

RONALD ALAN BROOKS

IBLA 94-267

Decided September 25, 1997

Appeal from a Decision issued by the Alaska State Office, Bureau of Land Management, deeming a small miner exemption held by Brooks inapplicable, and declaring the Lazy Willow Mine #1 placer mining claim (FF-026950) abandoned and void for failure to pay annual rental fees for the 1993 and 1994 assessment years.

Reversed.

1. Mining Claims: Plan of Operations--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 authorizes a small miner exemption in two circumstances. Drilling and geochemical and bulk sampling under an approved plan of operations qualify as exploration work for a small miner exemption.

APPEARANCES: Ronald Alan Brooks, Fairbanks, Alaska, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Ronald Alan Brooks has appealed a December 21, 1993, Decision issued by the Alaska State Office, Bureau of Land Management (BLM or Bureau) declaring the Lazy Willow Mine #1 placer mining claim (FF-026950) (hereafter referred to as the Lazy Willow placer) abandoned and void for failure to pay annual rental for the 1993 and 1994 assessment years by August 31, 1993, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (the Act), Pub. L. No. 102-381, 106 Stat. 1374 (1992). The Decision also deemed a small miner exemption issued to Brooks inapplicable, stating that "[c]ertificates of exemption for assessment years 1993 and 1994 were timely filed on August 27, 1993, however, the level of work permitted under the [plan of operations] does not qualify for the level required to be eligible for the small miner exemption." (Decision at 2.) The Decision on appeal was stayed by a March 9, 1994, Order issued by this Board.

Brooks states that he qualifies for a small miner exemption because: (1) he holds only one mining claim; (2) that claim is under a plan of

operations; (3) there are fewer than 10 acres of unreclaimed surface disturbance caused by operations covered by plans of operations since 1981; (4) the claim is being actively explored to confirm and corroborate the quality and quantity of placer minerals to substantiate the existence of a valid discovery; (5) the work is of a nature that requires a notice or plan of operations; and (6) he has performed assessment work and filed an affidavit as required for a small miner exemption. (Notice of Appeal at 3-4.) Brooks also contends that the statement in the Decision that he filed certificates for a small miner exemption on August 27, 1993, is inaccurate, because those documents were received by BLM on August 19, 1993.

The history of events pertaining to the Lazy Willow placer has a direct bearing on the resolution of this appeal. Documents in the case file indicate that in June 1987, BLM conducted a validity examination of the Lazy Willow placer and six other claims in the area. The Bureau took additional samples from the Lazy Willow placer in the summer of 1990. A cover letter, dated March 30, 1992, indicates that BLM sent a copy of a draft mineral report to Gerald Hassel, who owned the Lazy Willow placer at that time. ^{1/} Quitclaim deeds in the file show the conveyance from Hassel and the Hassel Family Trust No. 2 to Brooks on April 25, 1992. Hassel and Brooks were each served with a Contest Complaint dated December 10, 1992, in which the validity of the claims was challenged. Brooks filed an Answer, and the matter was referred to the Hearings Division's office in Salt Lake City.

On April 20, 1993, Brooks informed BLM that he had filed a placer mining application with the State of Alaska, seeking to undertake activities on the claim. In an April 22, 1993, memorandum written by the surface protection specialist with whom Brooks had spoken, the specialist stated that "[b]ecause the proposal will utilize mechanical equipment (dozer and mechanical drill) and the mining claim is located in the White Mountains Recreation Area, the operation will be a plan of operations requiring an Environmental Assessment regardless of the acreage of the operation." The Bureau then considered the placer mining application to be a proposed plan of operations and prepared an environmental assessment.

By letter dated July 7, 1993, BLM informed Brooks that his April 22 plan of operations had been approved as a 5-year plan subject to stipulations (FF 090640). Although the letter did not state that the Decision could be appealed, Brooks filed a Notice of Appeal objecting to performance standard stipulation number two, which stated:

Unless and until the operator, in the mineral contest hearing, successfully rebuts the BLM's determination that no valid discovery has been made thereon, samples of gold or other valuable minerals may be removed from the subject mining claim only

^{1/} The file does not contain a copy of a final mineral report, and we do not know whether one was issued.

for use as evidence to substantiate the existence of a valid discovery prior to withdrawal. No minerals may be extracted for any other purpose.

The Alaska State Director affirmed this determination in a decision dated August 24, 1993. In closing, he stated:

Also, please be advised that neither performance of minimal assessment work nor sampling to further substantiate discovery on the Lazy Willow Mine #1, as provided for in the stipulation being appealed, are "exploration" or "production" activities which would qualify for the "small miner exemption" provisions of the Interior Department and Related Agencies Appropriations Act of 1993.

(Mar. 24, 1993, Decision at 3-4.) Brooks filed an appeal of the State Director's Decision but that appeal was dismissed by this Board, in an Order dated November 16, 1993, because Brooks' Notice of Appeal had not been filed in a timely manner.

On August 19, 1993, Brooks filed certificates of exemption with BLM for the 1992-93 and 1993-94 assessment years. Brooks asserted that he held fewer than 10 claims, and that he was operating under plan of operations FF 90640. Following dismissal of Brooks' appeal, BLM requested and was granted a continuance of the hearing on the contest complaint "pending a determination * * * as to: (1) whether the mining claim involved be deemed abandoned and void for failure to pay the rental fee required; and (2) whether the contestee is qualified for a 'small miner' exemption from the payment of such fees." (Dec. 6, 1993, Order.) On December 31, 1993, BLM issued the Decision which is the subject of the present appeal.

In relevant part, the Act provides that

for fiscal year 1993, 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 * * *.

Pub. L. No. 102-381, 106 Stat. 1374, 1378 (1992). A substantially identical provision required mineral claimants to pay on or before August 31, 1993, a \$100 rental fee to hold an unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1994. Id. The legislation further provided that "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 * * *." Id. at 1379.

The Act also created what has come to be known as the small miner exemption. This section of the Act provides that a 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 such 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 of 1872 (30 U.S.C. 28-28e) and meet the 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.

Id. at 1378. An identical provision allows an exemption for the 1993-94 assessment year. Id. at 1378-79.

The Department published notice of the requirement to pay rental fees in the Federal Register. 57 Fed. Reg. 54102 (Nov. 16, 1992). It subsequently proposed regulations to implement the Act. 58 Fed. Reg. 12878 (Mar. 5, 1993). The final regulations were effective upon publication. 58 Fed. Reg. 38186 (July 15, 1993), codified at 43 C.F.R. Parts 3730, 3820, 3830, and 3850.

[1] Brooks did not pay the rental. However, he did file certificates for a small miner exemption. The above-quoted portion of the Act allows a small miner exemption in two circumstances, which have been both numbered and identified as alternatives by the use of the word "or." It would appear from the BLM Decision that "the level of work permitted under the [plan of operations] does not qualify for the level required to be eligible for the small miner exemption" refers to the statutory limit of exemption to claimants producing not less than \$1,500 and not more than \$800,000 in gross revenues per year. If so, the record does not indicate the basis upon which BLM concluded that Brooks could not produce \$1,500 in gross revenues from the activities approved by the plan of operations. Absent factual information about the value of minerals found on the claim, BLM may have believed that performance standard stipulation number two precluded Brooks from producing any revenue from the claim. Alternatively, BLM may have believed that the work allowed by Brooks' plan of operations was not "exploration work to disclose, expose, or otherwise make known possible valuable mineralization."

There is no need to determine which of these theories was the basis for BLM's Decision. The plan of operations BLM approved called for drilling 10 to 13 test holes during the summer and fall of 1993. (EA at 5-6.)

The regulations recognize that drilling and geochemical and bulk sampling qualify as exploration work for the small miner exemption. 43 C.F.R. § 3833.1-6(b) (1993). Regardless of whether Brooks could produce sufficient mineral to qualify under the first alternative, he was performing exploration work under an approved, valid plan of operations and qualified for the small miner exemption.

The Alaska State Director's August 24, 1993, Decision cannot be regarded as controlling. The question whether Brooks qualified for a small miner exemption was not reviewed when BLM examined the proposed plan of operations approved in BLM's July 7, 1993, Decision, or raised by Brooks in his appeal to the Director. The Alaska State Director's August 24, 1993, Decision cannot be construed to have decided the question. See Turner Brothers Inc. v. Office of Surface Mining Reclamation and Enforcement, 102 IBLA 111, 120-21 (1988). Additionally, the small miner exemption certificates Brooks filed were, as he asserts, date-stamped as received by BLM August 19, 1993, prior to issuance of the State Director's Decision, which did not become final until after the August 31, 1993, deadline had passed. The notion that the matter was decided by the State Director is also contrary to BLM's subsequent action seeking to have the contest hearing deferred to allow BLM an opportunity to determine whether Brooks qualified for the exemption.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the December 21, 1993, Decision by the Alaska State Office is reversed.

R.W. Mullen
Administrative Judge

I concur:

James L. Burski
Administrative Judge

