

CONTINENTAL OIL CO.

IBLA 78-103

Decided June 30, 1978

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, revoking the temporary deferment of annual assessment work on certain mining claims located by appellant and rejecting appellant's petition for deferment of the work, W-59517.

Affirmed in part and reversed in part.

1. Mining Claims: Assessment Work

Although pending litigation with respect to ownership of mining claims does not in itself establish grounds for deferment of assessment work thereon, a court injunction against entry upon the claims by the locator constitutes a "legal impediment" to entry which will support a deferment.

APPEARANCES: Barry G. Williams, Esq., of Wehrli and Williams, Casper, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

This appeal is brought from a November 3, 1977, decision of the Wyoming State Office, Bureau of Land Management (BLM), in W-59517 revoking the temporary deferment of annual assessment work on certain mining claims located by appellant on the public domain and rejecting appellant's petition for deferment of the work. The temporary deferment of assessment work for the 1-year period from September 1, 1976, through August 31, 1977, had been granted by a prior State Office decision of August 10, 1977, issued in response to appellant's petition for deferment. The petition was filed May 26, 1977. Certain supporting documents including a copy of the judgment of the court in litigation involving the mining claims were filed on July 5, 1977.

The ground for the decision below is that the pendency of litigation in the Federal courts regarding ownership of the mining claims does not establish a sufficient basis for the deferment of assessment

work -- that deferment can only be granted under 30 U.S.C. § 28b (1970) when claimant's right of access to the claim has been impeded or denied. The BLM cited Charlestone Stone Products, Inc., 32 IBLA 22 (1977), in support of its decision.

The statement of reasons for appeal alleges that appellant by court order of October 22, 1976, was enjoined from entering certain of the mining claims identified in appellant's petition for deferment. This order was adopted as a part of the judgment in litigation over ownership of the mining claims, which case is pending on appeal. Counsel asserts that this is the type of legal impediment to entry upon the mining claims which qualifies as a ground for deferment under 30 U.S.C. § 28b (1970).

Appellant further argues reliance upon the initial BLM decision granting a temporary deferment. Finally, it is contended that parties who are litigating title to mining claims should not be forced to perform assessment work on the claims at a time when title to the claims is still in doubt, because as a practical matter many parties cannot afford to risk the large amounts of money required to do the assessment work while title is still in question.

The mining claims involved in this appeal are too numerous to identify separately in this decision, but they are adequately identified in the case record. For purposes of this appeal, the claims may be separated into two classes: those which appellant was enjoined from entering by the District Court judgment on October 22, 1976, and those which appellant was not precluded from entering.

The file contains a copy of the District Court judgment in Continental Oil Company v. Natrona Service, Inc., and John W. MacGuire, Civ. No. C75-135-B (D. Wyo. October 22, 1976), appeal docketed (10th Cir.). That judgment provides in part:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants [Natrona Service, Inc., and John W. MacGuire] have and recover judgment against plaintiff [Continental Oil Company] as to the claims described upon Exhibit B hereto attached and by this reference made a part hereof, the same as if fully set forth herein.

* * * * *

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in accordance with the demand of defendants' counterclaim, the remaining claims, described upon Exhibit B hereto attached located by plaintiff, are invalid and that said claims located by defendants are valid; and as to the same, defendants have the exclusive right of possession as against plaintiff as to the lands covered by defendants' said claims for the purpose of taking all other

necessary steps, including performance of annual labor and assessment to perfect said claims under the laws of the United States and the State of Wyoming; and that plaintiff is enjoined and restrained from entering upon said lands or interfering in any way with the rights of defendants on the lands covered by said claims; and plaintiff is further enjoined and restrained from interfering with the rights of defendants to enter upon the public domain for the purpose of exploration and discovery upon said lands. [Emphasis added.]

The issue on appeal is whether a court order enjoining the claimant from entering mining claims located by the claimant constitutes such a legal impediment affecting the right of the claimant to enter upon the surface of the claims as will justify a deferment under the terms of 30 U.S.C. § 28b (1970).

[1] A minimum of \$100 worth of labor shall be performed or improvements made on a mining claim every year after location of the claim and prior to patent thereof. 30 U.S.C. § 28 (1970); 43 CFR 3851.1. Failure of the locator of a mining claim to perform labor or construct improvements of a value of \$100 annually renders the claim subject to loss by relocation of the claim by another party. 30 U.S.C. § 28 (1970); 43 CFR 3851.3(b); Ickes v. Virginia-Colorado Development Corporation, 295 U.S. 639, 645 (1935); Union Oil Co. v. Smith, 249 U.S. 337, 349-50 (1919); Oil Shale Corp. v. Udall, 261 F. Supp. 954 (D. Col. 1966), aff'd, 406 F.2d 759 (10th Cir. 1969), rev'd on other grounds sub nom., Hickel v. Oil Shale Corp., 400 U.S. 48 (1970).

However, provision is made by statute for the temporary deferment of the annual assessment work under certain circumstances:

The performance of not less than \$100 worth of labor or the making of improvements aggregating such amount, which labor or improvements are required under the provisions of section 28 of this title to be made during each year, may be deferred by the Secretary of the Interior as to any mining claim or group of claims in the United States upon the submission by the claimant of evidence satisfactory to the Secretary that such 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. [Emphasis added.]

30 U.S.C. § 28b (1970).

The purpose of this provision is to protect a claimant whose right of access to his mining claim has been impeded or denied. John W. MacGuire, 35 IBLA 117, 118 (1978). ^{1/} In applying this principle the Board has held that the mere pendency of litigation involving mining claims, which gives rise to a risk that any assessment work invested in the claims may be lost as a consequence of an unfavorable court decision, is an insufficient basis to support a petition for deferment of assessment work. John W. MacGuire, *supra*; Charlestone Stone Products, Inc., *supra* at 23.

The present case, however, can be distinguished from MacGuire and Charlestone. There was no injunction against entry upon the surface of the claims in Charlestone, nor was MacGuire precluded from access in his litigation with appellant. The injunction issued by the District Court in the present case is a legal impediment to entry which will justify a deferment. Therefore, the decision below must be reversed as to the rejection of the petition for deferment with respect to those claims which appellant was enjoined from entering.

On the other hand, as to those claims in the petition for deferment which appellant was not enjoined from entering, the mere fact that litigation is pending is not sufficient to justify deferment of assessment work -- the risk that any assessment work invested in the claims will be lost by reason of an unfavorable court decision is insufficient to support a deferment. Charlestone Stone Products, Inc., *supra* at 23. Thus, the second decision of the BLM was legally correct.

Although as a general rule the BLM has the authority to correct erroneous decisions, *see* Ideal Basic Industries, Inc. v. Morton, 542 F.2d 1364, 1367-68 (9th Cir. 1976), we have reservations about the reversal by BLM of a decision granting deferment of assessment work and revoking said deferment after the period for timely performance of the assessment work has lapsed. However, it is not necessary to consider this aspect of the case since there has been no offer of proof of specific detriment suffered by appellant as a result of reliance on the first decision of the BLM. The decision appealed from should be affirmed with respect to those claims which appellant was not enjoined from entering.

^{1/} The MacGuire case involved the same litigation as herein concerned, MacGuire being appellant's opponent.

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 as to such claims and reversed as to those appellant was prohibited from entering.

Joseph W. Goss
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge

