

UNITED STATES v. MINECO
UNITED STATES v. CYRUS L. & MARY F. COLBURN
UNITED STATES v. CACHE PROPERTIES
(ON RECONSIDERATION)

CYRUS L. COLBURN, JR.

IBLA 90-108, 94-237

Decided September 8, 1994

Petition for reconsideration of United States v. Mineco, 127 IBLA 181 (1993), affirming a decision declaring mining claims invalid for lack of a discovery pursuant to a mining contest. Consolidated with an appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring the same mining claims abandoned and void for failure to timely pay rental fees. CMC 134872-CMC 134876.

Decision in Cyrus L. Colburn, Jr., affirmed; petition for reconsideration of United States v. Mineco dismissed.

1. 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. Failure to pay the claim rental fee on or before Aug. 31, 1993, shall conclusively constitute an abandonment of the unpatented mining claim by the claimant.

2. Mining Claims: Abandonment--Mining Claims: Contests--Mining Claims: Patent--Mining Claims: Rental or Claim Maintenance Fees: Generally

As the mining claim rental fee required by Congress under the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1378-79 (1992), is in lieu of the statutory requirements to annually perform assessment work and to annually file with the Department, a claimant of an unpatented mining claim who

has filed an application for a mineral patent is not excused from complying with the rental fee requirement unless a final certificate has been issued. The pendency of a mining contest against the claim does not excuse a claimant's lack of compliance.

APPEARANCES: Cyrus L. Colburn, Jr., Denver, Colorado, pro se and for Mary Francis Colburn, Mineco, Inc., and Cache Properties, Inc.; and Karen Colburn, Esq., Denver, Colorado, also for appellants.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Cyrus L. Colburn, Jr., Mary Francis Colburn, Mineco, Inc., and Cache Properties, Inc., have filed a petition for reconsideration of the decision in United States v. Mineco, 127 IBLA 181 (1993) (IBLA 90-108). Therein, the Board affirmed a decision by Administrative Law Judge Ramon M. Child finding no discovery of a valuable mineral deposit on the Fraction and Fraction No. 1 placer mining claims, Josie and Josie No. 1 lode mining claims, and the Nugget placer mining claim, CMC 134872 through CMC 134876, and declaring the claims invalid. 1/

Appellants assert the existence of extraordinary circumstances and sufficient reason to warrant granting the petition for reconsideration. Appellants claim new evidence in the form of affidavits "attesting to the degree of economic probability that the deposits on the mineral claims of the claimants are of such a character that a prudent person would be justified in further expenditure to develop the existing discovery" (Petition at 7). Appellants argue that the Board's decision was based on convoluted facts and skewed samples "due, in large part, to the refusal of the Forest Service to allow the claimants to utilize modern technology which was readily available" (Petition at 7). Appellants assert that through such modern technology a valid discovery on the claims in question can be demonstrated if the opportunity is provided. Appellants, therefore, contend that they should be allowed to produce such evidence in a new hearing. For the reasons set forth below, appellants' petition must be dismissed as moot.

On November 9, 1993, following the filing of the petition for reconsideration with the Board on November 5, 1993, the Colorado State Office, Bureau of Land Management (BLM), issued a decision declaring mining claims CMC 134872 through CMC 134876 abandoned and void for failure to pay the required rental fee for assessment years 1992-93 and 1993-94 on or before August 31, 1993. Cyrus L. Colburn, Jr., timely appealed.

1/ Departmental proceedings involving CMC 134876 were docketed as CO Contest No. 742 and included in Mineral Patent Application No. 42015, filed by the Colburns and Cache Properties. Proceedings involving the other four claims, CMC 134872 - CMC 134875, were docketed as CO Contest No. 741 and included in Mineral Patent Application No. 42024, filed by the Colburns and Mineco.

In his statement of reasons, Colburn asserts that BLM is without jurisdiction to render a decision declaring his claims abandoned and void. He argues that under the mining laws, all obligations to maintain the validity of a mining claim are suspended when an application for patent has been made. Thus, he contends, "Claimant's rights to these claims are not available to the Government to be 'extinguished.'"

[1] 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

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 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. On July 15, 1993, the Department promulgated regulations to implement the rental fee provision. 43 CFR 3833.1; 58 FR 38186, 38199.

In Lee H. & Goldie E. Rice, 128 IBLA 137 (1994), the Board, after affirming BLM's denial of a request for exemption from the payment of the required rental fees, observed as follows with respect to a determination of abandonment of a mining claim under such circumstances as found here:

[W]here 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.

128 IBLA at 141.

In this case, there is no evidence that a timely payment of the rental fee for either assessment year designated in the Act was tendered. Appellants have not asserted the small miner exemption. Regardless, certain

qualifications set forth in the Act must be met in order for a claimant to be entitled to the exemption. See 43 CFR 3833.1-6(a). Thus, the claimant must affirmatively seek the exemption by complying with the filing requirements set forth in 43 CFR 3833.1-7. This appellants did not do. Therefore, BLM properly deemed the subject claims abandoned and void under the provisions of the Act.

Colburn asserts that the Act is inapplicable to his claims because patent applications had been filed and are pending review. We find the argument that appellants were not required to file documents or perform other work to preserve their rights in the claims because patent applications were pending to be without merit.

[2] The rental fee at issue "is in lieu of the requirements for performing assessment work under 30 U.S.C. 28-28e and for filing an annual affidavit of labor or Notice of Intent to Hold * * * under section 314 (a) and (c) of FLPMA." 43 CFR 3833.0-5(t). 2/

While section 314 of FLPMA does not exempt any unpatented mining claim from the filing requirement, Departmental regulation 43 CFR 3833.2-6 provides just one exception: that evidence of annual assessment work performed or a notice of intention to hold a mining claim need not be filed for an unpatented claim "for which an application for a mineral patent which complies with 43 CFR Part 3860 has been filed and the final certificate has been issued." Thus, unless a final certificate of mineral entry has been issued, a mining claimant/patent applicant is not excused from the requirement to file annually with BLM evidence of assessment work performed. 43 CFR 3833.2-4; see U. A. Small, 108 IBLA 102 (1989).

Moreover, until a final certificate issues, a mineral claimant is obligated, under the provisions of 30 U.S.C. § 28 (1988), to satisfy the annual assessment work requirement. 43 CFR 3851.5; see United States v. Bohme, 48 IBLA 267, 311, 87 I.D. 248, 270 (1980). Early in the history of the 1872 Mining Law, the Supreme Court recognized that when a patent applicant had completed all acts then required to entitle him to a patent, i.e., make final entry, pay the purchase price, and obtain a certificate of purchase, he was not thereafter required to perform assessment work. Benson Mining & Smelting Co. v. Alta Mining & Smelting Co., 145 U.S. 428 (1892); see also Luthye v. Northern Pacific Railroad Co., 30 L.D. 202 (1900). The same holds true today. A final certificate of mineral entry indicates to a

2/ In a Dec. 3, 1993, cover memorandum from the State Director, Colorado State Office, BLM, returning the related case files to the Board, in connection to the petition for reconsideration he reported: "Review of the mining claim recordation files for the claims involved shows that required affidavits of annual assessment work have not been recorded with [BLM] for the years 1990, 1991, and 1992." Review of the case files for the mining claims at issue confirms this. Assuming the record is correct, it appears the claims should have been declared invalid as of 1990.

claimant that he or she has satisfactorily completed certain requirements of the application process and relieves the claimant from doing further assessment work. Dorothy Smith, 44 IBLA 25, 30 (1979).

The right to receive a final certificate, and later a patent, is not assured until full compliance with the procedures set forth in the mining laws and regulations. See Freese v. United States, 639 F.2d 754, 758 (Ct. Cl.), cert. denied, 454 U.S. 827 (1981). The processing of a mineral patent application involves numerous considerations. A final certificate is not issued until certain requirements have been met: publication of the notice of application (evidenced by filing the publisher's affidavit), receipt of final proofs, acceptance of the purchase price, etc. See 43 CFR 3862.5; BLM Handbook, § 3862.71. Completion of the final certificate confirms that mineral entry has been allowed and equitable title is vested in the claimant. It does not, however, guarantee patent issuance. Following issuance of the final certificate, BLM designates a mineral examiner to prepare a mineral report. If that report is favorable and all else as to the status of the claim is regular, a patent will issue. See Marathon Oil Co. v. Lujan, 751 F. Supp. 1454, 1458-59 (D. Colo. 1990).

While Colburn is correct that a patent application is pending, further review of the record verifies that a final certificate has not been issued by BLM. Thus, appellants are not excused from satisfying the statutory requirements regarding assessment work. As the rental fee requirement is in lieu of the assessment work performance and filing requirements, the same standard governing them will apply. If a claimant is to be excused from compliance with the rental fee requirement, he or she must possess a final certificate issued by the Department. As appellants here did not, they were not excused from submitting the rental fees required by August 31, 1993.

Further, the pendency of the mining contest did not obviate the need to comply with the statutory filing, and therefore the rental fee, requirements. See Jean Emanuel Hatton, 107 IBLA 47, 51-52 (1989), aff'd, Hatton v. United States, Civ. No. 89-1930-PHX-RGS (D. Ariz. May 11, 1993).

As appellants were responsible to pay the required rental fees for the subject claims on or before August 31, 1993, their failure to do so cannot be waived. We find that these five claims are properly deemed abandoned and void by operation of law.

In light of our conclusion that the subject claims are void, and therefore without legal status, appellants' petition for reconsideration of the decision in Mineco, supra, is rendered moot and must be dismissed. See, e.g., United States v. Ballas, 87 IBLA 88 (1985).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the BLM decision

declaring the mining claims abandoned and void is affirmed and the petition for reconsideration of the Board's decision in United States v. Mineco, 127 IBLA 181 (1993), is dismissed.

Gail M. Frazier
Administrative Judge

I concur:

John H. Kelly
Administrative Judge

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