

JERRY D. GROVER D.B.A. KINGSTON RUST DEVELOPMENT  
(GROVER V)

IBLA 99-14

Decided January 22, 2004

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring unpatented oil shale mining claims forfeited for failure to pay maintenance fees, declaring portions of claims null and void ab initio, and informing claimant that BLM lacks jurisdiction over a portion of a claim located on land conveyed to the State of Utah subject to valid existing mining claims. UMC 65933-65935.

Vacated in part and affirmed as modified.

1. Energy Policy Act of 1992: Generally--Energy Policy Act of 1992:  
Oil Shale: Mining Claims: Rental or Claim Maintenance Fees--  
Oil Shale: Mining Claims

Where an oil shale application for patent was filed in October 1989 and BLM took no action to reject it until March 1993, a patent application had been filed and accepted for processing by the Department by October 24, 1992, as specified by the Energy Policy Act, 30 U.S.C. § 242(c)(1) (2000). By meeting this statutory criterion, the applicant fell into the category of persons who thereafter must maintain their claims "in accordance with the requirements of applicable law prior to the enactment of [the Energy Policy] Act."  
30 U.S.C. § 242(c)(2) (2000).

2. Energy Policy Act of 1992: Generally--Energy Policy Act of 1992:  
Oil Shale: Mining Claims: Rental or Claim Maintenance Fees--  
Oil Shale: Mining Claims

Payment of a \$100 rental fee for each oil shale claim on or before August 31, 1994, was required for the 1993 assessment year that ended at noon on

September 1, 1993, and the 1994 assessment year that began at noon on September 1, 1993. Pub. L. No. 102-381, 106 Stat. 1378-79 (1992). The failure to pay the claim rental fees on or before August 31, 1994, conclusively constituted abandonment of the claim. That consequence is self-executing, and the Department is without authority to excuse lack of compliance with the rental fee requirement, to extend the time for compliance, or to afford any relief from such statutory consequence.

APPEARANCES: Jerry D. Grover, Jr., Provo, Utah, pro se; John W. Steiger, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE PRICE

Jerry D. Grover, Jr., d.b.a. Kingston Rust Development, has appealed the August 28, 1998, decision of the Utah State Office, Bureau of Land Management (BLM), holding the Last Chance Nos. 1-3 unpatented oil shale claims (UMC 65933-65935) forfeited or null and void ab initio, and informing Daniel Clark Hales, j Production Industries Corporation, the claim holder of record,<sup>1/</sup> that it lacked jurisdiction over a portion of a third claim. All three oil shale claims were located on March 25, 1918.

Specifically, the decision determined that portions of the lands embraced by UMC 65933 and 65934 were patented on March 8, 1916, under Indian Trust Patent 517592. BLM therefore declared these claims null and void ab initio to the extent they embraced land subject to the Indian Trust Patent.<sup>2/</sup> (Decision at 2.) A portion of UMC 65935 is located on land conveyed to the State of Utah on September 23, 1964, effective January 25, 1927, subject to valid existing mining claims. BLM thus

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<sup>1/</sup> The decision was sent j Production Industries Corporation at Grover's current address in Provo, Utah. In its Answer, BLM notes that Grover has never notified it of the transfer of Hales' interest in the Last Chance claims, as required by 43 CFR 3833.3. However, the record contains a copy of a quitclaim deed dated October 21, 1993, which apparently conveyed the Last Chance oil shale claims to Grover in their entirety. That deed was recorded in Uintah County, Utah. BLM correctly sent the decision to Hales. In the past, we have repeatedly admonished Grover that he fails or refuses to comply with the notification regulation at his own peril.

<sup>2/</sup> The patented land includes the SW¼ Sec. 24, T. 9 S., R. 25 E., Salt Lake Meridian (SLM), Utah.

concluded that it lacked jurisdiction over a portion of that claim.<sup>3/</sup> (Decision at 2.) As to the land remaining in the three claims, BLM reached two conclusions.

First, BLM found that Grover had failed to pay the \$100 per claim rental fees for 1993 and 1994 that were due on or before August 31, 1993, as specified by the Interior Department and Related Agencies Appropriations Act of 1993 (Rental Fee Act).<sup>4/</sup> Consequently, BLM declared the claims forfeited by operation of law, to the extent BLM retained jurisdiction over them. Second, and in the alternative, BLM stated that the patent applications filed by Grover's predecessor had been filed on April 3, 1993, after the effective date of the Energy Policy Act of 1992 (EPA), 30 U.S.C. § 242 (2000), which required Grover or his predecessor to "pay \$550 per mining claim for calendar year 1993 on or before December 31, 1993." (Decision at 2.) Citing the regulations at 43 CFR 3833.1-5(e) and 3833.4(a)(2), BLM declared the default to be "deemed conclusively to constitute a forfeiture of the mining claim." (Decision at 3.)

The decision before us and BLM's Answer set forth the history of these claims, providing a more complete context for the decision's alternative rationale. On October 25, 1989, Hales filed a mineral patent application for the Last Chance claims, serialized as UTU-66097. The application was executed on September 29, 1989. Pursuant to the provisions of 43 CFR 1821.2-2(a), by decision dated March 24, 1993, BLM rejected the application because it was executed more than 10 days before the date it was filed.<sup>5/</sup> According to BLM, the decision stated that "[t]he subject application may be re-executed or a new and properly executed application may be filed, without priority (43 CFR 1821.2-2(b)). A new filing fee of \$350.00 will be required."<sup>6/</sup> (Answer at 2.) Hales appealed the March 24, 1993, decision, and it was docketed as IBLA 93-294.

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<sup>3/</sup> The land conveyed to the State includes E½ NW¼ Sec. 36, T. 9 S., R. 25 E., SLM, Utah.

<sup>4/</sup> Pub. L. No. 102-381, 106 Stat. 1378-79 (1992); 43 CFR 3833 (1993).

<sup>5/</sup> We did not find a copy of the Mar. 24, 1993, decision in the record, and it was not submitted by the parties.

<sup>6/</sup> The regulation, 43 CFR 1821.2-2(a) and (b) (1997), provided:

"(a) The authorized officer will reject all applications to make entry which are executed more than 10 days prior to filing.

"(b) Such rejections should be subject to the right of appeal and to the right to file a new and properly executed application, or to reexecute the rejected application, without priority." (Emphasis added.) The current "plain English" version of Subpart 1821 omits these specific provisions.

Although he had filed an appeal, Hales re-executed the application and submitted the fee. In his transmittal letter, he expressly stated that he was not conceding the correctness of BLM's decision; instead he was complying to avoid "further delay in the processing of his application." See Answer at 3. BLM now states, however, that, "[b]ecause Mr. Hales appeared to accept the BLM's advice in its March 24, 1993, decision to re-execute the application 'without priority,'" <sup>7/</sup> BLM moved to remand the case. (Answer at 4.) That request was granted by order dated June 4, 1993. On remand, the re-executed application was serialized as a new application, UTU-72080. No explanation for doing so appears from, or is suggested by, the record. No First Half Final Certificate has been issued.

By decision dated May 27, 1994, BLM declared the claims abandoned and void for failure to pay the \$550 fee imposed by the EPA for the 1993 calendar year. Grover filed an appeal, docketed as IBLA 94-669. By order dated June 27, 1997, this Board reversed the May 1994 decision, concluding that, given the facts presented in IBLA 94-669, its decision in Jerry D. Grover d.b.a. Kingston Rust (Grover I), 139 IBLA 178 (1997), dictated that result.

On August 4, 1997, in a decision issued to Hales, BLM declared the claims abandoned and void because he failed to pay the rental and maintenance fees for fiscal years 1993-1997 respectively established by the Rental Fee Act and the Omnibus Budget Reconciliation Act of 1993, as amended (Maintenance Fee Act). <sup>8/</sup> Grover again filed an appeal, docketed as IBLA 97-530. BLM's decision was not stayed. Later, however, BLM moved for a remand, which the Board granted by order dated December 15, 1997. Upon remand, BLM sent a decision to Hales dated March 4, 1998, which rescinded the August 4, 1997, decision and, citing the Rental Fee Act and the Maintenance Fee Act, notified him that "the \$100 rental/maintenance fee for each claim for assessment years 1993, 1994, 1995, 1996, 1997, and 1998" was due. (March 4, 1998, Decision at 2.) Neither Hales nor Grover responded. Ultimately, BLM issued the decision now before us, which declared the

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<sup>7/</sup> To the contrary, we note that Hales characterized BLM's action as "absolute negligence in processing the application" and "criminal." (Mar. 29, 1993, Transmittal Letter from Hales to BLM.)

<sup>8/</sup> Pub. L. No. 103-66, 107 Stat. 405-06 (Aug. 10, 1993); Pub. L. No. 105-240, 112 Stat. 1570 (Sept. 25, 1998); Pub. L. No. 105-277, 112 Stat. 2681-235 (Oct. 21, 1998); Pub. L. No. 107-63, 115 Stat. 418 (Nov. 5, 2001); 30 U.S.C. § 28f (2000); 43 CFR 3833.1-5(b), and 3833.1-7(d) (1994). Beginning in 1999, the annual claim maintenance fee became due on or before Sept. 1 of each year.

claims in part null and void ab initio, and, to the extent not void ab initio, declared them forfeited by operation of law on the alternative bases set forth above.<sup>9/</sup>

On appeal, Grover argues that patent application UTU-66097 was not properly closed, and that Hales re-executed UTU-66097 rather than initiating a new application. (SOR at 1.) He further contends that BLM assigned the new serial number without notice to the claimant or this Board. Grover alleges that BLM never issued a decision rejecting UTU-66097, and relying on language in Grover I, 139 IBLA at 184, concludes that there was no adverse action relating to the sufficiency of the application, or a voluntary withdrawal. (SOR at 2.)

Grover next argues that his claims are not subject to the \$100 claim fee established by the Rental Fee Act and Maintenance Fee Act, or the EPA's \$550 fee per claim per year, while the claims were the subject of a pending appeal before this Board. (SOR at 3-5.) This argument is in part premised on the fact that BLM's decision was not stayed. In part, the argument is also based on the assumption that, because the fees replaced the obligation to perform annual assessment work, which Grover argues cannot be performed retroactively, claim fees cannot be required on a retroactive basis. (SOR at 5.)

Grover's third argument is that the EPA does not apply to the Last Chance oil shale claims because Hales did not receive notice of the Act's requirements. (SOR at 6.)

Grover's fourth argument is that failure to pay the EPA's \$550 fee does not constitute abandonment of the claim or forfeiture, because nothing in that Act imposes such a consequence. (SOR at 6-7.)

Grover's fifth argument is that the EPA's \$550 fee is inapplicable to oil shale claims proceeding to limited patent when the application had been filed and accepted for processing by October 24, 1992, the effective date of the EPA. (SOR at 7-8.)

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<sup>9/</sup> Although the Mar. 4, 1998, decision notified Hales of claim fees due under both the Rental Fee Act and the Maintenance Fee Act, we emphasize that the Aug. 28, 1998, decision was confined to claim fees due pursuant to the Rental Fee Act and the EPA only. As the forfeiture decision here appealed was not predicated on fees imposed by the Maintenance Fee Act, there is no need to consider the parties' arguments relating to that statute.

His sixth contention is that Instruction Memorandum 98-01 <sup>10/</sup> does not apply to oil shale claims. (SOR at 9.) Grover's final group of arguments assert that the Code of Federal Regulations (CFR) did not impose a \$100 claim rental fee on his claims during the period of July 15, 1993, to August 30, 1994 (SOR at 9), and that the CFR has not imposed such a claim maintenance fee in the years since August 30, 1994 (SOR at 10). While he acknowledges the EPA's reference to laws in effect prior to its enactment, see 30 U.S.C. § 242 (c) (2), Grover maintains that this language does not include the obligation to pay the \$100 maintenance fee currently imposed by the Maintenance Fee Act. (SOR at 10-11.)

Although the issue was not raised or considered at the time, and no petition to reconsider the matter was filed by BLM, in its Answer BLM now argues that the Board should have addressed the effect under the EPA of the re-execution of the patent application and should have concluded that the re-executed patent application constituted a new application for limited patent. On this premise, BLM contends that the Board erred in concluding in its June 27, 1997, order that there was nothing in the decision or record in IBLA 94-669 that dictated a result different from that reached in Grover I, 139 IBLA 178. (Answer at 4.) Accordingly, BLM moves this Board to "disavow the June 27, 1997, order to the extent that it makes this erroneous factual finding" (Answer at 8), which would furnish the necessary factual predicate for establishing that Hales' patent application post-dated the effective date of the EPA and became subject to the \$550 fee specified therein.

Grover filed a Reply in which he pursues four principal groups of arguments. <sup>11/</sup> The first relates to the effect of Hales' re-execution of his patent application. Grover contends that UTU-66097 was pending before the Department on October 24, 1992. More particularly, he argues that, properly construed, the phrase "without priority" as used in 43 CFR 1821.2-2(b) refers to intervening valid, adverse claims and "does not include intervening actions by the government, including the EPA." (Reply at 3, emphasis in original.) In support of his contention that a re-executed application is not a new application, Grover points to language in Senate Reports 101-259 and 101-260 which is offered to show that Congress did not intend that modifications of a pending application should be deemed a new application. (Reply at 4.) Grover argues, moreover, that this Board "clearly and

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<sup>10/</sup> By its terms, IM 98-01 dated Sept. 29, 1997, expired on Sept. 30, 1999. By IM 2000-30 dated Nov. 10, 1999, IM 98-01, among others, was extended to Sept. 30, 2001. It is unclear whether it has been extended beyond Sept. 30, 2001, but the current status of the IM ultimately is irrelevant in this case.

<sup>11/</sup> It is apparent that Grover concedes the correctness of BLM's position regarding the portions of the Last Chance claims conveyed to the State, as he did not argue or challenge it in his SOR or in his Reply.

unequivocally set aside any rejection of the October 1989 application” (Reply at 4), so that arguments to the contrary are barred by *res judicata*. (Reply at 5-6.)

Grover’s second main argument is that he tendered \$100 per claim on January 28, 1993, which BLM rejected and returned. (Reply at 6.)

The third group of arguments is designed to demonstrate that BLM has misconstrued the legislative history of the EPA and applicable precedents in advancing its arguments regarding “existing law” incorporated in the EPA. (Reply at 9-14.)

The fourth group of arguments consists of an interpretation of section 37 of the Mineral Leasing Act of 1920 (MLA), 30 U.S.C. § 193, see also 30 U.S.C. § 241(a) (2000), with which Grover contends he has “substantially complied.” (Reply at 14-15.) In the alternative, he argues that BLM is leasing his claims to other parties, and that those leasing actions excuse the obligation to perform assessment work prescribed by the general mining law, 30 U.S.C. § 28b (2000). (Reply at 15.)

BLM did not file a further response.

In other appeals involving Grover or a predecessor in interest, this Board has thoroughly delved into virtually every major aspect of the EPA. This case presents an issue not previously raised or implicated: the legal effect of Hales’ re-execution and filing of his patent application. For the reasons that follow, however, we find it unnecessary to construe 43 CFR 1821.2-2 or rule on the parties’ arguments regarding that regulation.

The effective date of the Rental Fee Act was October 5, 1992. It is undisputed that the Last Chance claims had not been invalidated by BLM or abandoned as of October 5, 1992. The claims therefore were subject to the provisions of the Rental Fee Act, which established a \$100 claim rental fee for all unpatented mining claims, mill sites, and tunnel sites. This included oil shale claims, because nothing in the Rental Fee Act excluded such claims or otherwise provided for them differently. Pub. L. No. 102-381, 106 Stat. 1378-79 (1992); see also 43 CFR 3833.1-5 (1993). Thus, a claim rental fee of \$100 for each unpatented oil shale claim was due on or before August 31, 1993, for the 1993 assessment year that ended at noon on September 1, 1993, and for the 1994 assessment year that began at noon on September 1, 1993, for a total of \$200 per claim. Jerry D. Grover d.b.a. Kingston Rust Development (Grover IV), 160 IBLA 261, 266-67 (2000).

Three weeks later, on October 24, 1992, Congress enacted the EPA exclusively for oil shale claims. The EPA identifies three classes of claim holders, and these classes are defined by reference to whether the claim holder had filed a patent

application, which the Department accepted for processing, by the effective date of the EPA, and, if so, whether such application had proceeded to the issuance of first half final certificate. The status of a patent application in turn determines, “notwithstanding any other provision of law,” what is necessary under the EPA to maintain the possessory right to an oil shale claim as against the United States until patent issues (or the claim is otherwise invalidated). The EPA thus superseded the Rental Fee Act and created separate requirements for oil shale claim holders before the deadline for paying the fees imposed by the Rental Fee Act had even arrived, so that the status of Hales’ patent application on October 24, 1992, is critical.

[1] Hales filed his patent application in October 1989. It was still pending on October 24, 1992, because Hales had not withdrawn it and BLM had taken no action to reject or invalidate it. See Grover I, 139 IBLA at 184. BLM took no action to reject it until March 24, 1993. Hales therefore had “filed a patent application which ha[d] been accepted for processing by the Department of the Interior by October 24, 1992.” EPA, 30 U.S.C. § 242 (c) (1) (2000). Consequently, he met the statutory criterion. By doing so, Hales fell into the category of persons who, because they had patent applications pending before the Department by October 24, 1992, are thereafter required to maintain their claims “in accordance with the requirements of applicable law prior to enactment of [the EPA].” 30 U.S.C. § 242 (c) (2) (2000). See Grover IV, 160 IBLA at 266-67. <sup>12/</sup>

We find strong support for this construction of the EPA’s language in the legislative history of section 2511 of the EPA, <sup>13/</sup> 30 U.S.C. § 242 (2000), considered

<sup>12/</sup> Unlike the instant appeal, in Grover IV, there was no doubt about the pending status of the patent applications, and thus no question that those claims were subject to the Rental Fee Act, as provided by the EPA, 30 U.S.C. § 242 (c) (2) (2000).

<sup>13/</sup> In its Answer, BLM has provided the legislative history of the EPA:

“The prior legislation considered by the 101<sup>st</sup> Congress and enacted into law by the 102<sup>nd</sup> Congress is S. 30, 101<sup>st</sup> Cong. 2d Sess. (1990) (S. 30) and H.R. 2392, 101<sup>st</sup> Cong. 2d Sess. (1990) (H.R. 2392). The text and legislative history of those bills are found in two Senate Reports, S. Rep. No. 101-259 (1990) and S. Rep. No. 101-260 (1990). Section 6 of S. 30 and H.R. 2392 closely resembles section 2511(e) of the EPA. The EPA is the enacted version of H.R. 776, 102<sup>nd</sup> Cong. 2d Sess. (1992) (H.R. 776). Section 2511 was included in H.R. 776 by a conference committee. It was substituted for what had been section 2820 of H.R. 776. See 138 Cong. Rec. H11399-01, H11409, H11415, H12147 (daily ed. Oct. 5, 1992). The earlier version of H.R. 776, the one in which section 2820 was found, had been considered and favorably reported by the House Committee on Interior and Insular Affairs. See H.R. Conf. Rep. No. 102-474 (VIII), at 89, 139-41, reprinted in part in 1992 U.S.C.C.A.N.

(continued...)

by the 101<sup>st</sup> Congress. In the Section-by-Section Analysis of two Committee Reports, the following language appeared:

A patent application that is filed by March 8, 1990, and is substantively complete by such date is eligible to receive a patent pursuant to this section. The Committee wishes to emphasize that even if an applicant needs to modify an application or take other action (such as dividing a claim) which technically would result in a new filing under Department regulations, the Committee intends that the application be processed. The Committee believes that the result is appropriate in light of the foreclosure of future patenting.

S. Rep. No. 101-259 (1990) at 5; S. Rep. No. 101-260 (1990) at 5 (emphasis added.) Hales met the EPA's criterion before any question about the application arose under 43 CFR 1821.2-2 (1997), and this suffices without the need to consider events that subsequently affected it.<sup>14/</sup>

[2] Because the pendency of the patent application placed Hales in the category of those who must maintain their claims until patent issues in accordance with the law that governed prior to the EPA, see 30 U.S.C. § 242(c)(1) and (2) (2000), he or his successor was required to pay the rental fees for the 1993 and 1994 assessment years that were due on or before August 31, 1994. The failure to pay the rental fees on or before August 31, 1993, conclusively constituted abandonment of the claims. Pub. L. No. 102-381, 106 Stat. 1378-79 (1992). As we have held many times, the Department is without authority to excuse lack of compliance with the rental fee requirement, to extend the time for compliance, or to afford any relief from the consequences provided in the Rental Fee Act. Keith Lindsey, 130 IBLA 346, 348 (1994); Nannie Edwards, 130 IBLA 59, 60 (1994); Lee H. And Goldie Rice, 128 IBLA 137, 141 (1993). The consequence is self-executing, see U.S. v. Locke, 471 U.S. 84, 100 (1985) (construing as self-executing "conclusive presumption of abandonment" in the context of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(c) (2000)), so that a BLM decision holding a claim conclusively abandoned

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<sup>13/</sup> (...continued)

2307, 2357-59. The conference committee to which H.R. 776 was referred published a report, H.R. Conf. Rep. No. 102-1018, reprinted in part in 1992 U.S.C.C.A.N. 2472. See also 138 Cong. Rec. H11399-01 (daily ed. Oct. 5, 1992). That Conference Report does not contain an analysis of the provisions of section 2511. However, section 2511 is a copy of a provision found in two bills considered during the 101<sup>st</sup> Congress." See Answer at 22, n. 13.

(continued...)

<sup>14/</sup> Accordingly, we decline to retreat from our view that disposition of the appeal in IBLA 94-669 was controlled by the decision in Grover I, 139 IBLA 178.

merely declares the status of the claim thus effectuated by the statute. The decision therefore is modified to the extent that, in the alternative, it declared the claims forfeited by reason of Hales' or Grover's failure to pay \$550 per claim pursuant to 43 CFR 3833.1-5(e) and 3833.4(a)(2). See Grover I, 139 IBLA at 184; Grover IV, 160 IBLA at 268.

The Last Chance claims simply did not survive past August 31, 1994. That fact moots issues arising from Hales' or Grover's succeeding failure to pay the annual claim fees imposed by the Maintenance Fee Act, and, with one exception, likewise moots the parties' other arguments.<sup>15/</sup>

Grover contends that he tendered the rental fees for the claims in January 1993, and that BLM refused them. The record contains annual proofs of labor (POL) for a number of oil shale claims, including the Last Chance claims, and associated filing fees for 1993 through 1997. Those filing fees ultimately were refunded and the

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<sup>15/</sup> Although moot in this appeal, it should be noted that the parties' other arguments have been decided in one or another case involving Grover or a predecessor: Thus, the first decision in this series of appeals was Production Industries Corp., 138 IBLA 183 (1997). That case involved the sufficiency of a notice of election pursuant to the EPA, 30 U.S.C. § 242(d) (2000), timely filed by Grover's predecessor in an appeal docketed as IBLA 94-29. The next decision was Grover I, 139 IBLA 178 (1997), and it involved oil shale claim holders subject to the provisions of subsection (c)(1) and (2) of the EPA, 30 U.S.C. § 242(c)(1) and (2) (2000). We docketed the appeal in that case as IBLA 94-654. We disposed of the appeal docketed as IBLA 94-669 in the June 27, 1997, order on the basis of Grover I. A third decision issued in Jerry D. Grover d.b.a Kingston Rust Development (Grover II), 141 IBLA 321 (1997), which concerned the adequacy of BLM's notice of the EPA's requirements provided to claim holders in appeals docketed as IBLA 93-588 and IBLA 94-463.

Most recently, the Board has issued decisions in Jerry D. Grover d.b.a Kingston Rust Development (Grover III), 160 IBLA 234 (2003), which pertained to consolidated appeals docketed as IBLA 99-8, 99-9, 99-11, and 99-12. Grover III construed subsections (d) and (e) of the EPA, 30 U.S.C. § 242 (d) and (e) (2000), and held that the EPA requires the payment of \$550 per claim per year for each year of an oil shale claim's existence, and where a BLM decision that was not stayed is reversed in its entirety, the period for which payment is required includes the years an appeal was pending before this Board. The Board modified BLM's decisions and affirmed them as modified. Lastly, in Grover IV, 160 IBLA 261, an appeal docketed as IBLA 99-10, we determined that the oil shale claims at issue were subject to the provisions of the Rental Fee Act. An order issued in Jerry D. Grover d.b.a Kingston Rust Development (Dec. 22, 2003), dismissed an appeal docketed as IBLA 99-68 on the basis of lack of standing, noting that, in any event, service fees are not refundable.

POLs were not accepted for filing or made part of the record. (January 14, 1998, Letter from R.C. Stelmach, BLM, to Grover.) However, we found no correspondence, decision, receipt, accounting advice, or other evidence in the record before us to support the assertion that Grover tendered claim rental fees. He has submitted no information or detail and no documentation or other evidence on appeal to support his assertion. Absent any support in the record showing or supporting the alleged attempt to pay such rental fees, the argument is properly rejected.

Therefore, 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 vacated in part and affirmed as modified.

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T. Britt Price  
Administrative Judge

I concur:

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James F. Roberts  
Administrative Judge