

INTERIOR BOARD OF LAND APPEALS

E.C. Yegen

145 IBLA 300 (September 10, 1998)

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Appeal from a decision of the Wyoming State Office, Bureau of Land Management, declaring an oil placer mining claim forfeited by operation of law for failure to file the maintenance fee or waiver certification. WMC 75790.

Affirmed as modified.

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

Oil placer mining claims located pursuant to the Petroleum and Mineral Oils Act of Feb. 11, 1897, c. 216, 29 Stat. 526, and preserved by section 37 of the Mineral Leasing Act of 1920, 30 U.S.C. § 193 (1994), are subject to the maintenance fee required by section 10101 of the Omnibus Budget Reconciliation Act of Aug. 10, 1993, 30 U.S.C. § 28f(a) (1994).

2. Mining Claims: Rental or Claim Maintenance Fees: Generally–Statutory Construction: Generally

The fact that Subtitle B of the Omnibus Budget Reconciliation Act of Aug. 10, 1993, is titled, "Hardrock Mining Claim Maintenance Fee," is not controlling as to its coverage. Reliance upon headings to determine the meaning of a statute is not a favored method of statutory construction. They cannot limit the plain meaning of the text and may be utilized to interpret a statute, if at all, only where the statute is ambiguous. The owner of an oil placer mining claim is required to pay maintenance fees for the claim.

APPEARANCES: E.C. Yegen, Casper, Wyoming, pro se.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

E.C. Yegen has appealed from a May 30, 1995, decision of the Wyoming State Office, Bureau of Land Management (BLM), declaring the Belle oil placer mining claim (WMC 75790) abandoned and void because no \$100 per claim maintenance fee or waiver certification was filed for the claim on or before August 31, 1994, as required by section 10101 of the Omnibus

Budget Reconciliation Act of August 10, 1993 (the Maintenance Fee Act), 30 U.S.C. § 28f(a) (1994), and 43 C.F.R. §§ 3833.1-5, 3833.1-6, and 3833.1-7.

Under 30 U.S.C. § 28f(a) (1994), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of \$100 per claim on or before August 31 of each year for the years 1994 through 1998. Under 30 U.S.C. § 28i (1994), failure to pay the claim maintenance fee "shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law." The statute gives the Secretary discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof, on public lands and has performed assessment work required under the Mining Law of 1872. 30 U.S.C. § 28f(d)(1) (1994). BLM has implemented this statute with a regulation requiring a claimant to file "proof of the \* \* \* conditions for exemption \* \* \* with the proper BLM office by the August 31 immediately preceding the assessment year for which the waiver is sought." 43 C.F.R. § 3833.1-7(d)(2).

On appeal, Yegen states that claim in question is an oil placer claim which was filed and recorded in Natrona County, Wyoming, on December 28, 1908, that a well was drilled on the claim on or about 1917, and that oil has been produced from the well on and off for some 70 years. He alleges that it would be extremely costly to plug and abandon the well at this time. He argues that because the Maintenance Fee Act is titled "Hardrock Mining Claim Maintenance Fee," his claim is not covered by it. <sup>1/</sup>

[1] In Conoco, Inc., 58 IBLA 390, 88 I.D. 918 (1981), the Board concluded that oil placer mining claims located pursuant to the Petroleum and Mineral Oils Act of February 11, 1897, c. 216, 29 Stat. 526, and preserved by section 37 of the Mineral Leasing Act of 1920, 30 U.S.C. § 193 (Supp. II 1978), were subject to the recordation requirements of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). At the time the Board issued its decision in Conoco the regulations defined an unpatented mining claim as "a lode mining claim or a placer mining claim located under the General Mining Law of 1872, as amended (30 U.S.C. 21-54)," for which a patent had not been issued. 43 C.F.R. § 3833.0-5(b) (1981). In 1994, the regulations included the same definition for an unpatented mining claim. 43 C.F.R. § 3833.0-5(b) (1994).

The purpose of the Maintenance Fee Act was to compel owners of mining claims, mill sites, or tunnel sites to pay a maintenance fee for those claims or sites in lieu of doing the assessment work required by the General Mining Law and making the annual filings required by section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1994). Since the owners of oil placer claims had to record their claims and make annual FLPMA filings,

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<sup>1/</sup> In the Maintenance Fee Act, the maintenance fee provisions are located in Subtitle B, designated "Hardrock Mining Claim Maintenance Fee." Pub. L. No. 103-66, 107 Stat. 406 (1993).

it follows that those same owners would be required to pay the maintenance fees established by the Maintenance Fee Act.

A prior statute, the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Rental Fee Act), Pub. L. No. 102-381, 106 Stat. 1378-79 (1992), imposed a similar requirement, providing that owners of mining claims, mill sites, or tunnel sites had to pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993, for each unpatented mining claim, mill site, or tunnel site, to hold such claim or site for the assessment year ending at noon on September 1, 1993. The Rental Fee 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.

The case record shows that Yegen submitted rental fees to BLM for the claim in question on August 24, 1993, in satisfaction of the rental fee requirement established by the Rental Fee Act.

[2] Yegen attempts to escape the mandate of the Maintenance Fee Act by pointing to the heading of Subtitle B of the Maintenance Fee Act as justification for not filing. However, as the court stated in Scarborough v. Office of Personnel Management, 723 F.2d 801, 811 (11th Cir. 1984), "reliance upon headings to determine the meaning of a statute is not a favored method of statutory construction. Section headings cannot limit the plain meaning of the text and may be utilized to interpret a statute, if at all, only where the statute is ambiguous." Thus, the fact that Subtitle B reads, "Hardrock Mining Claim Maintenance Fee," is not controlling. Yegen was required to submit maintenance fees for the claim in question on or before August 31, 1994. He failed to do so.

Although we sympathize with Yegen in the loss of his claim, even where extenuating circumstances are asserted, BLM and this Board are without authority to excuse lack of compliance with the requirements of the Maintenance Fee Act, to extend the time for compliance, or to afford any relief from the statutory consequences. Richard W. Cahoon Family Limited Partnership, 139 IBLA 323, 326 (1997); Paul W. Tobeler, 131 IBLA 245, 249 (1994). In the absence of the payment of the maintenance fee or timely filing of a waiver certificate, the claim is properly declared forfeited and void. Harlow Corp., 135 IBLA 382, 385 (1996); Alamo Ranch Co., 135 IBLA 61, 76 (1996). 2/

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2/ BLM declared the claim abandoned and void. However, under 43 C.F.R. § 3833.4(a)(2), the failure to pay the maintenance fee or file the waiver certification within the time prescribed does not constitute an abandonment of the claim; instead, such a failure "shall be deemed conclusively to constitute a forfeiture" of the claim. Therefore, under the Act and implementing regulation the claim in question is deemed forfeited, and BLM's decision is modified accordingly.

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 affirmed as modified.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur.

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T. Britt Price  
Administrative Judge