

OTTO ADAMS

KATHERINE SMITH

IBLA 2000-161

Decided April 26, 2001

Appeal from a decision of the California State Office, Bureau of Land Management, declaring a placer mining claim forfeited by operation of law. CAMC 36725.

Affirmed

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

Where claimants fail to certify in writing that, on the date payment of a mining claim maintenance fee was required, they held no more than 10 mining claims, mill sites, or tunnel sites (or combination thereof), they were not entitled under section 101(e) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of Oct. 21, 1998, either to written notice by BLM of a defective certification or to a period of 60 days following receipt of the notice to pay the maintenance fee, and their claim is properly declared forfeited by operation of law.

APPEARANCES: Otto Adams and Katherine Smith, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Otto Adams and Katherine Smith have appealed from the February 8, 2000, decision of the California State Office, Bureau of Land Management (BLM), declaring the Lazy Leo placer mining claim, CAMC 36725, forfeited by operation of law because neither the \$100 per claim maintenance fee nor waiver certification was filed for the 2000 assessment year on or before September 1, 1999. BLM received a money order for \$100, dated October 1, 1999, for the subject claim on October 6, 1999.

Under 30 U.S.C. § 28f(a) (Supp. IV 1998), 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 September 1 of each year for the years 1999 through 2001. Failure to timely 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). The Secretary, however, is afforded discretion to waive the fee for a small miner who certifies in writing that, on the date payment was due, he held not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof, on public lands and has performed assessment work required under the Mining Law of 1872. 30 U.S.C. § 28f(d)(1) (1994). Such waiver certification must be filed "on or before September 1 each year to hold the claim[] each assessment year beginning * * * September 1 of the calendar year the certification is due, through September 1, 2002." 43 C.F.R. § 3833.1-7(d). In the absence of payment of the fee, failure to file the waiver certification by the September 1 deadline shall be deemed "conclusively to constitute a forfeiture of the mining claim, mill site, or tunnel site." 43 C.F.R. § 3833.4(a)(2).

Appellants admit that their maintenance fee payment for the 2000 assessment year was submitted to BLM on October 1, 1999, well after the September 1, 1999, deadline. (Letter to BLM, dated February 15, 2000, at 1.) However, they assert that they were entitled to do so in accordance with the 60-day grace period provisions of section 101(e) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of October 21, 1998 (Omnibus Act), Pub. L. No. 105-277, 112 Stat. 2681-235, and its implementing regulations, 43 C.F.R. § 3833.4-1. They note that the statute and regulations were intended to alleviate the greater burden on small miners of complying with the maintenance fee requirements of 30 U.S.C. § 28f(a) (Supp. IV 1998), thus preserving their mining claim property rights.

Appellants argue that, since any waiver certification which would have been filed with BLM after September 1, 1999, which is when they finally "realized that the deadline for filing * * * had arrived," would have been incurably defective, they were entitled to 60 days thereafter to submit the maintenance fee payment:

[F]iling of a waiver after September 1, renders the waiver incurable as the defect is date specific, thus BLM finding of incurability is imminent de facto; and therefore the claimant has the statutory right * * * to submit payment of a \$100.00 maintenance fee sum within 60 days of the date of finding of incurable waiver, in order to maintain mining claim validity.

(Letter to BLM, dated February 15, 2000, at 1, 2.) They argue that this 60-day grace period applies regardless of whether a waiver certification was filed by the September 1 deadline (or even filed at all), since the form itself does not determine whether the claimant qualifies for the waiver. Rather, they note that this is determined by whether the claimant in fact satisfies the small miner requirements of the maintenance fee statute.

Appellants misconstrue the plain meaning of the 60-day grace period set forth in section 101(e) of the Omnibus Act, which provides:

If a small miner waiver application is determined to be defective for any reason, the claimant shall have a period of 60 days after receipt of written notification of the defect or defects by the [BLM] to: (A) cure such defect or defects, or (B) pay the \$100 claim maintenance fee due for such period.

43 U.S.C. § 28f(d)(3) (Supp. IV 1998). To the same effect is 43 C.F.R. § 3833.4-1.

Section 101(e) of the Omnibus Act does not change in any way the existing statutory requirement to pay "on or before September 1 of each year for years 1999 through 2001, a claim maintenance fee of \$100 per claim or site." 30 U.S.C. § 28f(a) (Supp. IV 1998). Nor does it change the fact that failure to pay the maintenance fee by the September 1 deadline "conclusively constitute[s] a forfeiture" of the affected claim, rendering it "null and void by operation of law." 30 U.S.C. § 28i (1994). These statutory provisions are clear and unequivocal. See Howard J. Hunt, 147 IBLA 381, 384 (1999).

No statute, however, has ever specified the deadline for filing a waiver certification, in lieu of payment of the maintenance fee. Thus, no statute presently requires submission of a waiver certification by September 1 of each year for the years 1999 through 2001. Nor does any statute provide that the failure to do so conclusively constitutes a forfeiture of the affected claim, rendering it null and void by operation of law. Rather, all that has long been (and continues to be) provided by regulation. See 43 C.F.R. §§ 3833.1-7(d) and 3833.4(a)(2) (1998) (requiring filing of waiver certification, in lieu of payment of maintenance fee, on or before August 31 of each year, for years 1994 through 1998); 43 C.F.R. §§ 3833.1-7(d) and 3833.4(a)(2) (requiring filing of waiver certification, in lieu of payment of maintenance fee, on or before September 1 of each year, for years 1999 through 2001). We have nevertheless long held that the regulatory deadline for filing a waiver certification is binding on a claimant, and that the failure to timely file (absent payment of the maintenance fee) results in the automatic forfeiture of the affected claim. Goldie James, 143 IBLA 289, 292-94 (1998) (citing Alamo Ranch Co., 135 IBLA 61, 75 (1996)).

The Department's interpretation of the maintenance fee statute to provide for timely filing of waiver certification, as set forth in its regulations, was in place at the time Congress enacted section 101(e) of the Omnibus Act on October 21, 1998. There is no evidence that Congress intended thereby to alter that longstanding Departmental regulatory interpretation requiring the filing of a waiver certification on or before the statutory deadline for paying the maintenance fee (August 31 of each year, for years 1994 through 1998, and September 1 of each year, for years 1999 through 2001). We thus conclude that Congress intended that

section 101(e) of the Omnibus Act be construed in accordance with that regulatory interpretation.

We, therefore, hold that, when section 101(e) of the Omnibus Act refers to a waiver certification which has been determined to be defective, it is referring to one that was filed on or before the current September 1 deadline, not one which was filed at some time thereafter, since that is what is plainly required by regulation. To hold otherwise would be to permit a claimant to delay filing a waiver certification indefinitely until well after the statutory September 1 deadline for paying the maintenance fee and still be able to take advantage of the 60-day grace period for payment, following a determination and notification that the certification was defective. Such a state of affairs is legally untenable, and plainly not Congress' intent, which is clearly to permit a claimant to avoid forfeiture where a timely, but defective certification is filed, and the claimant thereafter cures the defect or pays the maintenance fee.

Given the applicability of the September 1 deadline for filing a waiver certification, when a defective certification is filed on or before that date, the claimant is, by virtue of section 101(e) of the Omnibus Act, entitled to written notice of the defect by BLM, and 60 days after receipt of such notification to either cure the defect in the certification or pay the maintenance fee. That is not the situation here.

Appellants admit that they did not submit any waiver certification for the 2000 assessment year on or before September 1, 1999. Thus, nothing was filed which might have been considered "defective for any reason" in accordance with section 101(e) of the Omnibus Act. 30 U.S.C. § 28f(d)(3) (Supp. IV 1998). Nor was any "determin[ation]" to that effect made by BLM, as required by section 101(e) of the Omnibus Act. Id.

Appellants assert that no determination by BLM was required, arguing that the passage of the September 1 deadline, with no filing of a waiver certification, automatically results in a "de facto" determination, thus triggering the 60-day grace period. (Letter to BLM, dated February 15, 2000, at 2.) That interpretation is clearly contrary to the plain language of the statute, and we reject it.

In these circumstances, there is no basis for invoking section 101(e) of the Omnibus Act. In the absence of any waiver certification filing, appellants were not entitled either to written notice by BLM of a defective certification or to a period of 60 days following receipt of the notice to pay the maintenance fee. Since appellants are not entitled to the benefit of section 101(e) of the Omnibus Act, and since they failed to pay the maintenance fee or file a waiver certification for the 2000 assessment year on or before September 1, 1999, BLM properly declared the Lazy Leo placer mining claim, CAMC 36725, forfeited by operation of law. Howard J. Hunt, 147 IBLA at 384.

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 affirmed.

David L. Hughes
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

