

BURBANK GOLD, LTD.

IBLA 94-337

Decided January 28, 1997

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring mining claims abandoned and void.

Reversed.

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

When a mining claimant lists 10 or fewer claims on an application for small miner exemption, its affidavit of assessment work lists the same claims it listed on its application for exemption, and there is nothing in the record that appears to contradict appellant's intent to abandon the claims it did not list on its exemption application, the claimant qualifies for a small miner exemption.

APPEARANCES: Greg Fryback, Administrator, Burbank Gold, Ltd.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Burbank Gold, Ltd., has appealed the January 26, 1994, decision of the Colorado State Office, Bureau of Land Management (BLM), declaring nine mining claims 1/ abandoned and void for failure to satisfy the requirements of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), P.L. 102-381, 106 Stat. 1374, 1378-79. BLM's decision stated:

Failure to have applied for a small miner's exemption or to have paid the [rental] fee within the time limits prescribed by the Act (that is, * * * on or before August 31, 1993) constituted a statutory abandonment of the mining claim, mill, or tunnel site.

1/ The claims involved are the Burbank A, CMC-88792; Cross, CMC-88793; Burbank 1, CMC-88797; Burbank 2, CMC-88796; Burbank 3, CMC-88795; Cross 3, CMC-208187; Burbank Extension #1, CMC-142233; Max, CMC-236464; and Shirley B. #8, CMC-236472, all located in San Juan County, Colorado.

Your exemption, filed on August 30, 1993, was found to be insufficient. 43 CFR 3833.1-6 requires claimants to hold no more than 10 mining claims, mill sites, or tunnel sites by the statutory deadline of the Act, in order to qualify for the exemption. You did not meet the 10-claim requirement and the claims are declared abandoned and void. We are returning your exemption filings.

The record contains appellant's affidavit of labor and improvement filed with BLM in December 1992 that lists 50 claims. On August 30, 1993, appellant filed a letter enclosing certification of exemption from payment of rental fee forms for the 1992-93 and 1993-94 assessment years as well as the \$200 rental fee for those years for the Burbank Tunnel Site, CMC-88794. The forms listed the Burbank Tunnel Site and the nine claims set forth in footnote 1. On December 30, 1993, appellant filed an affidavit of labor and improvement listing the same 10 claims. BLM's January 24, 1994, decision followed.

The record contains a BLM mining claimant index report listing 48 claims for Burbank Gold, Ltd., as of February 10, 1993. It also contains a handwritten note stating appellant "had 48 active claims as of 9/21/93 & no relinquishment had been posted at that time."

On appeal appellant states: "When we executed the application for the small miner's exemption, we thought that we were giving you written notice to drop all of our mining claims except for the ten claims stated on the application." Appellant adds:

We believe this whole problem originated due to a misunderstanding and the failure of the Memorandum dated November 9, 1992, to the Director of BLM from the Assistant Solicitor, Onshore Minerals[,] Division of Energy and Resources [2/] to fully explain that the act of completing form 3830-1 (June 1993) did not drop all of your mining claims except for the 10 listed in this certification form.

* * * * *

* * * After reviewing these documents in August of 1993, I went to your local BLM office and met with your mining claim specialist, Mr. Bob Kershaw, to make sure I was doing everything correctly. Mr. Kershaw stated that I needed to list the 10 claims that we wanted to keep on form 3830-1 if we wanted to only

2/ Memorandum dated Nov. 9, 1992, to Director, BLM, from Assistant Solicitor, Onshore Minerals, Division of Energy and Resources, entitled "Effect of 1993 Appropriations Act – Requirements for Mining Rental Fee."

keep these 10 claims. I told him that we did want to drop all claims except for 10 and he said fine. *
 ** I took Mr. Kershaw's direction literally and thought he meant that if I listed the 10 claims we
 wanted to keep, this was also stating that we wanted to drop any other claims not listed. We assumed
 that this was fully automatic and were in fact dropping all other claims. Myself and my other partners
 had spent days before deciding which claims to keep and which ones to drop. I can prove this.

After reviewing this conversation with Mr. Kershaw several weeks ago, he told me that he
 was sorry about the misunderstanding. He thought that when I told him that we wanted to drop all of
 the claims except the 10 listed on form 3830-1, that I knew that I had to write a specific statement in
 addition to Form 3830-1 to the BLM stating that we wanted to drop the other claims that we did not
 want counted toward our 10 claim limit.

[1] It is not clear on what BLM based its advice to appellant in August 1993. Presumably it was not 43 CFR
 3833.3 (1993), for that only requires a claimant to notify BLM when he (or she) sells, assigns, or conveys an interest in a claim,
 not when he decides to drop one. In April 1994, however, the Director of BLM issued Instruction Memorandum (IM) 94-183.
 The IM stated in part:

The question has been asked whether an exemption certification could act as an "automatic
 relinquishment" in cases where a claimant holds more than 10 claims but indicates 10 or fewer on the
 form[,] anticipating the voiding by BLM of claims not paid for or exempted.

POLICY: The small miner exemption form cannot be used as an automatic relinquishment
 of excess claims unless a relinquishment is clearly stated on the form or elsewhere. The claimant
 who submits the small miner exemption form which included the statement "I/we own 10 or fewer
 mining claims . . ." is making a false statement if he or she owns more than 10 claims at the time the
 certification is signed. The claimant cannot make this false statement even under the assumption that
 the excess claims would drop out on August 31, 1993. In such a case all claims would be considered
 void for failure to pay the rental fee or make a valid certification by the deadline. It is possible for the
 claimant to file an exemption which indicates on the form or elsewhere that he or she is relinquishing
 the excess claims as of the date of the exemption certification. In such a case the exemption
 certification could be considered valid because a relinquishment had been filed by the same date the
 claimant certifies to having 10 or fewer claims.

In Calvin W. Barrett, 134 IBLA 356, 359-60 (1995), we stated:

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., [133 IBLA 294 (1995)] * * *. 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.

In those cases we found the evidence of claimant's intent to abandon the "excess" claims in the affidavit of assessment work filed with the county recorder before the August 31, 1993, deadline. However, this affidavit of assessment work is evidence of intent rather than an act of relinquishment itself. See The Big Blue Sapphire Co., 138 IBLA 1, 5 (1997). As such, we do not consider it essential that affidavit of assessment work be filed before August 31, 1993, however, so long as it is not contradicted later, e.g., by filing an affidavit of assessment work for claims previously dropped by not listing them on an application for exemption. In this case, the evidence of appellant's intent to abandon is that its December 30, 1993, affidavit of assessment work listed the same 10 claims it had listed on its August 30, 1993, application for exemption, and there is nothing in the record that appears to contradict appellant's intent to abandon the claims it did not list on its exemption application. Under these circumstances, we believe appellant qualified for a small miner exemption.

Therefore, in accordance with the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's January 24, 1994, decision is reversed.

Will A. Irwin
Administrative Judge

I concur.

C. Randall Grant, Jr.
Administrative Judge

