

WILLIAM B. WRAY

IBLA 94-326

Decided April 22, 1994

Appeal from decisions of the Utah State Office, Bureau of Land Management, declaring mining claims abandoned and void for failure to pay rental fees. U MC 263800, et al.

Request for stay denied as moot; decisions affirmed.

1. 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 (Act), 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. Excepting only the small miner exemption, there is no basis for BLM to grant a request for exemption from the rental fee requirements of that Act. Where a mining claimant fails to qualify for a small miner exemption from the rental fee requirement, failure to pay the fee in accordance with the Act and regulations results in a conclusive presumption of abandonment.

APPEARANCES: William B. Wray, pro se.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

William B. Wray appeals from two decisions of the Utah State Office, Bureau of Land Management (BLM), dated February 1, 1994, declaring mining claims abandoned and void for failure to pay rental in the amount of \$100

per claim or submit a certification of exemption from payment of rental fees for the 1993 and 1994 assessment years. 1/

BLM's decisions acknowledged receipt of a copy of proof of labor/ affidavit of assessment work that Wray had filed for these claims on December 29, 1993, but held that claimants were required, on or before August 31, 1993, to pay the rental fees for each claim for both the 1993 and 1994 assessment years. 2/ Since the fees were not filed as required, BLM declared the claims abandoned and void. 3/ Wray (appellant) filed a timely notice of appeal.

Appellant requests a stay of the BLM decisions pending Board review, asserting the evident harm of losing his claims, the public interest in appropriate adjudication, and a likelihood of success on the merits due to the performance and timely filing of evidence of assessment work. In his statement of reasons in support of his appeal, he adds that he did not intend to abandon the claims, and that it was improper for the Federal Government to change the rules and effect an illegal taking of his claims.

[1] On October 5, 1992, Congress enacted the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993,

1/ One of BLM's decisions, addressed to WXW Partners, declared the following claims abandoned and void: Frisco Nos. 2-4 (UMC 229884-86), Frisco No. 6 (UMC 229888), Frisco Nos. 9-10 (UMC 229891-92), Frisco Nos. 12-13 (UMC 229894-95), Frisco Nos. 15-16 (UMC 229897-98), Frisco Nos. 18-22 (UMC 229900-04), Frisco Nos. 25-27 (UMC 229907-09), Frisco No. 29 (UMC 229911), Frisco Nos. 31-32 (UMC 229913-14), Frisco Nos. 37-38 (UMC 229919-20), Frisco Nos. 40-42 (UMC 229922-24), Frisco Nos. 44-45 (UMC 229926-27), Frisco Nos. 48-51 (UMC 229930-33), Frisco Nos. 54-56 (UMC 229936-38), Frisco Nos. 58-67 (UMC 229940-49), Frisco Nos. 69-70 (UMC 229951-52), Frisco Nos. 72-78 (UMC 229954-60), and Frisco Nos. 80-82 (UMC 263801-03).

The other decision, addressed both to Wray and WXW Partners, declared the following claims abandoned and void: Frisco No. 1 (UMC 229883), Hillside No. 1 (UMC 244467), and Frisco No. 79 (UMC 263800).

Wray submitted with his notice of appeal a notice of transfer of interest in 86 claims from WXW Partners to himself by conveyances dated Oct. 15, 1986, and Jan. 13, 1989. Wray asserts ownership in the following claims: Frisco Nos. 1-78 (UMC 229883-960), Frisco Nos. 79-82 (UMC 263800-03), and Hillside Nos. 1, 2, 5, and 8 (UMC 244467-70).

2/ The affidavit of assessment work that BLM received on Dec. 29, 1993, for the Frisco Nos. 1-82 claims and the Hillside Nos. 1, 2, 5, and 8 claims had been filed in the Beaver County, Utah, Recorder's Office on Sept. 27, 1993, by William B. Wray as owner.

3/ BLM's decisions also noted that any small miner's exemption requests for the 1993 and 1994 assessment years should have been filed on or before Aug. 31, 1993. 43 CFR 3833.1-7. It is now evident that Wray was ineligible for the exemption.

P.L. 102-381, 106 Stat. 1374 (Act). A provision of that Act relating to mining 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, also requiring payment of the \$100 rental fee on or before August 31, 1993. 106 Stat. 1378-79.

Implementing Departmental regulations require that each claimant pay a non-refundable rental fee of \$100 for each mining claim, millsite, or tunnel site for each specified assessment year for which the claimant desires to hold the claim, millsite, or tunnel site. 43 CFR 3833.1-5. Further, the regulations expressly provide that claimants who completed assessment work during the period from September 1, 1992, through October 4, 1992, must nevertheless pay the rental fee for the 1992-93 assessment year on or before August 31, 1993. Id. The only exemption provided from this annual rental requirement is available under limited circumstances to claimants holding 10 or fewer claims on Federal lands in the United States. 43 CFR 3833.1-6.

Where a mining claimant fails to qualify for a small miner exemption from the rental fee requirement, failure to pay the fee in accordance with the Act and regulations results in a conclusive presumption of abandonment. Lee H. & Goldie E. Rice, 128 IBLA 137, 141 (1994). The Department is without authority to excuse lack of compliance with the rental fee requirement of the Act, 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, such as timely filing of evidence of assessment work. Id.

On August 30, 1993, BLM received \$5,200 rental from Wray for 26 other mining claims, not included in this appeal. In his accompanying letter, Wray stated:

I am not making payment for the other claims of the Frisco and Hillside claim groups only because I am without funds available for that purpose. I am not waiving my rights to these other

claims, and I intend to file in the Beaver County (Utah) records an Affidavit of Work Done (assessment work) for the 1992/93 Assessment year for the entire group of 86 Frisco and Hillside claims."

It is evident that Wray asserts that he owns more than 10 claims, and is thus ineligible for the small miner exemption. Accordingly, the Act required him to pay the rental fees for these claims on or before August 31, 1993. There is no evidence of proper payment in the record. Therefore, in the absence of rental or exemption, BLM properly declared the listed claims abandoned and void.

Appellant argues that he did not intend to abandon the claims and he performed the necessary assessment work. He asserts that it was improper for the Federal Government to change the rules in the middle of the assessment year without giving credit for or making allowance for work already completed and plans made in reliance upon prior law.

In considering what regulations to adopt, BLM admittedly did consider (in "Alternative Two") exempting from the rental fee claimants who completed the 1993 assessment year work prior to the passage of the Act, provided that they certified that the assessment work was completed during that period. See 58 FR 12879 (Mar. 5, 1993). However, BLM did not promulgate a regulation allowing for the substitution of assessment work done between the beginning of the 1992-93 assessment year and the date of the enactment of the Act. When the final rule was adopted, the regulation explicitly provided that "[c]laimants who completed assessment work during the period from September 1, 1992, through October 4, 1992, shall pay the rental fee for the year ending September 1, 1993." 43 CFR 3833.1-5.

While appellant in effect challenges the constitutionality of the Act, contending that the statute effects a taking of property without compensation, the Board 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.

As to the Act's constitutionality, we note that the Act places responsibility for satisfying the rental fee requirement with the owner of the unpatented mining claim, as Congress 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), 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, 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).

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, there is no other basis for exempting the claimant from the requirements of the Act. See Lee H. & Goldie E. Rice, 128 IBLA at 141-42.

The economic hardship imposed upon holders of mining claims by this legislation has been acknowledged by BLM, which has stated:

Many comments stated that most small miners will not be able to afford the fee or that the fee would have a depressing effect on the mining industry and western economies generally. The rule cannot be amended based on these possible economic effects of the fee, because it has been required by Act of Congress.

58 FR 38186 (July 15, 1993). We agree with this assessment.

Review of appellant's request for a stay necessarily included examination of his assertion of a likelihood of success on the merits of the case, pursuant to 43 CFR 4.21(b). In doing so, we have found that appellant's arguments cannot succeed, therefore we have decided the appeal on its merits. See Texaco Trading & Transportation Inc., 128 IBLA 239, 241 (1994). As we have resolved this appeal on its merits, the request for a stay is denied as moot.

Accordingly, pursuant to the authority delegated to Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Utah State Office are affirmed and the request for a stay is denied as moot.

David L. Hughes  
Administrative Judge

I concur:

C. Randall Grant, Jr.  
Administrative Judge