

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for temporary deferment of annual assessment work on placer mining claims. W-60704.

Affirmed.

1. Mining Claims: Assessment Work

A "legal impediment" which would justify the granting of a deferment to perform annual assessment work is only one which interdicts the mining claimant from access to the claim. Where there is no indication in the record that the claimant prior to the decision appealed from has attempted to make satisfactory arrangements with the surface owners covering possible surface damage or has negotiated with such owners concerning his access, his access has not been interdicted and the petition for deferment was properly denied.

APPEARANCES: A. J. Maurer, Jr., pro se, Don H. Sherwood, Esq., and Mrs. Dawson, Nagel, Sherman and Howard, Denver, Colorado, for Mr. Douglas Randall.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

A. J. Maurer, Jr., appeals from the January 30, 1978, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying his petition for temporary deferment of assessment work on eight groups of unpatented placer mining claims located in Crook County, Wyoming. 1/

1/ The claims are described in Exhibit A attached to the BLM decision in case file W-60704.

The appellant's petition was filed on August 19, 1977, for the assessment year beginning September 1, 1976. The petition alleged that:

[A]pplicant and his optionee, International Minerals & Chemical Corporation, have been denied entry by the surface owners for the purpose of conducting exploration and annual assessment work; that applicant and International Minerals & Chemical Corporation have been unsuccessful in attempting to resolve any agreement for surface damages; that the surface landowners have located placer mining claims over the prior located claims of applicant; that applicant is in the process of posting bond with the Bureau of Land Management under the provisions of the Act of December 29, 1916, as amended by the Acts of June 17, 1949, and June 21, 1949 (63 Stat. 201 and 63 Stat. 215, respectively).

Appellant supported its petition with a copy of a letter dated August 2, 1977, from counsel for Mr. Douglas Randall to counsel for International Minerals and Chemical Corporation. Mr. Randall is one of the owners of lands patented under the Stockraising Homestead Act of December 29, 1916, 43 U.S.C. § 291 et seq. 2/ on which some of the appellant's claims are located. The letter states in part:

. . . no entry upon such stock-raising homesteads may occur subsequent to the location of the claims for the purpose of the performance of assessment work or otherwise, absent agreement with the landowner or the posting of a bond in an amount fixed by the Secretary of the Interior for the benefit of my client.

Mr. George Bean and Mr. Clyde Raber also own lands, patented under the Stockraising Homestead Act, on which some of appellant's claims are located. On September 28, 1977, Bean and Raber filed a protest with the Wyoming State Office against the granting of the deferment. The protest states in part:

. . . Mr. Maurer has never contacted either Mr. Bean or Mr. Raber regarding the performance of assessment work on the property. Moreover, International Minerals and Chemical Corporation (IMC), a purported assignee of Mr. Maurer's mining claims, has not attempted to

2/ The Stockraising Homestead Act was repealed by the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. § 1701 (1970).

resolve the problem of surface damages. . . . neither Mr. Maurer nor IMC made any attempt to negotiate for entry nor, to our knowledge, has any attempt been made by either to post a bond and proceed as provided in 43 C.F.R. § 3814.1. [3/]

Mr. Walt Crago, who also owns land upon which some of appellant's claims are located, joined in the above protest on October 7, 1977. The letter submitted on behalf of Mr. Crago states in part:

Mr. Crago has never been contacted by Mr. Maurer regarding assessment work, and he had one conversation with representatives of IMC shortly after July 29, 1977, where he indicated to them that no trespassing would be allowed without the filing of a bond. No discussion has ever taken place between Mr. Crago and James Maurer or IMC Corporation regarding negotiated entry.

The decision appealed from states that all but three of appellant's claims were located on lands patented under the Stockraising Homestead Act, and that the three excluded claims were located on public lands completely surrounded by private lands.

The decision denied appellant's petition on the ground that appellant failed to specify what steps had been taken to acquire a right-of-way by negotiation, and for failure to provide a bond as alternatively required by the Stockraising Homestead Act.

Appellant's petition was filed pursuant to 30 U.S.C. § 28(b) (1970) which states that a deferment may be granted where

3/ 43 CFR 3814.1(c) states with respect to bonds:

"It is further provided in said section 9 that any person who has acquired from the United States the coal or other mineral deposits in any such land or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal, or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; or, second, upon payment of the damages to crops or other tangible improvements to the owner thereof under agreement; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon."

[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.

The applicable regulation is 43 CFR 3852.2, Filing of petition for deferment, contests. It provides:

(a) In order to obtain temporary deferment, the claimant must file with the authorized officer of the proper office, a petition in duplicate requesting such deferment. No particular form of petition is required, but the applicant must attach to one copy thereof a copy of the notice to the public required by the act which shows that it has been filed or recorded in the office in which the notices or certificates of location were filed or recorded. The petition and duplicate should be signed by at least one of the owners of each of the locations involved, shall give the names of the claims, dates of location, and the date of the beginning of the one-year period for which deferment is requested. Each petition shall be accompanied by a \$10 nonrefundable service charge.

(b) If the petition is based upon the denial of a right-of-way, it must state the nature and ownership of the land or claim thereto over which it is necessary to obtain a right-of-way in order to reach the surrounded claims, and the land description thereof by legal subdivisions if the land is surveyed, and give full details as to why present use of the right-of-way is denied or prevented and as to the steps which have been taken to acquire the right to use it. The petition should state whether any other right-of-way is available and if so, give reasons why it is not feasible or desirable to use the right-of-way.

(c) If the petition is based on other legal impediments, they must be set out and their effect described in detail.

Appellant has filed a statement of reasons indicating that its optionee, International Minerals and Chemical Corporation, should have, but failed to, negotiate with the surface owners concerning

access to the claims and failed to post bond. Appellant stated on March 3, 1978, that it is currently negotiating with the surface owners. It makes no significant challenge to the decision appealed from.

Some of the surface owners, Mr. and Mrs. Douglas Randall have filed a motion to dismiss the appeal, asserting, inter alia, that appellant's statement of reasons fails to point out how the decision appealed from is in error.

[1] Our recent decision in Oliver Reese, 34 IBLA 103 (1978), analyzed the regulations and legislative history of 30 U.S.C. § 28(b) (1970). The meaning of the term "legal impediments" was specifically considered. We stated that "legal impediments" "include only those which interdict physical access of the claimant to the claim." Senate Report No. 405 (May 19, 1949) from which we quoted in Reese, supra, has particular application to the instant case:

It frequently happens that the surface of a claim is owned by other than the mineral claimant, or that the claim is surrounded by privately owned lands. Either of these situations may prevent the claimant from performing his assessment work within the specified period if he is unable to make satisfactory arrangements with the surface owners covering possible surface damage, or with the owners of the surrounding lands for a right-of-way. In either of these situations the obstructing party, being on the land without hindrance, will be in a preferred position to "jump" or relocate the claim himself. [U.S. Cong. Ser. 1403, 1404 (1949).]

The Report lists the following obstructions within the scope of denial of access.

1. Delays in making arrangements with surrounding surface owners due to contested titles, family squabbles, changes of ownership during negotiations, etc.
2. Delays in official approval of bonds to protect the owners of the surface of the claims. Such bonds are posted with the Bureau of Land Management, but the claimant may not enter until official approval has been received. The surface owner is entitled to protest the bond in several successive appeal actions, and by delaying tactics he may prevent the claimant from performing assessment or patenting work for many months.

3. Delays in causing legal condemnation of rights-of-way, which can be contested for a long time in the courts.

4. Delays in overcoming by court action the posting of "No trespassing" signs on roads which have been used by the public for many years but have never been declared public roads.

The Report, at 1405, quotes the Secretary of the Interior as stating:

I have no objection to the enactment of this bill.

The proposed bill would authorize the Secretary of the Interior, upon the submission of satisfactory evidence, to defer temporarily the annual assessment work requirement in certain contingencies which would make impossible the performance of assessment or mining work and would jeopardize the continued right to hold an unpatented mining claim. Thus, when a mineral claimant could not obtain access to the boundaries of the claim or was hindered from entering upon the surface of the claim by the adjoining landowners or holders of the nonmineral title, under the proposed legislation a deferment for not to exceed 2 years could be granted. The deferred assessment work would constitute an accumulating requirement and no part of it waived. [Emphasis added.]

The quoted portions of the report set out a variety of circumstances which might restrict or deny a mining claimant's access to his claims. It is clear, however, that before a claimant can complain that access has been foreclosed, he must make an attempt to gain access. The instant record contains no indication that appellant attempted to make arrangements with the surface owners. Appellant concedes as much in its statement of reasons. It cannot be said, therefore, that appellant was obstructed or hindered from entering its claims by the surface land owners. The letters filed by these owners are not denials of access. They show, on the contrary, that the question of access was negotiable, and that appellant had made no effort to communicate or negotiate with the owners in regard thereto. We conclude that there was no basis for granting the desired relief. In view of this holding, we need not address ourselves to the motion to dismiss.

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.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge

