

WALTER J. YAHN

IBLA 94-479

Decided February 7, 1996

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring mining claims abandoned and void for failure to file an affidavit of assessment work for the claims on or before December 30, 1993. AMC 87590, et al.

Affirmed.

1. Mining Claims: Abandonment–Mining Claims: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold–Mining Claims: Rental or Claim Maintenance Fees: Generally–Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

A mining claimant filing a certification of exemption from payment of rental fees is also required to file in the proper BLM office timely evidence of assessment work performed as required by P.L. 102-381, 106 Stat. 1378-79 (1992); failure to do so results in a conclusive presumption of abandonment of the mining claim.

APPEARANCES: Walter J. Yahn, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Walter J. Yahn has appealed from a May 2, 1994, decision of the Arizona State Office, Bureau of Land Management (BLM), declaring unpatented placer mining claim AMC 87590 and lode mining claims AMC 93233, AMC 189258, AMC 189263, and AMC 244824 abandoned and void for failure to file an affidavit of assessment work for the claims on or before December 30, 1993, as required by 43 CFR 3833.4(a)(1).

On August 30, 1993, Yahn timely filed a "Certification of Exemption from Payment of Rental Fee" for the assessment year running from September 1, 1992, through September 1, 1993, as well as a "Certification of Exemption" for the assessment year running from September 1, 1993, through September 1, 1994, pursuant to the Department of the Interior

and Related Agencies Appropriations Act for Fiscal Year 1993 (the Act), P.L. 102-381, 106 Stat. 1378-79 (1992). Nonetheless, the May 2, 1994,

BLM decision was issued because Yahn failed to file on or before December 30, 1993, an affidavit of assessment work performed for the period of September 1, 1992, through September 1, 1993, by a small miner claiming a rental fee exemption.

In his statement of reasons Yahn admits that he did not file the required affidavit of assessment work in 1993. He states that he purchased the claims in April of 1993 and received approval of a mining plan in August of 1993 but was unable to start work on the claims until September 1993 due to low water in the streams. Yahn asserts that he understood that since he was unable to start working the claim until September 1993 he would not be required to file an affidavit of assessment work until 1994.

The Act requires that:

[F]or 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 * * * 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 governing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of a \$100 rental fee on or before August 31, 1993. 106 Stat. 1378! 79. The Act further provided, under certain conditions, for an exemption from payment of rental fees for claimants holding 10 or fewer claims, mill sites, or tunnel sites, the so! called small-miner exemption.

The Act also provided that claimants who qualify for the small miner exemption for the 1993 fiscal year may elect to either pay claim rental for the assessment year ending at noon on September 1, 1993, or do assessment work required by the Mining Law of 1872, 30 U.S.C. §§ 28-28e (1988), and meet filing requirements of section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) and (c) (1988). There were similar provisions for fiscal year 1994. 106 Stat. 1378. Yahn elected to claim the small miner exemption and did not pay claim rental.

BLM declared Yahn's claims abandoned and void pursuant to 43 CFR 3833.1-7 (1993), which provides in relevant part:

(a) The affidavit of assessment work performed by a small miner claiming a rental fee exemption shall be filed with the

proper State Office of the BLM pursuant to § 3833.2 and meet the requirements of § 3833.2-4.

(b) For mining claims located on or before October 5, 1992, to claim the small miner's exemption, the following requirements shall be met:

(1) For the assessment year beginning September 1, 1992. The affidavit of assessment work for the period of September 1, 1992, through September 1, 1993, shall be filed on or before December 30, 1993, in the proper State Office. [Emphasis in original.]

[1] The Act and implementing regulations therefore require that, in lieu of paying rental, a miner claiming the exemption must file an affidavit of assessment work performed with the proper state office of BLM on or before December 30. Having filed the certification of exemption from payment of the rental fees otherwise required by the Act, Yahn was responsible for meeting the filing requirements of section 314 of FLPMA, 43 U.S.C. § 1744(a) and (c) (1988). 106 Stat. 1378; 43 CFR 3833.1-7(a),(b), and (d). Section 314(c) of FLPMA provides that failure to 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."

In 1985, 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, 100 (1985). Congress did not provide for waiver of the section 314 requirements, and the Department is without authority to excuse lack of compliance with the statute. Lynn Keith, 53 IBLA 192, 196, 88 I.D. 369, 372 (1981). Moreover, Congress is assumed to be aware of the interpretation thus given to section 314 of FLPMA; strict application of the filing statute is therefore required when a small miner exemption is granted. See Lee H. & Goldie Rice, 128 IBLA 137, 141 (1994). Accordingly, a mining claimant who filed for the small miner exemption in 1993 was also required to file an affidavit of assessment work for 10 or fewer claims on or before December 30, 1993, as specified in the Act and implementing regulations. His failure to do so resulted in a conclusive presumption of abandonment.

Yahn admits that he failed to file with BLM the affidavit of assessment work performed from September 1, 1992, through September 1, 1993. He could have paid the claim rental fees if no assessment work had been done, but chose not to do so. Because he failed to file his affidavit of assessment work on or before December 30, 1993, or pay the rental fees on or before August 31, 1993, the subject mining claims were properly declared abandoned and void. Charlene Schilling, 87 IBLA 52 (1985).

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.

Franklin D. Arness
Administrative Judge

I concur.

John H. Kelly
Administrative Judge

