

LENORE L. BAIRD

IBLA 97-96 Decided February 6, 1998

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring the McCauley #1 lode mining claim (AA-27399) forfeited for failure to timely pay the claim maintenance fee.

Reversed.

1. Administrative Procedure: Stays--Mining Claims: Rental or Claim Maintenance Fees: Generally--Rules of Practice: Appeals: Stay

When no stay of a BLM decision is granted, the decision is effective at the end of the period for granting a stay. Thus, when there is no stay of a decision voiding a mining claim for failure to comply with filing requirements, the claim is deemed void during the period of appeal, and a claimant is not required to maintain the claim. A BLM decision declaring a claim forfeited for failure to timely pay claim maintenance fees or obtain a waiver of the requirement to pay the fees during the pendency of an appeal is properly reversed when the decision on appeal had not been stayed.

APPEARANCES: LeNore L. Baird, Red Devil, Alaska, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

LeNore L. Baird has appealed the May 27, 1996, Decision issued by the Alaska State Office, Bureau of Land Management (BLM or Bureau), declaring the McCauley #1 lode mining claim (AA-27399) forfeited for failure to comply with the requirements of the Omnibus Budget Reconciliation Act of August 10, 1993 (the Act), 30 U.S.C. § 28f (1994). The Bureau found that Baird neither paid the claim maintenance fee nor submitted a waiver certification for the 1996 assessment year on or before August 31, 1995, as required by the Act.

Section 10101(a) of the Act provides that the

holder of each unpatented mining claim, mill or tunnel site * * * shall pay to the Secretary of the Interior, on or before August 31 of each year, for [the] years 1994 through 1998, a

claim maintenance fee of \$100 per claim * * * in lieu of the assessment work requirement contained in the Mining Law of 1872 (30 U.S.C. 28-28e) and the related 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) (1994))].

30 U.S.C. § 28f(a) (1994); see also 43 C.F.R. § 3833.1-5. Section 10104 of the Act provides that failure to pay the claim maintenance fee "shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law." 30 U.S.C. § 28i (1994); see also 43 C.F.R. § 3833.4(a)(2).

Section 10101(d)(1) of the Act allows the claim maintenance fee to be waived for claimants holding not more than 10 mining claims, mill sites, and/or tunnel sites on public lands who have performed the required assessment work. 30 U.S.C. § 28f(d)(1) (1994). The implementing regulation requires a claimant to file a waiver certification on or before August 31 to hold the claims for the assessment year beginning at noon on September 1 of the calendar year the certification is due. 43 C.F.R. § 3833.1-7(d). If the fees had not been paid, a failure to file the waiver certification documents by August 31 is conclusively presumed to constitute a forfeiture of the claim. 43 C.F.R. § 3833.4(a)(2); see also Alamo Ranch Co., 135 IBLA 61, 75 (1996).

Baird admits that she sent the maintenance fee payment to BLM on September 7, 1995, 8 days late. That fact would normally mandate that the claim be deemed forfeited and declared null and void. See Harlow Corp., 135 IBLA 382, 385 (1996). However, 2 years earlier, on July 29, 1993, BLM declared the McCauley #1 lode mining claim abandoned and void for failure to file an affidavit of assessment work or a notice of intention to hold the claim on or before December 30, 1992, as required by section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1994).

Baird appealed the July 29, 1993, BLM Decision and her appeal was docketed as IBLA 93-639. She did not request a stay pending appeal, and BLM's determination became effective 30 days after the July 29, 1993, BLM Decision was received by her. 43 C.F.R. § 4.21(a)(2). The claim was deemed void, and Baird had no obligation to maintain it during the pendency of her appeal. See Gordon B. Copple, 105 IBLA 90, 94 n.4, 95 Interior Dec. 219, 222 n.4 (1988); J.L. Block, 98 IBLA 209, 211-12 (1987); Andrew Freese, 50 IBLA 26, 35, 87 Interior Dec. 395, 399 (1980). ^{1/}

The Bureau recently has acknowledged that a claimant has no duty to maintain a voided claim during the pendency of an appeal of the Decision

^{1/} Although these cases address assessment work obligations and FLPMA filing duties, the same logic applies to claim maintenance fees paid in lieu of those requirements.

voiding the claim when that Decision is not stayed. On September 29, 1997, the Assistant Director, Minerals, Realty and Resource Protection, BLM, issued Instruction Memorandum No. (IM) 98-01 addressing, *inter alia*, maintenance fee requirements for voided mining claims during an appeal of the voidance decision. The pertinent portions of IM 98-01 provide that

[i]f a voidance decision is appealed to [the Interior Board of Land Appeals (IBLA)], and IBLA does NOT grant a stay of the decision, the decision remains in effect while the appeal is pending and the claim is void. The mining claimant is not obligated to maintain the voided claim during the pendency of the appeal. * * *

If the voidance decision is not stayed, [BLM] must not accept any filings or fees submitted by the claimant for the voided claim during the pendency of the appeal to IBLA.

If IBLA reverses and remands an appealed voidance decision which was not stayed during the appeal, [BLM] cannot hold the claimant responsible for not having maintained the claim during the pendency of the appeal. [BLM] must send a decision letter to the claimant requiring the claimant to pay the annual maintenance fee or, if qualified, file a small miner waiver with affidavits of labor for each August 31st deadline which passed during the pendency of the appeal. [BLM] can provide the claimant 30 days in which to comply. A waiver may be filed by the claimant only if the assessment work was done in the year(s) for which the waiver is filed; otherwise the maintenance fee must be paid. If the claimant fails to comply with the decision letter, [BLM] may then send a decision letter voiding the claim(s) because of the claimant's failure to meet the claim maintenance requirements.

(IM 98-01, at 2.) Thus, under both the IM and relevant precedent, Baird was not required to pay the claim maintenance fee or submit waiver certification documents during the pendency of her appeal of BLM's July 29, 1993, Decision, and BLM's Decision declaring the McCauley #1 lode mining claim forfeited for failure to timely pay the claim maintenance fee or submit waiver certification documents for the 1996 assessment year must be reversed. ^{2/}

^{2/} By Order dated Nov. 17, 1997, the Board set aside BLM's July 29, 1993, Decision declaring the McCauley #1 lode mining claim abandoned and void for failure to meet FLPMA's filing requirements and remanded the case to BLM for a determination of whether Baird timely filed an affidavit of annual labor with the Anchorage Office, as she alleged. The setting aside of BLM's voidance determination reinstates the claim and activates the IM provisions guiding BLM actions upon remand of an appealed, but not stayed, voidance decision.

Therefore, 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 reversed.

R.W. Mullen
Administrative Judge

I concur.

T. Britt Price
Administrative Judge

