

JOHN S. HERR

IBLA 78-370

Decided March 30, 1979

Appeal from a decision of the Colorado State Office, Bureau of Land Management, denying a petition for deferment of annual assessment work for fifty oil shale placer mining claims in Garfield County, Colorado. C-22496.

Affirmed.

1. Mining Claims: Assessment Work

Under sec. 2 of the Act of June 21, 1949, 30 U.S.C. § 28c (1976), annual assessment work for mining claims may only be deferred for 2 years, and a petition for deferment beyond the authorized 2-year period is properly denied.

APPEARANCES: John K. York, Esq., Orange, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Appellant is trustee for the Black Prince Oil Shale Company, a defunct Colorado corporation which holds fifty oil shale placer mining claims known as Black Diamond Nos. 10-27, Black King Nos. 3-5 and 7-20, and Black Prince Nos. 5-19 located at secs. 14, 15, 22-27, and 33-35, T. 6 S., R. 101 W., and secs. 1, 2, 4, 5, 8, 11, 14, and 23, T. 7 S., R. 101 W., sixth principal meridian, Garfield County, Colorado. All of these claims were located in 1916.

On October 7, 1976, the Department, through the Colorado State Office of the Bureau of Land Management (BLM), granted appellant's initial petition for a deferment of the assessment work for the 1973-1974 assessment year. The basis for the deferment was appellant's statement that the owner of patented lands in the vicinity of the claims had denied permission to use roads on those lands to gain access to the claims and that no other access routes were feasible.

On August 11, 1977, appellant filed a petition seeking a 1-year renewal of the deferment on the same grounds. BLM granted this petition on August 16, 1977, giving a deferment for both the 1973-1974 and 1974-1975 assessment years until September 1, 1977. Appellant was advised that these deferments meant that all assessment work for the four 1-year periods beginning September 1, 1973, and ending September 1, 1977, must be completed by September 1, 1977.

On February 24, 1978, appellant petitioned for additional deferments for the 1975-1976 and 1976-1977 assessment years on the same grounds. BLM denied this petition stating that 30 U.S.C. § 28c (1976) provides for only one renewal of a deferment. Appellant appeals arguing that the statute does not prohibit an additional deferment.

[1] This Board has previously held that annual assessment work for mining claims may only be deferred for 2 years. The Dredge Corp., 38 IBLA 178 (1978). As we stated in that case, section 2 of the Act of June 21, 1949, 30 U.S.C. § 28c (1976), provides that "the initial period [of a deferment] shall not exceed one year but may be renewed for a further period of one year if justifiable conditions exist." (Emphasis added.) This section is implemented in 43 CFR 3852.4:

Period for which deferment may be granted.

If the showing made is satisfactory, the authorized officer of the Bureau of Land Management will grant a deferment for an initial period not exceeding one year. The period shall begin on the date requested in the petition unless the approval sets a different date. Upon petition, the one year period may be renewed for another year if justifiable conditions exist. If the conditions justifying deferment are removed prior to the specified termination date of the deferment period, the deferment shall automatically be ended as of such earlier date. [Emphasis added.]

The legislative history of the statute supports the conclusion that a maximum deferment of 2 years was intended:

[W]hen 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. [Emphasis added.]

Senate Report No. 405 (May 19, 1949), quoted in U.S. Congressional Service 1405 (1949).

Appellant has shown no other basis for an additional 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.

Joseph W. Goss
Administrative Judge

I concur.

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE FISHMAN CONCURRING:

I agree with the holding in the main decision that the Department has no authority under 30 U.S.C. § 28(c) (1976) to grant annual assessment deferments for more than 2 years.

Appellant's brief recites that various judicial decisions have created additional exemptions for the performance of annual assessment work. But these exemptions do not clothe this Department with any authority additional to 30 U.S.C. § 28(c) (1976), to grant deferments of assessment work. If, indeed, circumstances existed or exist which warrant a deferment under judicial declarations, then such circumstances may be availed of in appropriate litigation concerning the right of possession to the mining claims. See, e.g., Ames v. Sullivan, 235 F. 880 (9th Cir. 1916).

Frederick Fishman
Administrative Judge

