

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void for failure to pay rental fees. SDMMC 17215, SDMMC 17216, SDMMC 60310.

Affirmed; petition for stay denied as moot.

1. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally--Notice: Generally--Regulations: Generally--Statutes

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. 1374, 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. Failure to pay the fee in accordance with the Act and implementing regulations results in a conclusive presumption of abandonment. Neither the claimant's lack of actual knowledge of the statutory requirement to pay rental fees nor BLM's failure to advise the claimant of that statutory requirement excuses the claimant's lack of compliance with the rental fee requirement since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: James S. Nelson, Esq., Rapid City, South Dakota, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Lester W. Pullen has appealed from a June 15, 1994, decision of the Montana State Office, Bureau of Land Management (BLM), declaring

the Pierce lode mining claim (SDMMC 17215), the Last Chance placer mining claim (SDMMC 17216), and the Pullen placer mining claim (SDMMC 60310) abandoned and void for failure to pay rental in the amount of \$100 per claim or to submit a certification of exemption from payment of rental fees for the 1993 and 1994 assessment years. Pullen has requested a stay of BLM's decision pursuant to 43 CFR 4.21(a).

Pullen located the Pierce lode mining claim, situated in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ sec. 8, T. 2 S., R. 6 E., Black Hills Meridian (BHM), Pennington County, South Dakota, on September 1, 1962, and the Last Chance placer claim embracing lot 1, sec. 19, T. 2 S., R. 7 E., BHM, on August 23, 1971. He recorded both these claims with BLM on October 24, 1978. On June 3, 1980, Pullen located the Pullen placer mining claim in the E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 19, T. 2 S., R. 7 E., BHM, and he recorded this claim with BLM on June 23, 1980. Pullen filed yearly the required notices of annual assessment work for each of his claims, including November 15, 1993, affidavits of labor for the assessment year ending September 1, 1993.

In its decision, BLM acknowledged Pullen's November 15, 1993, filings for his three unpatented mining claims. BLM held, however, that in accordance with the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), P.L. 102-381, 106 Stat. 1374, 1378-79 (1992), Pullen was required to pay the \$100 per claim rental fees for both the 1993 and 1994 assessment years on or before August 31, 1993, and that his failure to submit those fees or to furnish a certification of exemption from payment constituted a statutory abandonment of the claims.

On appeal Pullen asserts that he was not aware of any change in the law. He contends that he did not receive notice of any such change requiring him to pay rental fees or file for an exemption even though several of his neighbors received postcards from BLM advising them of the new statutory requirements. Pullen states that not only is he willing to pay the annual rental fee for each of his three claims, but that he would have done so earlier had he known of the requirement.

[1] On October 5, 1992, Congress enacted the 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 contained an identical provision establishing 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 circumstances, for an exemption from the payment of rental fees for claimants holding 10 or fewer claims, the so-called small miner exemption. Id. Additionally, the Act directed "[t]hat 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.

On July 15, 1993, the Department promulgated regulations implementing the rental fee provisions of the Act. 58 FR 38186. These regulations required a claimant to pay, on or before August 31, 1993, a nonrefundable rental fee of \$100 for each mining claim, millsite, or tunnel site located on or before October 5, 1992, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental of \$200 per claim. 43 CFR 3833.1-5(b). The regulations also included sections governing rental fee exemption qualifications, 43 CFR 3833.1-6, and rental fee exemption filing requirements. 43 CFR 3833.1-7. The regulations further provided that failure to pay the required rental fee or to timely file the required rental fee exemption documents "shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site, which shall be void." 43 CFR 3833.4(a)(2).

If a mining claimant does not request and 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. William B. Wray, 129 IBLA 173, 175 (1994); Lee H. & Goldie E. Rice, 128 IBLA 137, 141 (1994). The Department has no 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. Id.

In any event, neither Pullen's unawareness of the statutory rental fee requirement nor BLM's failure to notify him of that requirement excuses his lack of compliance with the rental fee requirement. All persons dealing with the Government are presumed to have knowledge of relevant statutes and regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Thomas L. Sawyer, 114 IBLA 135, 139 (1990); Magness Petroleum Corp., 113 IBLA 214, 217 (1990). BLM, therefore, had no obligation to provide Pullen with any particular notice of the changes in the law since Pullen was deemed to know the contents of the Act and duly promulgated regulations. See David & Roirdon Doremus, 61 IBLA 367, 368 (1982). Since Pullen admittedly did not pay the rental fees required by the Act and regulations, BLM properly declared his mining claims abandoned and void.

Because we have resolved this appeal on its merits, Pullen's petition for stay is denied as moot.

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

James L. Burski
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge

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