

Appeals from a decision of the Idaho State Office, Bureau of Land Management, declaring mining claims abandoned and void. IMC 9503 et al.

Affirmed; stay denied.

1. Mining Claims: Rental or Claim Management Fees: Small Miner Exemption--Rules of Practice: Appeals: Stay

Since no grace period is allowed by Departmental regulation 43 CFR 3833.0-5(m) in which to file the small miners annual rental fee exemption certificate required by 43 CFR 3833.1-5, an extension of time to file was not available to claimants seeking to correct their failure to file the required certificates.

APPEARANCES: Jack S. Brooks, Twin Falls, Idaho, Alan Brooks, Gannett, Idaho, Bill Brooks, Bellevue, Idaho, and Juhl F. Kauffman, Ketchum, Idaho, pro sese.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Jack S. Brooks, Bill Brooks, Jr., Alan Brooks, and Juhl F. Kauffman, have appealed from so much of a June 10, 1994, decision of the Idaho State Office, Bureau of Land Management (BLM), as declared mining claims IMC 9519 et al. abandoned and void pursuant to the Act of October 5, 1992 (106 Stat. 1374), for failure to timely file a certificate of exemption from payment of rental fees for the 1994 assessment year, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, 106 Stat. 1378-79 (1992), and 43 CFR 3833.1-5. Appellants also seek a stay of the BLM decision under Departmental regulation 43 CFR 4.21(a).

In seeking a stay of the June BLM decision, appellants contend that they had "no prior notification of any deficiencies in time to correct them" and request information to enable them to comply with the 1992 law creating the small miners exemption (Statement of Reasons at 2). Addressing the contested portion of the BLM decision, appellants dispute that mining claims

IMC 9519, IMC 9521-IMC 9536, IMC 9539, IMC 17555-IMC 17556, IMC 17562-IMC 17563, IMC 17565-IMC 17567, IMC 17571-IMC 17573, IMC 22503-IMC 22506, IMC 22508-IMC 22511, IMC 51016-IMC 51017, and IMC 96326- IMC 96327, all shown to have been located prior to 1992, were properly found to be abandoned and void by operation of the 1992 law. It is undisputed, however, that no certificates claiming exemption from fee payment were filed for the 1994 assessment year for those claims on or before August 31, 1993, nor were any annual claim rental fees paid on or before that date.

[1] To be entitled to a stay of the BLM decision, appellants must demonstrate, among other things, that there is a likelihood they will prevail on appeal. 43 CFR 4.21(b)(1)(ii). The record before us, however, establishes that they cannot prevail on appeal because the claims at issue were extinguished by operation of law when they failed to pay the 1994 mining claim rental fee or file qualifying certificates for the 1994 assessment year claiming exemption from the rental fee requirement on or before August 31, 1993. See Nannie Edwards, 130 IBLA 59, 60 (1994), and cases cited therein. Because evaluation of the stay request has established that this appeal must be rejected, no purpose would be served by delaying decision, and BLM's decision must therefore be affirmed on the record presented. See Clay Worst, 128 IBLA 165, 166 (1994).

The record on appeal contains no certificates of exemption from payment of rental fee filed by appellants for the claims at issue for the 1994 assessment year showing that they were received by BLM on or before August 31, 1993. Such certificates were required, however, to be filed not later than August 31, 1993. See 106 Stat. 1379; 43 CFR 3833.1-5(b). The June BLM decision correctly points out, and appellants do not deny, that rental fees or exemption forms for both the 1993 and 1994 assessment years were required by the Act to be paid or filed not later than August 31, 1993 (Decision at 1). Although appellants suggest the required exemption certificates may now be filed for the 1994 assessment year to correct the admitted deficiency, no grace period for filing late certificates of exemption has been provided by Departmental regulation; to comply with the Act, the required documents must have been received by BLM on or before the date required by regulation, in this case by August 31, 1993. See 43 CFR 3833.0-5(m); 43 CFR 3833.1-5(b).

The BLM decision found that, under the Act, failure to file the small miners exemption certificate on or before August 31, 1993, for the 1994 assessment year constituted abandonment of the mining claims at issue, and that they therefore became void by operation of law. This finding was correct. See Lee H. Rice, 128 IBLA 137, 141 (1994). Because the claims were extinguished by operation of law, corrective action to supply missing exemption certificates is not now available to appellants, and their appeals must be denied. Nannie Edwards, 130 IBLA at 60.

IBLA 94-606, 94-651

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the applications for stay are denied and the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

John H. Kelly
Administrative Judge

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