

LEE H. AND GOLDIE E. RICE

IBLA 94-68

Decided January 7, 1993

Appeal from a decision of the Arizona State Office, Bureau of Land Management, denying a small miner exemption from the payment of rental fees for assessment year 1992-93 and declaring an exemption request for the 1993-94 assessment year moot. A MC 71962-64, A MC 71966-67, A MC 71970.

Decision affirmed; mining claims deemed abandoned and void; petition for stay denied as moot.

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

In order to qualify for a small miner exemption under the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1378-79 (1992), and 43 CFR 3833.1-6(a) (58 FR 38199 (July 15, 1993)), a claimant must hold 10 or fewer mining claims, millsites, and tunnel sites on Federal lands. Where BLM records disclosed that on Aug. 31, 1993, a mining claimant seeking a small miner exemption held in excess of 10 mining claims on such lands, and where on appeal the claimant failed to provide any evidence to show otherwise, BLM's decision denying the exemption was properly affirmed.

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

Responsibility for satisfying the rental fee requirement of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1378-79 (1992), resides with the owner of the unpatented mining claim, millsite or tunnel site, as Congress has mandated that failure to make the annual payment of the claim rental fee as required by the Act shall conclusively constitute an abandonment of the unpatented mining claim, millsite or tunnel site by the claimant. In the absence of a small miner exemption, an unpatented mining claim is deemed abandoned and void when there is no evidence of timely payment of the claim rental fee.

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

The Department is without authority to excuse lack of compliance with the rental fee requirement of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1378-79 (1992), to extend the time for compliance, or to afford any relief from the consequences provided in that Act. Congress did not provide for a waiver of the requirement that for each unpatented mining claim, millsite or tunnel site on Federally owned lands, each claimant shall, except as provided by the Act, pay a claim rental fee on or before Aug. 31, 1993.

APPEARANCES: Lee H. and Goldie E. Rice, Deming, New Mexico, pro sese.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Lee H. Rice and Goldie E. Rice have appealed from an October 6, 1993, decision, of the Chief, Branch of Mining Law Administration, Arizona State Office, Bureau of Land Management (BLM), denying a small miner exemption from the payment of rental fees for assessment year 1992-93 and declaring the exemption request for assessment year 1993-94 moot. Appellants have requested a stay of BLM's decision pursuant to 43 CFR 4.21(a) (58 FR 4942-43 (Jan. 19, 1993)).

On August 30, 1993, appellants filed two forms with BLM, each entitled "Certification of Exemption from Payment of Rental Fee." One sought exemption from the payment of rental fees for six mining claims (A MC 71962-64, A MC 71966-67, A MC 71970) in the Coronado National Forest, Cochise County, Arizona, for assessment year 1992-93, while the other requested exemption for the same claims for assessment year 1993-94. BLM denied appellants' request for an exemption for assessment year 1992-93 because it concluded that appellants owned more than 10 mining claims, millsite and tunnel sites on August 31, 1993. BLM noted in its decision: "Each owns 16 mining claims in Arizona." Without an approved exemption for assessment year 1992-93, BLM concluded that the exemption request for assessment year 1993-94 was moot.

On October 5, 1992, Congress passed the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), P.L. 102-381, 106 Stat. 1374. A provision of that Act relating to mining established that:

[F]or 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 governing 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. The Act further provided, under certain conditions, for an exemption from the payment of the rental fees for claimants holding 10 or fewer claims, millsites or tunnel sites, the so-called small miner exemption. Id.

On July 15, 1993, the Department promulgated regulations to implement the rental fee provision of the Act. 58 FR 38186. Those regulations include a section governing rental fee exemption qualifications, 43 CFR 3833.1-6(a) (58 FR 38199 (July 15, 1993)), which substantially tracks the statutory language and sets forth various conditions, all of which must be met in order to qualify for the exemption. 1/ The regulation provides, in relevant part:

(1) The claimant shall hold 10 or fewer mining claims, mill sites, and tunnel sites, on Federal lands in the United States. For purposes of determining the small miner exemption, oil shale claims will not be counted toward the 10-claim limitation for the small miner exemption to the \$100 rental fee. A claimant who owns 10 or fewer claims, mill sites, and tunnel sites, and otherwise meets the requirements of this section, is not precluded from paying the rental fee in addition to filing for a small miner exemption.

(2) Mining claims held by a husband and wife, either jointly or individually, or their children under the age of discretion, shall be counted toward the 10-claim limit.

(3) Mining claims held in co-ownership, or by an association of locators, by a partnership, or by a corporation, shall be counted toward the 10-claim limit for claimants that have an interest in these entities.

The case record forwarded by BLM contains computer-generated information showing that at the time appellants (husband and wife) filed their forms for seeking a small miner exemption, they were co-owners of 16 unpatented mining claims on Federally owned land in the State of Arizona (A MC 71943-50, A MC 7162-64, A MC 71966, A MC 71967, A MC 71970, A MC 91601, and A MC 315785). Appellants have not disputed that information. Rather,

1/ The regulations also contain a section, 43 CFR 3833.1-7, governing the filing requirements for rental fee exemptions (58 FR 38200 (July 15, 1993)).

appellants allege that "[t]here was no intent or bad faith on the part of the appellants not to comply fully" with the Act and regulations (Statement of Reasons (SOR) at 1). Appellants contend that as a result of insufficient time "to procure the proper documents or file properly," they "lost all their claims in Arizona" (SOR at 4). They allege that "[t]ragic incidents occurring this past year pertaining to Rices' loss of other claims and property were a major contributing factor" (SOR at 1). The "tragic incidents" referred to by appellants relate to their removal by the Federal Government from other unpatented mining claims upon which they had made their home for many years.

[1] The issue in this case is whether BLM properly denied appellants' certification of exemption for assessment year 1992-93. Since the record evidence, unrebutted by appellants, shows that they are co-owners of more than 10 unpatented mining claims in the State of Arizona, we conclude that BLM properly denied an exemption for assessment year 1992-93 and determined that without an approved exemption for 1992-93, the request for 1993-94 was moot. 2/ The effect of denial is that appellants were required to pay the annual rental fee of \$100 per claim for assessment year 1992-93 on or before August 31, 1993. 3/

The arguments presented on appeal do not excuse noncompliance with the Act and regulations. Although appellants assert that they had insufficient time to gather documents to file properly, we note that they timely filed certifications of exemption and that their failure to comply with the Act and regulations in this case related directly to the fact that they held more claims than allowed to qualify for the exemption. Thus, an argument that they had insufficient time to comply is meritless. In addition, while appellants challenge the constitutionality of the Act, contending that the statute affects a taking of property without compensation, the Board

2/ BLM has stated in Instruction Memorandum No. 94-20, dated Oct. 15, 1993, entitled "Processing of \$100 Rental Fees and Small Miner Exemption Forms," that, where a claimant files an exemption certificate and the BLM records show that the claimant has more than 10 claims, it is possible to cure that defect. BLM would require the production of acceptable documentation that the claimant transferred interest in the requisite number of claims prior to Sept. 1, 1993. There has been no such showing in this case, however. In addition, BLM stated in its decision that no other criteria on the exemption certificate were adjudicated because the holding of more than 10 claims was itself disqualifying. We agree, and we find no reason to further adjudicate the certificate.

3/ 43 CFR 3833.1-6(a)(1) provides that "[a] claimant who owns 10 or fewer claims, mill sites, and tunnel sites, and otherwise meets the requirements of this section, is not precluded from paying the rental fee in addition to filing for a small miner exemption" (58 FR 38199 (July 15, 1993)). In the preamble to the regulations, BLM explained that "[s]uch a payment would ensure that the claims will not be declared void should the small miner status be denied for a particular claimant" (58 FR 38190 (July 15, 1993)).

has long held that it has no authority to declare an act of Congress unconstitutional. Amerada Hess Corp., 128 IBLA 94, 98 (1993), and cases cited therein. Such power resides with the judicial branch of Government, not the executive branch.

Responsibility for satisfying the rental fee requirement of the Act resides with the owner of the unpatented mining claim, as Congress has mandated "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). This language used by Congress is nearly identical to that found in section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1988), which provides that the failure to record the notice of location of a mining claim, millsite or tunnel site with BLM or file evidence of annual assessment work or a notice of intention to hold "shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner."

The Board has consistently held that responsibility for complying with the recordation and filing requirements of FLPMA rests with the owner of the unpatented mining claim or millsite or tunnel site, as Congress mandated that failure to file the proper documents in the proper offices within the time periods prescribed in section 314 of FLPMA would, in and of itself, cause the claim or site to be lost. The Supreme Court upheld the constitutionality of section 314 of FLPMA, concluding that a mining claim for which timely filings are not made is extinguished by operation of law notwithstanding the claimant's intent to hold the claim. United States v. Locke, 471 U.S. 84, 97 (1985). Thus, section 314 of FLPMA is self-operative, and a claim must be deemed abandoned when an annual filing is not timely received. Ptarmigan Co., 91 IBLA 113, 118 (1986), aff'd, Bolt v. United States, 994 F.2d 603 (9th Cir. 1991). Congress did not provide for waiver of the section 314 requirements, and the Board has held that the Department is without authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 196, 88 I.D. 369, 372 (1981).

[2, 3] We must assume that Congress was aware of the interpretation that this Department and the courts had given to section 314 of FLPMA and that it intended the present language under consideration to be given the same construction. Thus, there is no reason to deviate from this interpretation in this case. Accordingly, where a mining claimant fails to qualify for a small miner exemption from the rental fee requirement, failure to pay that fee in accordance with the Act and regulations results in a conclusive presumption of abandonment. In addition, the Department is without 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, and the Board may not consider special facts or provide relief in view of mitigating circumstances.

Since appellants failed to qualify for a small miner exemption, they were required to pay the required rental fee for the claims on or before August 31, 1993. There is no evidence in the record of proper payment.

Therefore, the six claims for which exemption was sought (A MC 71962-64, A MC 71966-67, A MC 71970) are properly deemed abandoned and void.

Finally, because we have resolved this appeal on its merits, appellants' petition for stay is denied as moot.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals, 43 CFR 4.1, the decision appealed from is affirmed; A MC 71962-64, A MC 71966-67, A MC 71970 are declared abandoned and void; and the petition for stay is denied as moot.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

David L. Hughes
Administrative Judge