

WILLIAM JENKINS ET AL.

IBLA 95-24

Decided November 2, 1994

Appeal from a decision of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CA MC 30606-30607.

Affirmed.

1. Mining Claims: Rental or Claim Maintenance Fees: Generally

Failure to pay the \$100 claim maintenance fee required by sec. 10101 of the Omnibus Budget Reconciliation Act of Aug. 10, 1993, P.L. 103-66, 107 Stat. 312, 405-06, and 43 CFR 3833.1-5, 59 FR 44846, 44860 (Aug. 30, 1994), conclusively constitutes a forfeiture of an unpatented mining claim, millsite, or tunnel site.

APPEARANCES: William Jenkins, La Grange, California, pro se, for appellants.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

William Jenkins, Timothy Jenkins, and Thomas Jenkins have appealed the September 22, 1994, decision of the California State Office, Bureau of Land Management (BLM), declaring the Chimisal # 1 and # 2 lode mining claims abandoned and void because no \$100-per-claim maintenance fee or small miner waiver certification was filed for the claims before August 31, 1994, for the 1995 assessment year, as required by sections 10101-10106 of the Omnibus Budget Reconciliation Act of August 10, 1993, P.L. 103-66, 107 Stat. 312, 405-06 (the Act), and 43 CFR 3833.1-5, 3833.1-6, and 3833.1-7, 59 FR 44846, 44860-61 (Aug. 30, 1994). Appellants included a petition for stay of BLM's decision with their statement of reasons (SOR) for appeal. See 43 CFR 4.21.

43 CFR 4.21(b)(1) states that, except as otherwise provided by law or other pertinent regulation, a petition for stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (i) The relative harm to the parties if the stay is granted or denied;
- (ii) The likelihood of the appellant's success on the merits;

(iii) The likelihood of immediate and irreparable harm if the stay is not granted;
and

(iv) Whether the public interest favors granting the stay.

43 CFR 4.21(b)(2) provides that "[t]he appellant requesting the stay bears the burden of proof to demonstrate that a stay should be granted." The preamble to the rule states that "the burden is on the appellant to demonstrate in the petition for a stay that a stay is necessary under each of the criteria" and that we are "to consider whether all four criteria listed in § 4.21(b)(1) have been met." The preamble also states that the "Department decline[d] to heighten the standard for meeting the four criteria listed in paragraph (b)(1)." 58 FR 4939, 4941 (Jan. 19, 1993).

In a September 1, 1994, letter to BLM, appellant William Jenkins states he was not aware until that day "that payment of \$200 was needed by August 31, 1994. I paid \$400 last August which I felt was for 1993 and 1994." In his October 2, 1994, SOR for appeal, appellant states he learned when he called BLM on September 1, 1994, that his claims had been declared void by law. He states that he did not receive any notification that a small miner exemption certification or \$100/claim maintenance fee was due by August 31, 1994. He concludes: "We would like to file a Pe[titi]on for Stay at this time to perform assessment work in 1995."

Appellants' petition for stay is denied. They do not demonstrate there is a likelihood of success on the merits of their appeal.

Indeed, appellants cannot show any likelihood of success on the merits because they acknowledge that no maintenance fee or small miner exemption certification was filed before August 31, 1994. Section 10101(a) of the Act provides that the

holder of each unpatented mining claim, mill or tunnel site * * * shall pay to the Secretary of the Interior, on or before August 31 of each year, for [the] years 1994 through 1998, a claim maintenance fee of \$100 per claim * * * in lieu of the assessment work requirement contained in the Mining Law of 1872 * * * and the related filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Maintenance Act of 1976 (43 U.S.C. 1744 (a) and (c)). [1/]

Section 10104 of the Act provides that failure to pay the claim maintenance fee "shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be

1/ Unlike the similar provisions in the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1374, 1378-79, which required payment of a "claim rental fee," the Act denominates this fee as a "claim maintenance fee."

deemed null and void by operation of law." 2/ These provisions of the Act are implemented by 43 CFR 3833.1-5 and 3833.4(a)(2), 59 FR 44860 and 44862 (Aug. 30, 1994), respectively. The first paragraph of 43 CFR 3833.1-5 provides:

Except as provided in §§ 3833.0-3(f), 3833.1-6, and 3833.1-1(d) and (e), each claimant shall pay a nonrefundable maintenance fee of \$100 for each mining claim, mill site, or tunnel site to the proper BLM office for each specified assessment year for which the claimant desires to hold the mining claim, mill site, or tunnel site. The assessment years covered by the Act of August 10, 1993, begin at 12 o'clock noon on September 1, 1994, and end at 12 o'clock noon on September 1, 1999.

43 CFR 3833.1-5(b) provides: "The first payment will be due on or before August 31, 1994 * * * ."

43 CFR 3833.4(a)(2) provides that "failure to pay the maintenance * * * fees required by * * * 3833.1-5 * * * shall be deemed conclusively to constitute a forfeiture of the mining claim, mill site, or tunnel site."

Appellants are presumed to know the contents of Acts of Congress and regulations published in the Federal Register, and BLM is not required to send them notification of these laws and regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 385 (1947). Because there is no evidence in the record of payment of the maintenance fee on or before August 31, 1994, BLM properly declared appellants' claims void. See Nannie Edwards, 130 IBLA 59, 60 (1994); Lee H. & Goldie E. Rice, 128 IBLA 137, 141-42 (1994).

Therefore, in accordance with the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, appellants' petition for stay is denied and BLM's September 22, 1994, decision is affirmed.

Will A. Irwin
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge

2/ The comparable provision of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, supra note 1, stated that "failure to make the annual payment of the claim rental fee * * * shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant." (Emphasis supplied.)