

THELMA C. SATROM ET AL.

IBLA 94! 486

Decided February 18, 1997

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring mining claim abandoned and void for failure to pay rental fees or provide adequate certification of exemption from payment of rental fees for the 1993 and 1994 assessment years. MMC 27658.

Set aside and remanded.

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

Under 43 CFR 3833.1! 7(d), mining claimants seeking a small miner exemption from the requirement to pay rental or claim maintenance fees were required to file a separate statement on or before Aug. 31, 1993, supporting the claimed exemption for each assessment year the small miner exemption was claimed. However, under 43 CFR 3833.4(b), unintentional failure to file the complete information required by that regulation (among others) when the document is otherwise filed on time, shall not be deemed conclusively to constitute an abandonment of the claim or site, but such information shall be filed within 30 days of receipt of a notice from the authorized officer calling for such information. Where claimants show that the failure to file a complete exemption request form was unintentional and BLM failed to provide them notice calling for such information and allowing 30 days for compliance, BLM's decision is properly set aside and the case remanded to comply with 43 CFR 3833.4(b).

APPEARANCES: Donald J. Beighle, Esq., Deer Lodge, Montana, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Thelma C. Satrom, et al., appeal from a decision of the Montana State Office, Bureau of Land Management (BLM), dated May 5, 1994, declaring the Spring Hill placer mining claim, M MC 27658, abandoned and void for failure to pay rental fees or provide adequate certification of exemption from payment of rental fees for the 1993 and 1994 assessment years.

BLM's decision notes that appellants timely filed a Certification of Exemption from Payment of Rental Fee form, but notes that the exemption form failed to include the assessment year in which the exemption from payment was being sought. Citing 43 CFR 3833.1! 7(d), BLM ruled that appellants had to file a separate statement on or before August 31, 1993, supporting the claimed exemption for each assessment year the small miner exemption was claimed. 1/

On appeal, claimants cite 43 CFR 3833.4(b), which provides:

(b) Unintentional failure to file the complete information required in \* \* \* [43 CFR] 3833.1! 7(d) \* \* \* when the document is otherwise filed on time, shall not be deemed conclusively to constitute an abandonment of the claim or site, but such information shall be filed within 30 days of receipt of a notice from the authorized officer calling for such information. Failure to file the information requested by the decision of the authorized officer shall result in the mining claim \* \* \* being deemed conclusively to be abandoned and it shall be void.

Claimants have submitted an affidavit from Thelma C. Satrom, who apparently filed the exemption form or participated in its preparation. She avers therein that the failure to include certain information was unintentional, and we perceive no reason to discredit that statement.

Although claimants filed the exemption document on time, they unintentionally failed to file the complete information required in 43 CFR 3833.1! 7(d). Specifically, they failed to specify the assessment year or years that the exemption request was intended to cover. Under 43 CFR 3833.4(b), BLM should have provided claimants notice calling for such information and allowed 30 days for compliance. 2/ Only after the expiration of that period without compliance could BLM properly issue a decision

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1/ BLM actually cited to "43 CFR 3833.1! 7(2)(d)," which does not exist.

2/ We note that BLM Information Memorandum No. 93-514 (Aug. 2, 1993) adopted a similar position:

"[Question:] If I am filing for an exemption for assessment years 1993 and 1994, must I file two forms or can both years be included on one form?

"Answer: The regulations require a separate exemption form to be filed for each year an exemption is claimed. This is to avoid confusion over which assessment year is being claimed. However, if one form is submitted by a claimant who holds claims located prior to October 5, 1992, and the claimant must have intended to file an exemption for two years, it is considered a curable defect."

There is no doubt here that appellant "must have intended to file an exemption for 2 years": she has filed an affidavit so stating. BLM should have treated the defect as curable.

declaring the claims abandoned and void. In these circumstances, it is appropriate to set aside BLM's decision and remand the case to it so that it can comply with the notice requirements of 43 CFR 3833.4(b).

Accordingly, 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 set aside and the case is remanded for further action.

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David L. Hughes  
Administrative Judge

I concur.

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James L. Bymes  
Chief Administrative Judge

