

ARTEMIS EXPLORATION CO.

IBLA 96-83 Decided August 21, 1998

Appeal from a Decision of the Nevada State Office, Bureau of Land Management, declaring the Willow Nos. 7 through 16 lode mining claims abandoned and void. NMC 705908 through NMC 705917.

Set aside and remanded.

1. Mining Claims: Abandonment–Mining Claims: Rental or Claim Maintenance Fees: Generally

Where mining claims are located on Aug. 19, 1994, under 43 C.F.R. § 3833.1-5(a) (1993), the holder must pay a nonrefundable \$100 per claim rental fee (as required by the Department of the Interior and Related Agencies Appropriation Act for Fiscal Year 1993) for the assessment year in which the claim was located at the time copies of notices of location for the claims are filed as required by section 314(b) of FLPMA. That filing is timely under 43 C.F.R. § 3833.1-2(a) if made within 90 days after the date of location of claim.

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

Where mining claims are located on Aug. 19, 1994, a certification for exemption filed after Aug. 31, 1994, but within the 90-day period allowed for a newly-located claim for submitting the initial \$100 fee and the \$100 maintenance fee for the subsequent assessment year, is timely filed.

APPEARANCES: Beth Essington, Artemis Exploration Company, Ely, Nevada.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Artemis Exploration Company (Appellant) has appealed from the October 24, 1995, Decision of the Nevada State Office, Bureau of Land Management (BLM), declaring the Willow Nos. 7 through 16 lode mining

claims (NMC 705908 through NMC 705917) abandoned and void for failure to submit the \$100 per claim rental fee on or before August 31, 1994, for the assessment year ending on September 1, 1995.

Appellant filed copies of certificates of location for these claims with BLM on October 31, 1994, as required by section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1994), and 43 C.F.R. § 3833.1-2(a). The notices of location state that the claims were "posted on the ground" on August 14, 1994. ^{1/} That filing was accompanied by \$35 per claim, representing the \$10 nonrefundable service charge imposed by 43 C.F.R. § 3833.1-4(a) and the \$25 one-time nonrefundable location fee imposed by 43 C.F.R. § 3833.1-4(b) for claims located on or after August 11, 1993.

In addition, Appellant filed certifications of exemption for the assessment years ending on September 1, 1994, and on September 1, 1995. Further, it submitted \$1,000 in fees at that time for the 10 claims.

^{1/} Appellant argues that the date of location of the Willow #7 - #16 lode mining claims was not Aug. 14, 1994, but the date the certificates of location were recorded with the Ely County Recorder, Oct. 14, 1994. The date of location defined by Nevada law was addressed in Richard Borgen, 117 IBLA 239, 245-46 (1991):

"Nevada law provides that a mining claim is located by monumenting the boundaries of the claim, constructing a location monument," and "[p]osting in or upon the monument of location a notice of the location, which must contain," along with other information, "[t]he date of location." Nev. Rev. Stat. 517.010 (1989). Additionally, Nevada law requires a locator to file with the local county recorder "duplicate certificates of location which contain," along with other information, "[t]he date of the location." Nev. Rev. Stat. 517.050 (1989). These certificates must be filed within 90 days of posting the notice of location. Nev. Rev. Stat. 517.040 (1989). Federal law requires that a copy be filed with BLM. 43 U.S.C. § 1744(b) (1988); 43 C.F.R. § 3833.1-2.

"Under Nevada law, the date of location is the date stated in the notice of location posted on the claim and repeated in the certificate of location filed with the county recorder. Boyd Tanner, 113 IBLA 387, 390 (1990); Jim Spicer, 42 IBLA 288 (1979); Southwestern Exploration Associates, 33 IBLA 240 (1977)."

The certificates for all of Appellant's claims state: "NOTICE IS HEREBY GIVEN that the * * * lode mining claim has been located by Artemis Exploration Company," and each proceeds to describe the claim. The certificates then provide: "The location work consisted of surveying, erecting posts, posting of notice and making the map(s) as provided in NRS 517.040," and conclude with: "Dated and posted on the ground this 14 day of August 1994." No other expression of location is presented to indicate that the intended acts of location were not to be efficacious on the date provided. The only date supplied by the locator within each certificate is Aug. 14, 1994, and, in accordance with the State of Nevada's requirement to specify the date of location therein, we conclude that the legal location date was that date.

In its Decision, BLM declared the claims abandoned and void, ruling that Appellant had failed to timely pay the rental fees for the claims for the assessment year that ended on September 1, 1994. BLM cited only 43 C.F.R. § 3833.1-5(a)(1), governing maintenance fee filing requirements.

Since it concerns claims located during the assessment year ending on September 1, 1994, this case is governed by the provisions of both the Department of the Interior and Related Agencies Appropriation Act for Fiscal Year 1993 (1992 Act), Pub. L. No. 102-381, 106 Stat. 1374 (Oct. 5, 1992) and the Omnibus Budget Reconciliation Act of 1993 (1993 Act), Pub. L. No. 103-66, 107 Stat. 405 (1993), 30 U.S.C. § 28f(1994). The regulations governing maintenance fees imposed by the 1993 Act do not apply to fee requirements for assessment years prior to the assessment year beginning on September 1, 1994. 43 C.F.R. § 3833.1-5. Fee requirements for the assessment year beginning on September 1, 1993, and ending on September 1, 1994, are controlled instead by the regulations governing rental fees imposed by the 1992 Act. See 43 C.F.R. § 3833.1-5(a) (1993).

[1] Under the regulations promulgated to enforce the 1992 Act, for each claim located on or after October 6, 1992, and on or before September 30, 1994, a \$100 nonrefundable rental fee was due for the assessment year in which the claim was located. That rental fee had to be paid at the time of recording the claim pursuant to section 314(b) of FLPMA and 43 C.F.R. § 3833.1-2. 43 C.F.R. § 3833.1-5(a) (1993). As its claims were located on August 19, 1994, Appellant was accordingly required to pay a \$100 rental fee per claim when it filed copies of its notices of location for the claims. That filing was timely if it was made within 90 days after the date of location of claim. 43 C.F.R. § 3833.1-2(a). By submitting \$100 per claim within the 90-day period, Appellant complied fully with the requirements of 43 C.F.R. § 3833.1-5(a) (1993). 2/

Having paid its initial rental fee, Appellant fell under the maintenance fee requirements of 43 C.F.R. § 3833.1-5 for each subsequent assessment year, starting with the assessment year beginning at noon on September 1, 1994. See 43 C.F.R. § 3833.1-5. The regulations generally provide that a nonrefundable maintenance fee of \$100 for each mining claim had to be paid annually on or before August 31, in advance, for the subsequent assessment year beginning at noon on September 1 of that year. The first such payment was due on or before August 31, 1994. 43 C.F.R. § 3833.1-5(b). However, the regulations also provide that, where (as here) claims are located prior to August 31 and the copy of the notice of location is properly filed within the 90-day FLPMA time frame but after August 31, the \$100 maintenance fee that was due on August 31 for the succeeding assessment year may be paid at the time of filing the copy of the location notice along with the initial \$100 fee. See 43 C.F.R. § 3833.1-5(a)(1). That provision allows a claimant in a situation similar

2/ As noted above, Appellant also complied with the additional filing fee requirements (totaling \$35 per claim) for newly-located claims imposed by 43 C.F.R. §§ 3833.1-4(a) and 3833.1-4(b).

to that faced by Appellant (where the 90-day FLPMA filing period "bridges" the August 31 fee filing deadline) to comply by making a single filing, within 90 days of the date of location of its claims, consisting of the "initial \$100 fee" (whether a "rental" fee under the 1992 Act, or a "maintenance" fee under the 1993 Act) and the \$100 "maintenance" fee for the following assessment year.

However, Appellant did not make such filing. Instead of submitting the \$100-per-claim "maintenance" fee for the claims for the assessment year beginning at noon on September 1, 1994, it filed a certification of exemption under the "small miner" waiver provisions of the 1993 Act. As such, it might, under certain circumstances, perform assessment work and file the affidavit of labor in lieu of paying the maintenance fees on its claims. See 43 C.F.R. §§ 3833.1-5(d), 3833.1-6, and 3833.1-7. However, the regulations state that, in "order to hold mining claims or sites for the assessment year beginning at [noon] on September 1, 1994, each small miner shall file a waiver certification on or before August 31, 1994." 43 C.F.R. § 3833.2-1(d). No latitude is expressly provided to cover the situation presented here, where the 90-day period allowed for filing the initial rental payment bridged the putative August 31 deadline for filing a certification.

The question presented here is the timeliness of a certification for exemption filed after August 31, 1994, but within the 90-day period allowed for a newly-located claim for submitting the initial \$100 fee and the \$100 maintenance fee for the subsequent assessment year. Reading 43 C.F.R. § 3833.2-1(d) strictly would create the unlikely inversion of filing deadlines where the locator of a newly-located claim would be required to seek a waiver for the assessment year starting on September 1, 1994, up to 90 days prior to paying the initial \$100 fee for the assessment year ending on September 1, 1994.

The Preamble to the rulemaking that promulgated 43 C.F.R. § 3833.1-5 states that, as a matter of discretion, BLM will not allow a waiver of the initial \$100 fee due upon recordation of a newly-located claim. See 59 Fed. Reg. 44849 (Aug. 30, 1994). However, we find no similar policy statement disfavoring the allowance of waivers of the \$100 maintenance fees for subsequent years when associated with the recordation of a newly-located claim. The 1993 Act contains latitude for considering the filing of Appellant's waiver request timely. It provides, in section 10101(a), that a mining claimant shall pay "for 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 requirements contained in section 314(a) and (c) of [FLPMA]." 30 U.S.C. § 28f(a) (1994). Significantly, Congress also provides in that Act that the

claim maintenance fee may be waived for a claimant who certifies * * * that on the date payment was due, the claimant and all related parties—(A) held not more than 10 mining claims, mill

sites, or tunnel sites, or combination thereof, on public lands; and (B) have performed assessment work required under the Mining Law of 1872.

30 U.S.C. § 28f(d)(1) (1994) (emphasis supplied). As discussed above, Departmental regulations establish that the date payment of the maintenance fee for which Appellant sought a waiver was due was at the time of filing of copies of the notices of location of the claims, and that such filing is timely within 90 days of the location of the claim. 43 C.F.R. § 3833.1-5(a)(1). In these circumstances, we hold, Appellant could properly delay filing its certification until the date payment was due, that is, the date it filed copies of its notices of location. The certification of waiver was timely filed and should have been considered by BLM.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, BLM's Decision declaring the claims abandoned and void is set aside, and the matter is remanded for consideration of the certification of waiver timely filed by Appellant.

David L. Hughes
Administrative Judge

I concur.

James L. Bymes
Chief Administrative Judge

