

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring mining claims void for failure to file a certificate of exemption from payment of maintenance fees on or before August 31, 1995. AA 60408-28 et al.

Stay denied; decision affirmed.

1. Mining Claims: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold—Mining Claims: Rental or Claim Maintenance Fees: Generally—Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

A mining claimant seeking the small miner exemption from payment of claim maintenance fees by filing affidavits of assessment work performed on unpatented mining claims is also required to file annually in the proper BLM office on or before Aug. 31 a certificate of exemption from payment of such fees; failure to do so causes his claims to become null and void by operation of law.

APPEARANCES: Joe Bob Hall, Fairbanks, Alaska, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Joe Bob Hall has appealed from a February 12, 1996, decision of the Alaska State Office, Bureau of Land Management (BLM), that declared placer mining claims AA-60408 through AA-60428 void under provisions of the Omnibus Reconciliation Act (Act) of August 10, 1993, 30 U.S.C.A. §§ 28i through 28k (West 1996), and 43 CFR Subpart 3833, for failure to timely pay \$100 claim maintenance fees for the 1996 assessment year, or file certificates of exemption from payment of such fees for each claim. Together with a timely notice of appeal and a statement of reasons in support of appeal, Hall has filed a request, under Departmental regulation 43 CFR 4.21(a), for a stay of BLM's decision.

There is nothing in the record before us to show that Hall can properly represent the interests of Lavitiiti Iosua and Ray Moore, the owners of claims AA-060418 through AA-060428, before this Board in conformity to 43 CFR 1.3, governing who may practice before the Department. While the Board has, in the past, recognized the existence of mining partnerships to allow an individual partner to represent the partnership on appeal (see Mespelt & Almasay Mining Co., 99 IBLA 25 (1987)), the existence of a partnership in this case would contradict statements filed by Lavitiiti and Moore concerning their individual qualifications for a small miner exemption, discussed below. To the extent, therefore, that Hall seeks to represent the interests of the other claimants, the appeal must be dismissed. Helmut Rohrl, 132 IBLA 279 (1995).

On appeal to this Board, Hall states that timely affidavits of annual labor for the claims at issue were filed in a belief, encouraged by advice from BLM employees, that nothing more was required under the Act. He points out that he and his associates are small miners who are qualified to claim exemption from maintenance fee payment under the Act and intended to do so. He explains that, in earlier years, they paid annual fees rather than claim exemption from such payment. In order to avail themselves of the exemption benefit for the 1996 assessment year, however, he and his associates divided their group of claims between them individually so that none of them had more than 10 claims, in order to qualify as small miners. See 30 U.S.C.A. § 28f(d) (West 1996). They then timely filed affidavits of annual labor, believing that by so doing they were exempted from fee payment under the Act. The circumstances of this filing are explained by Hall as follows:

I was told at the time I transferred these claims into individual hands that we would only have to file the assessment work each year. For years we had only filed the assessment work. Then when the law changed and required \$100.00 per claim fee each year, we paid that fee. After paying the \$100 per claim for a few years, we transferred the claims into individual hands since we were already spending well over \$100.00 for each claim on assessment work each year. We are small miners and certainly qualify as such. We have had these claims for a long time and have experienced much hardship in hanging onto these claims until the mining industry picked back up. Now that it has, we are finally in a position to make a little money instead of pouring it into the ground and getting nothing in return.

I filed the assessment work on a timely basis as we were expected to do. I was advised at no time that we had to file a waiver each year by August 31st. I specifically asked the lady when I filed the [1995] waiver on these claims, "Now let me get this straight, from now on we will only have to file the assessment work, is that right?" She replied "Yes, that is right. You only have to file the assessment work each year."

In support of his stay request, Hall alleges that he will be harmed financially if a stay is denied, and that issuance of a stay will serve the interests of the State of Alaska and the United States by helping promote the mining industry in Alaska. He submits that it is in the public interest that the BLM decision finding the mining claims abandoned and void be stayed. He reiterates that "I feel that the Department of the Interior/BLM advised me to only file the assessment work each year."

To be entitled to a stay, however, Hall must also show there is a likelihood he will prevail on appeal. 43 CFR 4.21(b)(1)(ii). Under the circumstances of this appeal, wherein it is acknowledged that no waiver of maintenance fees was sought before August 31, 1995, and no fees were paid for the 1996 assessment year, there is no likelihood that Hall's appeal can succeed on its merits, and his request for stay must be denied.

The case file furnished by BLM on appeal shows that affidavits of annual labor for the claims at issue were filed on November 30, 1995. Maintenance fee waiver certificates for the 1995 assessment year filed on August 31, 1994, also appear in the file. These documents support Hall's statement that, during 1995, only affidavits of labor were filed for the claims at issue. The case file confirms that no maintenance fees were paid and no certificates of exemption from fee payment were filed for the claims in 1995.

Departmental regulations implementing the Act provide that, for every unpatented mining claim, prior to August 31 of each year from 1994 through 1998, a \$100 maintenance fee shall be paid "for the subsequent assessment year" beginning at noon on September 1. 43 CFR 3833.1-5(b). This fee may be waived for qualifying small miners. 43 CFR 3833.1-5(d). To qualify for waiver of the assessment year fee as a small miner, an exemption certificate establishing entitlement to fee waiver must be filed "on or before August 31." 43 CFR 3833.1-7(d); 43 CFR 3833.1-6(d)(2). Claimants seeking the small miner exemption from fee payment must, in addition to filing timely affidavits of assessment work, file a waiver certification not later than August 31. 43 CFR 3833.4(a)(3); 43 CFR 3833.1-7(d). If maintenance fees for unpatented mining claims are not paid, and certificates of exemption from payment are not timely filed, the claims are forfeited. 43 CFR 3833.4(a)(2). The BLM decision here under review declared the claims at issue void after finding that claim maintenance fees for the 1996 assessment year were not paid and entitlement to waiver of such payment was not certified on or before August 31, 1995. This finding, which is based upon Departmental regulations implementing the Act, is correct. Alamo Ranch Co., 135 IBLA 61, 76 (1996).

In cases such as this, responsibility for satisfying rental fee requirements imposed by the Act rests with claim holders, not with BLM, since the Act provides "that failure to pay the claim maintenance fee or the location fee as required by sections 28f to 28k of this title shall conclusively constitute a forfeiture of the unpatented mining claim * * *

by the claimant and the claim shall be deemed null and void by operation of law." 30 U.S.C.A. § 28i (West 1996); William Jenkins, 131 IBLA 166, 168 (1994). Alleged reliance on incomplete or inaccurate information from BLM cannot, therefore, relieve Hall from filing requirements imposed by the Act upon the mining claimants themselves. See 43 CFR 1810.3. Since the annual filing requirement appears at 43 CFR 3833.1-7(d), Hall could not rely on contrary advice from a BLM employee. See Ptarmigan Co., 91 IBLA 113, 117 (1986). Because the claims became null and void by operation of law at the expiration of the unmet filing deadline, corrective action to revive them is not now possible as a matter of law. William Jenkins, supra. Hall's appeal for a stay of the May 2, 1995, decisions must, therefore, be denied. Id.

In deciding the stay request we have necessarily decided this appeal, since our review has revealed that there is no likelihood the appeal can succeed on its merits. See Texaco Trading & Transportation Inc., 128 IBLA 239, 241 (1994). Because claim maintenance fees owed for these claims were not paid by August 31, 1995, and an exemption from such payment was not timely filed, BLM properly declared the claims void. Alamo Ranch Co. Inc., supra; William Jenkins, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the request for stay is denied and the BLM decision appealed from is affirmed.

Franklin D. Amess
Administrative Judge

I concur.

James L. Burski
Administrative Judge

