

AMADA MINERAL CORP.

IBLA 89-230, 89-231, 89-232,
89-245, 89-459, and 90-139

Decided October 17, 1990

Consolidated appeals from decisions of the Wyoming, New Mexico, and Colorado State Offices, Bureau of Land Management, requiring submission of a filing fee for affidavit of assessment work filed pursuant to 43 U.S.C. § 1744 (1982).

Affirmed in part, dismissed in part.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Federal Land Policy and Management Act of 1976: Service Charges--Mining Claims: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold

Departmental regulation 43 CFR 3833.1-3(c) requires that annual filings made pursuant to 43 CFR 3833.2 regarding evidence of assessment work and/or notice of intention to hold be accompanied by a nonrefundable service charge of \$5 for each mining claim, millsite, or tunnel site. This requirement became effective on Jan. 3, 1989, the first business day of that year, and applies to any filing made on or after that date. The fact that a mining claimant may have performed his assessment work and executed the documents prior to that date does not relieve him of the obligation to comply with this requirement.

APPEARANCES: Raymundo J. Chico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This case involves several consolidated appeals brought by Amada Mineral Corporation 1/ from decisions of the Bureau of Land Management (BLM)

1/ BLM's decisions were originally issued to American Gold Minerals Corporation. By document filed with this Board on December 15, 1989, appellant advised that its name was changed to Amada Mineral Corporation.

applying the regulations regarding filing fees for mining claim filings. Amada appeals decisions of the Wyoming and New Mexico State Offices, BLM, requiring appellant to submit a \$5 service fee for each mining claim for which appellant filed an affidavit of assessment work or notice of intention to hold the claim in calendar year 1989. Appellant filed affidavits of assessment work for the various mining claims on January 4, 1989. BLM informed appellant that under a duly promulgated regulation, 43 CFR 3833.1-3, a \$5 nonrefundable recordation fee was required for filing evidence of annual assessment work for each claim. Appellant paid fees for most of the claims under protest and appealed BLM's decisions to this Board.

More specifically, the record discloses that on January 4, 1989, appellant filed affidavits of assessment work for the variously numbered DEVO claims, maintained in case record W MC 219365. By decision dated January 24, 1989, the Wyoming State Office informed appellant that under a duly promulgated regulation, 43 CFR 3833.1-3, a \$5 nonrefundable recordation fee was required for filing an annual affidavit of assessment work for each claim. The total due was stated to be \$945. Subsequently, appellant paid \$360 under protest and its appeal from this decision was docketed as IBLA 89-230. 2/

By another decision on January 24, 1989, the Wyoming State Office requested appellant to submit recordation fees totaling \$460 for the P.M. group of mining claims with the lead serial number W MC 230794. Appellant paid the total amount under protest and its appeal was docketed as IBLA 89-231.

A third Wyoming State Office decision dated January 24, 1989, required appellant to submit \$380 in recordation fees for another group of mining claims: W MC 230212-31, W MC 234133-34, and W MC 233404-57. Appellant paid under protest and its appeal was docketed as IBLA 89-232.

A fourth Wyoming State Office decision dated January 24, 1989, required \$920 in recordation fees for the Run group of mining claims: W MC-230232 --W MC-230415. Appellant paid \$450 under protest and this appeal was docketed as IBLA 89-245.

The New Mexico State Office's decision requiring appellant to submit a \$5 filing fee per claim for several groups of claims was dated March 30, 1989. Previously, BLM had erroneously assumed that appellant's filings were late filings for the 1988 calendar year and had returned them, and BLM's March 30 letter was intended to correct this mistake. The appeal from this

2/ To the extent appellant did not identify the specific claims to be covered by the \$360, guidance on application of the amount paid to the appellant's claims is provided in Instruction Memorandum 89-222 (Jan. 18, 1989). See Herbert M. Cole, 115 IBLA 272, 275 (1990).

letter has been docketed as IBLA 89-459, and identifies seven groups of mining claims. Appellant submitted payment under protest for all of those claims except NM MC 131197 through NM MC 131221, and NM MC 121243 through NM MC 131277 which appellant later relinquished in a document received by BLM on December 8, 1989. Accordingly, appellant's appeal from BLM's decision is properly dismissed as moot with respect to the relinquished claims.

We have also consolidated Amada's purported appeal of an undated notice issued by the Colorado State Office which generally informs mining claimants of the new filing fee requirements. ^{3/} It appears that appellant construed this general notice as directed to certain mining claims for which the annual assessment work affidavits had been mailed on January 2, 1989, and filed on January 3. On November 21, 1989, appellant filed a "Notice of Appeal" from the general notice and submitted payment under protest for the 112 claims. By letter dated November 29, 1989, BLM advised appellant of the statutory and regulatory basis for the filing fee requirement and stated that "we can take no action on your appeal/protest." This Board subsequently requested the case files, and by letter dated December 12, 1989, BLM informed appellant that the files were being sent, explaining: "It was the opinion of this office that the undated notice sent to you in or about April or May of this year alerting you to the new filing fee schedule was not ripe for appeal at this time."

In another appeal from notices requiring recordation fees, Herbert M. Cole, 115 IBLA 272 (1990), we pointed out that final BLM decisions are appealable to the Board, but the notices requiring recordation fees are interlocutory in nature so that the appeals of such notices are premature. Thus, such decisions are not final for purposes of appeal until the 30-day period for compliance has lapsed. Herbert M. Cole, *supra* at 274; Randall J. Gerlach, 90 IBLA 338, 339 (1986). The "appeal" filed by Amada was in essence a protest of the action proposed to be taken (*i.e.*, rejection of the filings and voiding of the claims in the event the deficiency was not cured). Herbert M. Cole, *supra* at 274; *see* 43 CFR 4.450-2. Although an appeal may be dismissed in such circumstances as premature and the case remanded to BLM to rule on the protest, such dismissal is not mandatory. The Board may properly rule on the appeal where, as in this case, the result which BLM would reach and the basis for that decision is clear in view of the relevant regulations and a remand would amount to an unreasonable exercise in administrative futility. Robert C. LeFavre, 95 IBLA 26, 28 (1986). Accordingly, we now reach the merits of this controversy.

[1] Departmental regulation 43 CFR 3833.1-3(c) requires that annual filings submitted pursuant to 43 CFR 3833.2 such as affidavits of assessment work shall be accompanied by a nonrefundable service charge of \$5 for each

^{3/} The Colorado appeal has been docketed as IBLA 90-139 and involves mining claims CMC 214772 through 214883.

mining claim, millsite, or tunnel site. This regulation was published in the Federal Register on Friday, December 2, 1988, 53 FR 48876, 48881, with an effective date of January 3, 1989. Although this effective date was later than the 30-day minimum required by 5 U.S.C § 553(d) (1988), it was unnecessary for BLM to designate an earlier date because January 1 was a Sunday, January 2 was a Federal holiday, and January 3 was the first date on which filings could be received.

Appellant states that the filings were executed and mailed on January 1 and should not be subject to the fee. In Herbert M. Cole, *supra*, we held that a document mailed on December 31 but received on or after January 3 was subject to the new filing fee. We noted that under Departmental regulation 43 CFR 3833.0-5(m), a document is not filed unless it is received and date-stamped by the proper BLM office. Thus, because the regulation became effective on the first business day that BLM was open in 1989, the requirement applies to every filing made on or after that date, regardless of when it was transmitted. Appellant further contends:

The Mining Law of 1872 allows the claim owner to work and to complete documentation related to mining claims on Federal lands at any hour of the day disregarding holidays. The decision of the U.S. BLM not to be open on January 1 and 2, 1989 (while the United States of America Postal Service and other offices were open) to accept my Annual Assessment work for my claims for the 1989 calendar year conflicts with the protection offered by the 1872 Mining Law of the United States. The Federal lands and the mining claims were open to the claim owner and not withdrawn or closed for business by the U.S. BLM on Sunday, January 1, 1989, or Monday, January 2, 1989. Obviously, I would have hand carried the copy of the Affidavit of Assessment work to the U.S. BLM office on Monday, January 2, 1989, but the U.S. BLM elected to have a holiday and was closed. [Emphasis in original.]

We note that except for the Colorado claims, appellant's documents were not filed on January 3, the first day BLM offices were open, but on January 4.

In essence, appellant appears to be arguing that BLM was required to allow it to make a filing that was exempt from the fee. Appellant overlooks the obvious fact that the regulation was intended to go into effect the first business day of the new year. Thus, no assessment work filing which could satisfy the 1989 calendar year filing requirement could be exempt from the fee, even if the assessment work had been performed during the current assessment year which began the previous September 1. Furthermore, had BLM been open on the day suggested by appellant, BLM would have promulgated the regulation so as to make it effective then. We find appellant's argument to be without merit.

IBLA 89-230, etc.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal docketed as IBLA 89-459 is dismissed in part with respect to the relinquished claims; BLM's decisions with respect to the remaining claims in that appeal as well as the other appeals are affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

John H. Kelly
Administrative Judge

116 IBLA 261