief from the statutory consequences, regardless of any mitigating circumstances. Hubert A. Riebold, 137 IBLA 255, 257 (1996), and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Land appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, BLM's determination is affirmed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur.

James L. Burski
Administrative Judge