

RICHARD K. HATCH

IBLA 97-551

Decided August 26, 1998

Appeal from a decision of the Nevada State Office, Bureau of Land Management, denying a request for deferment of annual assessment work and payment of maintenance fees. NMC 682726, NMC 682727.

Affirmed.

1. Mining Claims: Generally--Mining Claims: Assessment Work--Mining Claims: Rental or Claim Maintenance Fees

A petition for deferment of assessment work and payment of annual maintenance fees may only be granted pursuant to 30 U.S.C. § 28b (1994) and 43 C.F.R. § 3852.1 where "legal impediments" exist which affect the right of a mining claimant to enter upon the claims. The possibility that the granted access may be difficult to use is not a legal impediment.

APPEARANCES: Richard K. Hatch, Garrison, Utah, pro se.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Richard K. Hatch has appealed from a July 18, 1997, Decision of the Nevada State Office, Bureau of Land Management (BLM), denying a petition for temporary deferment of annual assessment work and payment of the annual Federal mining claim maintenance fees for the 1997 assessment year. The Decision denied deferment for 29 mining claims located in White Pine County, Nevada. BLM determined that Hatch had failed to provide sufficient evidence of a legal impediment to performing assessment work as required by 30 U.S.C. § 28b (1994) and 43 C.F.R. § 3852.2.

In his Notice of Appeal and Statement of Reasons (SOR), Hatch states that he is appealing the denial of his petition for deferment on his claims identified as "Hatch Rock #66-57 (NMC 682726 through 682727), relocated July 22, 1993." Those serial numbers relate to the Hatch Rock 66 and the Hatch Rock 67. We assume that the number 57 is merely a typographical error and that Hatch is appealing only that portion of the BLM decision denying the petition for deferment of assessment work for the Hatch Rock 66 (NMC 682726) and the Hatch Rock 67 (NMC 682727).

Under section 10101 of the Omnibus Budget Reconciliation Act of August 10, 1993, 30 U.S.C. § 28f(a) (1994), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of \$100 per claim on or before August 31 of each year for the years 1994 through 1998. However, 43 C.F.R. § 3833.1-6(e) provides that payment of the maintenance fee may be deferred "for mining claims covered by a deferment of assessment work granted by the authorized officer pursuant to 30 U.S.C. 28(b)-(e) and subpart 3852 of this title * * * during the period for which the deferment is granted."

Previously, in a decision dated May 31, 1996, BLM had granted Hatch a deferment for certain claims, including the Hatch Rock 66 and the Hatch Rock 67, for the period September 1, 1995, through September 1, 1996. By letter dated August 20, 1996, Hatch requested BLM to extend the deferment of assessment fees for the coming assessment year, stating only that the situation at the quarry had not changed since the previous year. Apparently Hatch provided no other information to BLM in this request, evidently relying instead on the information he had submitted with his first request on August 25, 1995, and BLM did not request any additional information. ^{1/} We are unable to ascertain from the record before us what persuaded BLM to grant the earlier deferment, but for present purposes it is unnecessary to delve into the matter, because it is clear that the decision here appealed must be sustained.

After BLM received Hatch's request for a second deferment on August 30, 1996, it sought information from the Forest Service as to the status of the area in a letter dated December 23, 1996. The District Ranger, Ely Ranger District, replied on March 19, 1997, as follows:

The Forest Service has not denied Mr. Hatch access to his mining claims. There are two access roads leading to his claims. One is located inside the Mt. Moriah Wilderness, and the other is located outside the wilderness. The road outside the wilderness has been used by Mr. Hatch in the past to access his claims. The Forest Service has instructed him to continue using this access road and to not use the road inside the wilderness.

The road inside the wilderness also leads to claims within the wilderness that Mr. Hatch once had but are now declared

^{1/} Regulation 43 C.F.R. § 3852.2(a) requires that a petition for deferment include a copy of the notice to the public required by 30 U.S.C. § 28e (1994), "showing that it has been filed or recorded in the local recording office in which the notices or certificates of location were filed or recorded." Hatch provided the required copy for his 1995 request but there is nothing in the file for his 1996 request. Thus, on the record before this Board, it appears Hatch failed to conform his petition for deferment to the regulatory requirement.

abandoned and void * * * because annual assessment work or notice to hold the claims had not been filed (BLM letter, dated May 24, 1993). The letter tells Mr. Hatch the claims may be relocated if there are no intervening rights and the lands are open to mineral location. Since these lands are within a wilderness that was withdrawn from mineral entry, they are not open to location. However, Mr. Hatch did relocate the claims (NMC682726, NMC682727, and NMC682728). It is apparent that Mr. Hatch believes he has valid claims within the wilderness, which might explain why he thinks the Forest Service is denying access. All information indicates these claims are not valid, therefore, he has no right to enter the wilderness for purposes of mining within the wilderness under the 1872 Mining Law.

Based on this information from the Forest Service, BLM concluded that Hatch had not been denied access to his claims, that he had failed to provide evidence of any legal impediment as required by 30 U.S.C. § 28b (1994), and that his request for deferment should be denied.

We think the District Ranger's observations go to the heart of this appeal and require brief discussion. Whether because the May 24, 1993, decision contained the standard paragraph that advises mining claimants that they may relocate a claim or because Hatch believed he could do so, Hatch did relocate the Hatch Rock 66 and Hatch Rock 67 on July 22, 1993. These were declared null and void ab initio to the extent the mining claims are situated within the Mt. Moriah Wilderness Area by decision dated July 13, 1997.^{2/} Hatch timely appealed that decision, which appeal was docketed as IBLA 98-257. In a companion decision issued this day, we hold that BLM properly declared the Hatch Rock 66 and the Hatch Rock 67 partially null and void ab initio. Thus, as the District Ranger noted, Hatch has no right to enter the Mt. Moriah Wilderness for mining purposes, and therefore no need to use the road within the wilderness for any mining purpose connected with those former claims. In this context, access has been denied, because Appellant no longer possesses any viable mining claims to which to gain access. To the extent Appellant's arguments may pertain to access to his claims that are outside the Mt. Moriah Wilderness, given the District Ranger's reasoning regarding the need for access, we do not read his letter as an absolute prohibition against accessing those claims, only that Hatch is not to use that road "inside the wilderness" for mining purposes.

Even absent the decision declaring the Hatch Rock 66 and Hatch Rock 67 partially null and void ab initio, however, we would uphold the denial of the deferment and the reasoning that supports it. In his SOR, Hatch states that he has had a long dispute with the Forest Service over the existence

^{2/} The third mining claim, the Hatch Rock 68, was declared null and void ab initio in its entirety by decision dated May 1, 1997.

of his claims that was only resolved by a decision by the Ninth Circuit Court of Appeals and briefly and generally refers to junctures in the course of the dispute. In response to the specific basis for BLM's Decision, however, it is Hatch's contention that the access road the Forest Service wants him to use has a grade of 18 percent to 24 percent, which, he asserts, is "three times the recommended grade allowed by Forest Service rules." Appellant states that he refuses to ask men to use that road, suggesting that the road is too dangerous or too steep to be usable. Hatch does not deny that he has used the road in the past, and he does not provide or identify the Forest Service rules to which he alludes.

[1] It is well established that in order to be entitled to a deferment of the performance of the statutorily required annual assessment work pursuant to 30 U.S.C. § 28b (1994) and 43 C.F.R. § 3852.1, a mining claimant must generally establish that there is a legal impediment which affects the claimant's right to enter upon the surface of his claim. Lyra-Vega II Mining Association, 91 IBLA 378, 381-82 (1986), and cases cited therein. The relevant provision of the statute states that assessment work

may be deferred by the Secretary of the Interior as to any mining claim or group of claims in the United States upon the submission by the claimant of evidence satisfactory to the Secretary that such mining claim or group of claims is surrounded by lands over which a right-of-way for the performance of such assessment work has been denied or is in litigation or is in the process of acquisition under State law or that other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof.

30 U.S.C. § 28b (1982) (emphasis added). The implementing regulation, 43 C.F.R. § 3852.1, restates the parent statutory provisions.

Even assuming that the road designated by the Forest Service is steep, it cannot reasonably be said that Appellant has been denied access to his remaining claims. We conclude that there is no such impediment in the present case. The purpose of the statute is to protect a claimant whose right of access to his mining claim has been impeded or denied. John W. MacGuire, 35 IBLA 117, 118 (1978). Hatch's complaint relates to the suitability or desirability of the road for mining, not to his ability to use it to actually reach the claims to perform assessment work. As Appellant can get to his claims, there is no legal or other impediment to his performance of annual assessment work. Clearly, this is not the situation presented in American Resources, Ltd., 44 IBLA 220 (1979), where deferment was deemed appropriate when the appellant was physically barred from entering the claims to perform assessment work by no-trespassing notices, barricades, and threats of criminal prosecution by National Park Service officials at the site. Thus, an order to use an access road other than the one desired by Hatch is not the same as a denial of access as required by 30 U.S.C. § 28b (1994), even though use of the road might be

difficult or less than ideal for mining purposes. See Sunrise Mining & Exploration Co., 117 IBLA 377 (1991); Lyra-Vega II, *supra*, at 383; Minerals Engineering Co., 71 IBLA 402, 403 (1983); John W. MacGuire, *supra*, at 118 (1978); Oliver Reese, 34 IBLA 103, 105 (1978). The request for deferment of assessment work was properly denied.

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 Decision appealed from is affirmed.

T. Britt Price
Administrative Judge

I concur.

James L. Burski
Administrative Judge

