

JOHN W. MACGUIRE

IBLA 78-107

Decided May 15, 1978

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting application for deferment of annual assessment work on mining claims. W-55707.

Affirmed.

1. Mining Claims: Assessment Work

In order for a mining claimant to qualify for deferment of his annual assessment work under 30 U.S.C. § 28b (1970), his access to his mining claims must be interdicted. The mere fact the mining claims are involved in litigation over possessory rights does not justify granting a deferment of annual assessment work.

APPEARANCES: Dennis M. Hand, Esq., of Hand, Hand & Hand, Casper, Wyoming, and H. Byron Mock, Esq., of Mock, Shearer & Carling, Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

John W. MacGuire appeals from the November 3, 1977, decision (W-55707) of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his application for deferment of annual assessment work on certain mining claims. <sup>1/</sup> The State Office based its decision on Charlestone Stone Products, Inc., 32 IBLA 22 (1977), which held that deferments of assessment work should only be granted where access to the mining claims is impeded or denied.

Appellant argues that the deferment statute, 30 U.S.C. § 28b (1970), was designed to protect miners from third party locators when

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<sup>1/</sup> Appellant applied for deferment of the assessment work on 1,891 mining claims. The claims are too numerous to list in this decision but are set out in case file W-55707.

assessment has not been currently performed. He asserts it was not designed to require assessment work while conflicting claimants resolve possessory rights. Referring to the analysis of the statute in Charlestone as dicta, he argues that it is inapplicable to his mining claims. Finally, he requests that either the deferments be granted or that the application be remanded to the BLM State Office for consideration of whether all or part of the claims qualify for deferment.

[1] The statute under which appellant applied for deferment of the annual assessment work on his mining claims states that a deferment may be granted in the following circumstances:

[S]uch mining claim or group of claims is surrounded by lands over which a right-of-way for the performance of such assessment work has been denied or is in litigation or is in the process of acquisition under State law or that other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof.

30 U.S.C. § 28b (1970). In the first case involving this statute before the Board, we affirmed the denial of a deferment because the "appellant has not shown that his right to enter upon the claims has been obstructed." James R. Eck, 6 IBLA 263, 264 (1972).

Our most recent decision concerning 30 U.S.C. § 28b (1970) presents an analysis of the regulations and legislative history. Oliver Reese, 34 IBLA 103 (1978). We concluded in Reese that "legal impediments" which would justify a deferment must be of the sort which interdict the mining claimant from access to his claim. Thus, regardless whether Charlestone Stone Products, Inc., *supra*, contains dicta, the principles stated in that decision set forth the correct interpretation of 30 U.S.C. § 28b (1970) on the issue of what constitutes "legal impediments."

Appellant requested the deferments because his mining claims are involved in litigation over possessory rights. In one suit, appellant prevailed in part and the plaintiff, Continental Oil Co., has appealed. In the second suit, the matter is pending before the U.S. District Court in Wyoming. The United States is not involved in either law suit. Appellant stated in his deferment application that he "cannot be expected to expend the time and money necessary to meet the annual assessment requirements until the possessory rights to the mining claims have been fully adjudicated." Appellant has not alleged either in his application or on appeal that his access to the mining claims is in any way obstructed. The BLM State Office properly denied his application for the deferment.

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 affirmed.

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Joan B. Thompson  
Administrative Judge

We concur:

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Joseph W. Goss  
Administrative Judge

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Douglas E. Henriques  
Administrative Judge

