

J. M. GLENN d.b.a. NORTHWEST MINERAL EXPLORATION

IBLA 83-41

Decided June 7, 1983

Appeal from a decision of the Nevada State Office, Bureau of Land Management, denying a petition for deferment of annual assessment work for 57 mining claims in Pershing County, Nevada. N-30641.

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: E. A. Hollingsworth, Esq., Reno, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

J. M. Glenn, d.b.a. Northwest Mineral Exploration, appeals from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated September 3, 1982, denying a petition for deferment of annual assessment work for certain lode and placer mining claims in Pershing County, Nevada. ^{1/} Deferment was denied because "petitioner has received temporary deferments for the two previous years under decisions N-30641 dated August 28, 1980, and N-34150 dated August 31, 1981. Under the law and regulations there are no provisions for additional deferments (63 Stat. 214; 30 U.S.C. 28b-c; 43 CFR 3852.4)."

The previous deferments were granted because appellant is a defendant in a quiet title action to determine the rights to the land embraced by the subject mining claims. The court ordered on March 13, 1980, that appellant and the adverse party could not go upon the contested mining claims for mining purposes pending the outcome of the trial. Appellant alleges in his statement of reasons, in effect, that since extraordinary circumstances beyond appellant's control have delayed the trial, the court order is still

^{1/} See Appendix A, which sets forth the 57 claims subject to this appeal.

in effect and additional deferment is necessary. Appellant then argues that since the essence of the Act of June 21, 1949, 63 Stat. 214, is to provide relief for claim owners who are unable to perform annual assessment work for specified reasons, "it seems illogical to interpret the statute in such manner as would deny relief after 2 years even though the circumstances warranting deferment in the first instance still existed."

[1] This Board has previously held that annual assessment work for mining claims may only be deferred for 2 years. John S. Herr, 40 IBLA 158 (1979); Dredge Corp., 38 IBLA 178 (1978). Section 2 of the Act of June 21, 1949, states, "The period for which said deferment may be granted shall end when the conditions justifying deferment have been removed: Provided, That the initial period shall not exceed one year but may be renewed for a further period of one year if justifiable conditions exist." 30 U.S.C. § 28c (1976). Regulation 43 CFR 3852.4, in implementing this law, states:

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.

Appellant urges that 30 U.S.C. § 28c (1976) be construed to mean that the initial period could be renewed for only 1 year; however, if additional time is required, a new application could be filed with proof that justifiable conditions still exist. Thus, appellant states that another 2-year period could potentially be established for the same individual. Emphasizing the first statement in 30 U.S.C. § 28c (1976) that the deferment shall end when the conditions justifying deferment have been removed, appellant asserts that it would be inconsistent with the objectives of the law to "extend relief and then withdraw it before the conditions preventing the owner from performing the required assessment work are removed."

Neither the language of the statute, nor the regulation, however, authorize deferment beyond 2 years. The legislative history of the statute also supports the conclusion that annual assessment work for mining claims may only be deferred for 2 years. S. Rep. No. 405, 81st Cong. 1st Sess., reprinted in 1949 U.S. Congressional Service 1405 includes a statement by the Secretary of the Interior that "under the proposed legislation a deferment for not to exceed 2 years could be granted." (Emphasis added.)

We reiterate our conclusion that the Department has no authority under 30 U.S.C. § 28c (1976) to grant annual assessment deferments for more than

2 years. We would add, however, that if circumstances exist which would warrant a deferment under judicial declarations, then such circumstances may be availed of in appropriate judicial litigation. See the concurring opinion in John S. Herr, supra at 161.

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.

Bruce R. Harris
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

APPENDIX A

<u>CLAIM NAME</u>	<u>DATE OF LOCATION</u>	<u>NMC NO.</u>
Happy Jim # 1	July 11, 1979	102238
Happy Jim # 2	July 11, 1979	102239
Happy Jim # 3	July 11, 1979	102240
Happy Jim Fraction	July 11, 1979	102241
Money Bag Placer	July 11, 1979	102242
Lucky J. #I	July 6, 1979	102243
Lucky J. #II	July 6, 1979	102244
Lucky J. #III	July 6, 1979	102245
Lucky J. # 1	July 6, 1979	102246
Lucky J. # 2	July 6, 1979	102247
Lucky J. # 3	July 6, 1979	102248
Lucky J. # 4	July 6, 1979	102249
Lucky J. # 5	July 6, 1979	102250
Lucky J. # 6	July 6, 1979	102251
Lucky J. # 7	July 6, 1979	102252
Lucky J. # 8	July 6, 1979	102253
Lucky J. # 9	July 6, 1979	102254
Lucky J. #10	July 6, 1979	102255
Lucky J. #11	July 6, 1979	102256
Lucky J. #12	July 12, 1979	102257
Lucky J. #13	July 12, 1979	102258
Lucky J. #14	July 12, 1979	102259
Lucky J. #15	July 12, 1979	102260
Lucky J. #16	July 12, 1979	102261
Lucky J. #17	July 6, 1979	102262
Lucky J. #18	July 6, 1979	102263
Lucky J. #19	July 6, 1979	102264
Lucky J. #20	July 6, 1979	102265
Lucky J. #21	July 6, 1979	102266
Lucky J. #22	July 6, 1979	102267
Lucky J. #23	July 6, 1979	102268
Lucky J. #24	July 6, 1979	102269
Lucky J. #25	July 6, 1979	102270
Lucky J. #26	July 6, 1979	102271
Lucky J. #27	July 6, 1979	102272
Lucky J. #28	July 6, 1979	102273
Lucky J. #29	July 6, 1979	102274
Lucky J. Fraction	July 6, 1979	102275
Pure Quill # 1	December 8, 1977	17174
Pure Quill # 2	December 8, 1977	17175
Pure Quill # 3	December 8, 1977	17176
Pure Quill # 4	December 8, 1977	17177
Pure Quill # 5	December 8, 1977	17179
Pure Quill # 6	December 8, 1977	17179
Pure Quill # 7	December 8, 1977	17180
Pure Quill # 8	December 8, 1977	17181

Pure Quill # 9	December 8, 1977	17182
Pure Quill #10	December 8, 1977	17183
Pure Quill #11	December 8, 1977	17184
Rosebud	August 6, 1979	126087
Aster	August 6, 1979	126083
Marygold	August 6, 1979	126084
Violet	August 6, 1979	126082
Tulip	August 6, 1979	126086
Daisy	August 6, 1979	126085
Goldenrod	August 6, 1979	126088
Bud	August 6, 1979	126089

