

JIM TAYLOR ET AL.

IBLA 94-675

Decided July 25, 1997

Appeal from decisions of the Nevada State Office, Bureau of Land Management, declaring the J.T. 1-7 mining claims abandoned and void. NMC 662457 et al.

Affirmed.

1. Mining Claims: Abandonment–Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

Mining claimants seeking a small miner exemption from payment of rental fees under the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992), for claims located on or before Oct. 5, 1992, must file a certified statement by Aug. 31, 1993, for each of the assessment years (ending Sept. 1, 1993, and Sept. 1, 1994) for which the exemption is claimed. Mining claims are properly declared abandoned and void where mining claimants of claims located on or before Oct. 5, 1992, failed to either pay the rental fee or file a certified statement seeking an exemption by Aug. 31, 1993, for the assessment year ending Sept. 1, 1993.

APPEARANCES: Steve L. Dobrescu, Esq., Ely, Nevada, for Appellants.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Jim Taylor and Mike Tippery have appealed two June 17, 1994, Decisions of the Nevada State Office, Bureau of Land Management (BLM), declaring the J.T. 1-7 mining claims abandoned and void. ^{1/} The BLM's Decisions stated that BLM's records indicated neither rental fees nor small miner exemption certificates had been filed for the claims by August 31, 1993, as required

^{1/} One Decision declared the J.T. 1-2 claims, NMC 662457 - NMC 662458, abandoned and void. The second Decision declared the J.T. 3-5, NMC 564484 - NMC 564486, and the J.T. 6-7, NMC 595142 - NMC 595143, abandoned and void.

by the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (the Act). Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992). "Pursuant to the requirements of the Act," BLM stated, "mining claimants were required to pay rental fees in the amount of \$100.00 per claim or site or submit a Certificate of Exemption from Payment of Rental Fees (small miners exemption) for both the 1993 and 1994 assessment years."

We granted a stay of BLM's Decisions on September 2, 1994, pursuant to 43 C.F.R. § 4.21.

In support of their Petition for Stay Pending Appeal and their Statement of Reasons, Appellants state that a "small miners exception [sic] was provided to BLM in a timely fashion" and submit copies of a Certification of Exemption from Payment of Rental Fee for the J.T. 1-7 claims, a return receipt card for an article addressed to BLM stamped August 30, 1993, and a "Notice of Return of Remittance" from BLM dated September 3, 1993, returning a check for \$70 because "[n]o fees [are] required for exemption certificates."

The record contains the original of the Certification of Exemption from Payment of Rental Fee for the claims, which is date-stamped as received by BLM on August 31, 1993. This Certification is for the assessment year beginning at noon on September 1, 1993, and ending at noon on September 1, 1994. The record does not contain a Certification for the assessment year beginning at noon on September 1, 1992, and ending at noon on September 1, 1993, nor does it contain evidence of the payment of rental fees for that year.

The record shows that all of Appellants' claims were located before October 5, 1992. The J.T. 1 and J.T. 2 claims (NMC 662457 - NMC 662458) were located on August 1, 1992; the J.T. 3 through J.T. 5 (NMC 564484 - NMC 564486) were located on July 1, 1989; and the J.T. 6 and 7 claims (NMC 595142 - NMC 595143) were located on February 23, 1990.

For claims located on or before October 5, 1992, both the Act and implementing regulations require the payment of rental fees or a certificate of exemption to be filed by August 31, 1993, for each of the relevant assessment years, i.e., the assessment year ending September 1, 1993, and the assessment year ending September 1, 1994. See 106 Stat. 1378-79, 43 C.F.R. § 3833.1-7(b) and (d), 43 C.F.R. § 3833.4(a)(2) (1993); James L. Patterson, 137 IBLA 156, 158 (1996). Consequently, mining claimants seeking small miner exemptions for claims located on or before October 5, 1992, are required to file a separate certificate of exemption by August 31, 1993, for each of the two assessment years (ending September 1, 1993, and September 1, 1994) for which they are seeking an exemption. 43 C.F.R. § 3833.1-7(d) (1993); James L. Patterson, supra; Edwin L. Evans, 132 IBLA 103, 105 (1995). Because the record includes a certificate of exemption for the assessment year ending September 1, 1994, but not for the assessment year ending September 1, 1993, BLM's Decisions declaring the claims abandoned and void must be affirmed. James L. Patterson, supra.

Therefore, pursuant to the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1., the Decisions appealed from are affirmed.

Will A. Irwin
Administrative Judge

I concur.

R.W. Mullen
Administrative Judge

