

CALVIN W. BARRETT ET AL.

IBLA 94-576

Decided January 31, 1996

Appeal from a decision of the Idaho State Office, Bureau of Land Management, rejecting certifications of exemption from payment of rental fees and declaring mining claims abandoned and void for failure to pay required rental fees. IMC 119679-IMC 119687.

Reversed.

1. Mining Claims: Abandonment–Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

A decision rejecting a small miner's exemption and declaring claims abandoned and void for failure to pay rental fees on the grounds that claimants own more than 10 claims is properly vacated where claimants show that they filed certifications of exemption for the 1993 and 1994 assessment years on Aug. 25, 1993, listing only nine claims, and that they recorded their affidavit of annual assessment work with the county recorder on Aug. 6, 1993, for only those same nine claims.

APPEARANCES: Jerry K. Barrett, Rigby, Idaho, for appellants.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Calvin W. Barrett, et al. (claimants or appellants), 1/ have appealed from a May 19, 1994, decision of the Idaho State Office, Bureau of Land Management (BLM), rejecting their certifications of exemption from payment of rental fees for the 1993 and 1994 assessment years, filed August 25, 1993, for unpatented mining claims IMC 119679-IMC 119687, and declaring those claims abandoned and void for failure to pay the required rental fees. By order dated July 27, 1994, the Board stayed the effectiveness of BLM's decision pending resolution of this appeal.

1/ Although not specifically identified in the notice of appeal, appellants apparently include claim locators Calvin W. Barrett, Robert D. Barrett, Gary D. Barrett, Jerry K. Barrett, John Schara, and Lorraine Barrett, and Laurie Barrett, the heir of deceased locator C. R. (Ray) Barrett.

On January 30, 1987, claimants located nine unpatented lode mining claims, The Water Way, Gold Point, The Cross, Southern Cross, Northern Cross, South Fork, South Fork No. 1, South Fork No. 2, and South Fork No. 3 (IMC 119679-IMC 119687, respectively), on lands within secs. 1, 2, and 3, T. 24 N., R. 22 E., and secs. 34 and 35, T. 25 N., R. 22 E., Boise Meridian (BM), Lemhi County, Idaho. Claimants filed the notices of location for these nine claims with BLM on February 19, 1987.

On November 16, 17, and 18, 1989, apparently pursuant to a mining lease agreement with claimants, Meridian Gold Company located 32 lode mining claims, the Blacktail #1-#32 (IMC 154481-IMC 154512), on lands within secs. 2 and 3, T. 24 N., R. 22 E., and secs. 34 and 35, T. 25 N., R. 22 E., BM, Lemhi County, Idaho. Portions of most of the Blacktail claims overlay parts of claimants' claims.

By release and quitclaim deed executed January 16, 1992, Meridian Gold Company transferred its right, title, and interest in all the claims, including the Blacktail #1-#32 claims, to claimants. Claimants filed a copy of the recorded release and quitclaim deed with BLM on March 18, 1992, and, in the accompanying letter dated March 9, 1992, requested that BLM file the additional 32 claims "the same as the first 9 claims" which were already filed in their names, *i.e.*, IMC 119679-IMC 119687.

On August 25, 1993, claimants filed certification of exemption from payment of rental fee forms for both the 1992-93 and the 1993-94 assessment years listing the nine claims they located in 1987 (IMC 119679-IMC 119687). On October 1, 1993, claimants filed a copy of their affidavit of annual assessment work for the 1993 assessment year which had been recorded with the County Recorder on August 6, 1993. The affidavit identified only the nine original 1987 claims as the claims upon which the assessment work had been performed. ^{2/}

BLM declared the nine claims abandoned and void by operation of law in its May 19, 1994, decision. ^{3/} BLM explained that, under the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (the Act), P.L. 102-381, 106 Stat. 1374, 1378-79 (1992), in order to maintain an unpatented mining claim, claimants had to pay a claim rental fee of \$100 per claim or file for a small miner exemption from payment of rental fees on or before August 31, 1993. The implementing regulation, 43 CFR 3833.1-6(a)(1) (1993), as well as the Act, BLM noted, provided that claimants had to hold 10 or fewer mining claims, mill sites, or tunnel sites on Federal land in order to qualify for the small

^{2/} Claimants' 1992 affidavit of annual assessment work had listed 41 claims, their 9 original claims and the 32 Blacktail claims.
^{3/} BLM declared the Blacktail #1-#32 claims abandoned and void by operation of law in a separate, unchallenged decision dated May 19, 1994.

miner exemption. Since BLM records revealed that claimants owned 41 mining claims on August 31, 1993, BLM rejected their certifications of exemption for failure to meet the 10-claim requirement. BLM concluded that claimants' failure to pay the requisite rental fees or satisfy the exemption criteria within the prescribed time periods rendered the claims abandoned and void by operation of law.

In their statement of reasons (SOR), appellants indicate that after they decided in 1993 to maintain only their nine original claims, they contacted both the U.S. Forest Service and BLM for assistance in filling out the required paperwork. They assert that they "understood that if we did not act on the 32 claims they would be considered abandoned and thus allow us to meet the [small miner exemption] requirement by only filing on the original 9 claims" (SOR at 1). Appellants argue that the regulations were unclear and that, since they made every attempt to meet the intent of the law, BLM's decision should be reversed. ^{4/}

[1] On October 5, 1992, Congress enacted the Act, a provision of which relating to mining establishes that

for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314 (a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993: Provided further, That for fiscal year 1993, each claimant - (i) that is producing under a valid notice or plan of operation not less than \$1,500 and not more than \$800,000 in gross revenues per year as certified by the claimant from ten or fewer claims; or - (ii) that is performing exploration work to disclose, expose, or otherwise make known possible valuable mineralization on ten or fewer claims under a valid notice or plan of operation; and that has less than ten acres of unreclaimed surface disturbance from such mining activity or exploration work, may elect to either pay the claim rental fee for such year or in lieu thereof do assessment work required by the Mining Law

^{4/} The record also contains a letter dated Aug. 8, 1994, from appellants to the Acting Chief, Branch of Mining Law & Salable Minerals, Idaho State Office, BLM, responding to a telephone conversation between one of appellants and the Acting Chief, expressly stating that appellants intended to abandon the 32 unlisted claims when they filed their exemption certifications in August 1993.

of 1872 (30 U.S.C. 28-28e) and meet the filing requirements of FLPMA (43 U.S.C. 1744 (a) and (c)) on such ten or fewer claims and certify the performance of such assessment work to the Secretary by August 31, 1993 * * *.

106 Stat. 1378. The Act also contains the identical provisions governing rental fees and exemptions for the assessment year ending at noon on September 1, 1994, requiring payment of the \$100 rental fee or certification of the qualifications for the so-called small miner exemption on or before August 31, 1993. 106 Stat. 1378-79. The Act directs "[t]hat failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant." 106 Stat. 1379.

Implementing Departmental regulations require a claimant to pay, on or before August 31, 1993, a nonrefundable rental fee of \$100 for each mining claim, millsite, or tunnel site located on or before October 5, 1992, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental of \$200 per claim. 43 CFR 3833.1-5(b) (1993). The only exemption provided from the rental requirement is the small miner exemption which is available to claimants holding 10 or fewer mining claims on Federal land who meet all the conditions set forth in 43 CFR 3833.1-6 (1993), which essentially tracks the statutory criteria. Pursuant to 43 CFR 3833.1-7(d) (1993), a claimant pursuing a small miner exemption must file separate certifications of exemption on or before August 31, 1993, supporting the claimed exemption for each assessment year the claimant seeks the exemption. See Washburn Mining Co., 133 IBLA 294, 296 (1995). The regulations further direct that failure to pay the required rental fee or to timely file the required rental fee exemption documents "shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site, which shall be void." 43 CFR 3833.4(a)(2) (1993); see William B. Wray, 129 IBLA 173, 175 (1994); Lee H. & Goldie E. Rice, 128 IBLA 137, 141 (1994).

In this case, appellants timely filed certifications of exemption for both years, but BLM rejected the certifications because it concluded that appellants owned more than 10 unpatented mining claims. Appellants aver on appeal that they decided to drop the 32 Blacktail claims and maintain only their nine original claims in order to satisfy the small miner exemption requirements. They assert that they understood that if they did not act on the 32 claims, those claims would be considered abandoned. Appellants' intent to drop the 32 Blacktail claims finds corroboration in their affidavit of annual assessment work for the 1993 assessment year which they recorded with the County Recorder on August 6, 1993, and filed with BLM on October 1, 1993, in which they list only their nine original 1987 claims as the claims upon which the assessment work had been performed.

The situation before us is analogous to that before the Board in Washburn Mining Co., supra. In that case, Washburn Mining Company

(Washburn) had timely filed certifications of exemption for both years, but BLM had denied the exemption because it had concluded that appellant owned more than 10 claims. On appeal Washburn argued that it had dropped two claims in order to meet the small miner exemption, noting that the statement of annual assessment work it had recorded on August 24, 1993, and the notice it had filed with the U.S. Forest Service concerned only the 10 claims listed on its certifications of exemption. The Board found those circumstances sufficient to establish that Washburn had owned only 10 claims as of the date it had filed its certification seeking the small miner exemption and vacated BLM's decision. 133 IBLA at 296.

Similarly, the facts of this case convince us that appellants owned only their nine original claims as of the date they filed their certifications of exemption. ^{5/} Thus, we vacate BLM's decision rejecting appellants' certifications and declaring those nine claims abandoned and void.

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 reversed.

Will A. Irwin
Administrative Judge

I concur.

David L. Hughes
Administrative Judge

^{5/} We note that BLM has stated in Instruction Memorandum No. 94-220, issued on June 22, 1994, that evidence submitted after Aug. 31, 1993, may be used to show a relinquishment or transfer in effect on or before Aug. 31, 1993.

