

BENJAMIN HAIMES

IBLA 95-505

Decided November 22, 1995

Appeal from decisions of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CAMC 31417-CAMC 31436, CAMC 262729, CAMC 262730.

Decision affirmed; stay lifted; petition to intervene granted; petition for expedited consideration granted.

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

The failure of a mining claimant to file by Aug. 31, 1993, the \$100 claim rental fee or the certificate of exemption from payment of rental fee required by the Department of the Interior and Related Appropriations Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1378-79 (1992), constitutes an abandonment of the claim. Similarly, failure to file by Aug. 31, 1994, the \$100 claim maintenance fee or certificate of waiver from payment of maintenance fee required by the Omnibus Budget Reconciliation Act of Aug. 10, 1993, P.L. 103-66, 107 Stat. 312, 405-06, 30 U.S.C.A. § 28f (West 1995) conclusively constitutes a forfeiture of the unpatented mining claim and it is deemed void by operation of law.

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

Pursuant to the requirements of the Omnibus Budget Reconciliation Act of Aug. 10, 1993, P.L. 103-66, 107 Stat. 312, 405-06, 30 U.S.C.A. § 28f (West 1995), for a mining claim located after passage of the Act, the \$100 claim maintenance fee must be paid at the time the location notice is recorded with the Bureau of Land Management for the existing assessment year, and prior to the commencement of the next assessment year, on or before Aug. 31. Failure to pay the \$100 claim maintenance fee prior to the commencement of

each assessment year through 1998 conclusively constitutes a forfeiture and the claim shall be deemed abandoned and void by operation of law.

APPEARANCES: Benjamin Haimes, Los Angeles, California, pro se; Elizabeth Knowlton, Esq., Carlsbad, California, for Intervenor; Donna L. Reynolds, Supervisor, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

On June 14, 1995, Benjamin Haimes, appellant herein, filed a notice of appeal of decisions dated April 21, 1995, and April 28, 1995, issued by the California State Office, Bureau of Land Management (BLM). The decisions found 20 mining claims (CAMC 31417-CAMC 31436) and two mining claims (CAMC 262729-CAMC 262730) respectively, to be abandoned and declared them null and void. BLM's stated reasons for the decisions were that appellant had, with respect to the referenced mining claims, failed to file either the per claim Rental Fee Payment or the Exemption from Payment of Rental Fee as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1378-79 (1992), and/or comply with the provisions of the Omnibus Budget Reconciliation Act of August 10, 1993, P.L. 103-66, 107 Stat. 312, 405-06, requiring a mining claimant to file either a per claim Maintenance Fee Payment or Maintenance Fee Payment Waiver Certificate. See Junior L. Dennis, 133 IBLA 329 (1995).

On July 11, 1995, the Board issued an order granting appellant's request for a stay of the decision pursuant to 43 CFR 4.21(b). On August 17, 1995, Dain Blackburn filed a request to lift the stay and to intervene in the above captioned appeal. Therein, Blackburn advised that some of the claims at issue are adverse to his, and that his title is clouded by this appeal. Blackburn contends that he is an adverse party to this appeal, and is entitled to be heard. He complains that he was not aware of the pending appeal until recently because appellant failed to serve him with a copy of the notice of appeal. Also, Blackburn and the Government have moved to expedite consideration of this appeal. In its request, BLM states:

We are requesting that Mr. Haimes' appeal and stay be expedited because of the immediate harm the public has experienced while on these lands. The Bureau of Land Management would like to insure the public that we are doing everything we can to protect them and keep public land safe. Due to these extraordinary circumstances, we believe it is in the best interest of the public to expedite this case.

The record shows that appellant was served with copies of each of the motions; however, he has offered no response. Based on our review of the record, we deem it appropriate to grant Blackburn's request to intervene and to lift the stay, and also to grant the motions requesting expedited consideration.

The claims which are the subject of the April 21, 1995, decision (CAMC 31417-CAMC 31436) were declared abandoned and void because BLM concluded that Haimes failed to comply with the requirements 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 file on or before August 31, 1993, a \$100 per Claim Rental Fee or a Certificate of Exemption from Payment of Rental Fees. Further, BLM held appellant failed to file a \$100 Claim Maintenance Fee or Maintenance Fee Payment Waiver Certificate under the requirements of section 10101 of the Omnibus Budget Reconciliation Act of August 10, 1993, P.L. 103-66, 107 Stat. 312, 405-06, 30 U.S.C.A. § 28f (West 1995) and its implementing regulations by August 31, 1994, for assessment year 1995. The April 28, 1995, decision declared the North Hubbard and Ready Relief lode mining claims (CAMC 262729-CAMC 262730) null and void for failing to comply with the filing requirements of the Omnibus Budget Act for the 1995 assessment year.

In 1992 Congress enacted, as part of the Department of the Interior Appropriations Act cited above, substantive provisions applicable to mining claims. In relevant part, the statute provides:

That notwithstanding any other provision of law and effective upon the date of enactment of this Act, for fiscal year 1993, 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 * * *.

P.L. 102-381, 106 Stat. 1374, 1378 (1992). The legislation also includes a substantially identical provision requiring claimants to pay, on or before August 31, 1993, a \$100 rental fee to hold an unpatented mining claim, mill or tunnel site during the assessment year beginning September 1, 1993. *Id.* Congress further determined 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 * * *." *Id.* at 1379.

The relevant provision of the Omnibus Budget Act, section 10101(a) provides that

the holder of each unpatented mining claim * * * shall pay to the Secretary of the Interior on or before August 31 of each year, for [the] years 1994 through 1998, a claim maintenance

fee of \$100 per claim * * * in lieu of the assessment work requirement contained in the Mining Law of 1872 * * * and the related filing contained in section 1744(a) and (c) of Title 43.

30 U.S.C.A. § 28f(a) (West 1995). Section 10104 of the Act provides that failure to pay the claim maintenance fee "shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be null and void by operation of law."

30 U.S.C.A. § 28i (West 1995).

Haimes does not deny that he failed to pay claim rental fees, claim maintenance fees or file for a small miner exemption certificate or waiver for 1993, 1994 or the 1995 assessment year as stated in the April 21, 1995, BLM decision. The record supports BLM's decision declaring the claims abandoned and void based on a finding that appellant failed to comply with the fee filing requirements of both the Agencies Appropriations Act and the Omnibus Budget Act. Lester W. Pullen, 131 IBLA 271, 271-73 (1994); William Jenkins et al., 131 IBLA 166, 167 (1994); William B. Wray, 129 IBLA 173, 175 (1994); Lee H. & Goldie Rice, 128 IBLA 137, 141 (1994).

With respect to the April 28, 1995, decision, appellant points out that he paid the 1994 maintenance fee when he recorded his claims with BLM on April 20, 1994. His statement of reasons reads in part:

[W]hen I pay for a year's rent in advance that means twelve (12) months and not four(four)months [sic].

On December 1994, I filed my assessment work and sent an

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Appellant is mistaken. He did not pay for a year in advance on April 20, 1994. As BLM explained in its letter of April 28, 1995, in response to appellant's letter of April 18, 1995, the maintenance fee paid at the time of recordation of the claims in April 1994 was applied to the 1994 assessment year because that was the assessment year in which the claims were recorded. The date of recording the location notice and paying the initial maintenance fee has no relevance to the date the claim maintenance fee is due for subsequent assessment years. That date was determined by Congress when it enacted section 10101(b) of the Omnibus Budget Act:

(b) TIME OF PAYMENT. - The claim maintenance fee payable pursuant to subsection (a) of this section for any assessment year shall be paid before the commencement of the assessment year, except that for the initial assessment year in which the location is made, the locator shall pay the claim maintenance

fee at the time the location notice is recorded with the Bureau of Land Management.

30 U.S.C.A. § 28f(b) (West 1995).

Pursuant to section 10104, supra, failure to pay the claim maintenance fee conclusively constitutes a forfeiture of the unpatented mining claim by the claimant, and the claim is deemed null and void by operation of law. There being no dispute that appellant did not file the 1995 \$100 per claim maintenance fee or a small miner waiver on or before August 30, 1994, BLM properly declared the North Hubbard and Ready Relief Lode mining claims null and void. Paul W. Tobeler, 131 IBLA 245, 247 (1994); William Jenkins, 131 IBLA 166, 167 (1994).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Bureau of Land Management dated April 21, 1994, and April 28, 1994, finding appellant's mining claims to be abandoned and declaring them void are affirmed.

Gail M. Frazier
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

