

TERRENCE TIMMINS

IBLA 2002-196

Decided March 26, 2003

Appeal from a decision of the California State Office, Bureau of Land Management, declaring lode mining claims CAMC 275592 and CAMC 275593 forfeited by operation of law.

Vacated and remanded.

1. Administrative Procedure: Administrative Review – Appeals: Generally – Bureau of Land Management – Rules of Practice: Appeals: Effect of

Upon the filing of an appeal, it is incumbent upon BLM to forward the complete, original case file to the Board within the time frame and manner provided by BLM Manual 1841.15A

2. Evidence: Burden of Proof--Mining Claims: Rental or Claim Maintenance Fees: Generally -- Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

A BLM decision purporting to declare mining claims forfeited by operation of law for failure to either pay the \$100 maintenance fee or file a maintenance fee payment waiver certification on or before September 1, 2000, for the 2001 assessment year is properly set aside and remanded to BLM where mining claimant on appeal establishes by a preponderance of the evidence that he timely filed a maintenance fee payment waiver certification on August 28, 2000, which date was before September 1, 2000, albeit possibly incorrect identifying the serial numbers assigned by BLM to the named claims.

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

Under 43 CFR 3833.4-1, should BLM records indicate that a mining claimant, while timely filing the required maintenance fee payment waiver certification, identified erroneous serial numbers associated with named claims for which the waiver was sought, BLM should issue claimant a notice identifying the defect and the claimant must cure the defective waiver or pay the annual maintenance fees within 60 days of receiving BLM notification of the defect. Otherwise the claims covered by the defective waiver are forfeited.

APPEARANCES: Terrence Timmins, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Terrence Timmins has appealed a July 31, 2001, decision issued by the California State Office, Bureau of Land Management (BLM), purporting to declare the Gold Shot 1 and Gold Shot 2 lode mining claims forfeited by operation of law for failure to either pay the maintenance fee or file a maintenance fee payment waiver certification on or before September 1, 2000. The decision identified the two claims as "CAMC 275592-93."

In his notice of appeal, Timmins disputes BLM's holding that he did not file a maintenance fee payment or a waiver certification in a timely manner. He states that "all documents were submitted, and on time. Please see copies of documents attached." (Notice of Appeal at 1.) Timmins attached a copy of his maintenance fee waiver certification bearing a BLM date stamp of August 28, 2000, listing the claims for which a waiver was sought as follows: "Gold Shot #1 CAMC 0276726," "Gold Shot #2 and 3" "CAMC 0276753," and "Hemet Belle" "CAMC 0276752." ^{1/} Timmins also attached a copy of the affidavits of assessment work filed for the Gold Shot #1 and Gold Shot #2 claims. Those affidavits listed the same serial numbers shown on his waiver certification.

^{1/} The record also contains an Aug. 24, 2001, BLM decision declared the Hemet Belle lode mining claim (CAMC 275594) forfeited by operation of law for failure to either pay the maintenance fee or file a maintenance fee payment waiver certification on or before September 1, 2000. However, the cover memorandum attached to the record now before the Board contains the following statement: "we apologize for the delay. Appeal was misplaced." BLM should compile a case file for the Hemet Belle claim and assure itself that it has not also misplaced the appeal of its Aug. 24, 2001, decision.

The record contains a copy of the "Maintenance (Rental) Fee Payment Form" for the previous year, in which Timmins paid the maintenance fees. The form is date-stamped August 31, 1999, and indicates that Timmins paid the maintenance fees on that date. Timmins identified the serial numbers for the Gold Shot #1 and Gold Shot #2 on that form in a manner consistent with the serial numbers referenced by BLM in its decision, that is —“0275592-93.”

[1, 2] On repeated occasions we have held, that when an appeal is filed it is incumbent upon BLM to forward the complete, original case file to the Board in the time frame and manner called for in the BLM Manual at 1841.15A. Michael E. Burns, 139 IBLA 7, 8 (1997); Patrick G. Blumm, 116 IBLA 321, 333-34 (1990); Thana Conk, 114 IBLA 263, 273-74 (1990). It is incumbent upon BLM to ensure that its decision is supported by a rational basis, and that such basis is stated in the written decision, as well has being demonstrated in the administrative record accompanying the decision. Kitchens Productions, Inc., 152 IBLA 336, 345 (2000). An administrative decision is properly set aside and remanded if it is not supported by a case record providing this Board the information necessary for an objective independent review of the basis for the decision. U.S. Oil and Refining Co., 137 IBLA 223, 232 (1996); Larry Brown and Associates, 133 IBLA 202, 205 (1995).

Timmins has established error in BLM's decision by a preponderance of the evidence by showing that the record does not support the stated basis for BLM's decision. The record forwarded to this Board by BLM does not contain the full history of Timmins' filings/recordings or the original assignment of BLM serial numbers which would allow this Board to verify whether BLM's decision or Timmins incorrectly identified the serial numbers associated with the claims. The maintenance fee waiver form date stamped August 28, 2000, which was submitted by Timmins with his notice of appeal is not found in the case file. The only conclusion we can draw is that BLM has failed to forward the full record of the mining claims.

It is clear, however, that the stated basis for BLM's decision declaring the claims forfeited because “neither the \$100 Maintenance Fee was paid nor a Maintenance Fee Payment Waiver Certification was filed in this office on or before September 1, 2000” is in error. That finding has been refuted by Timmins. BLM's date-stamp shows Timmins' Maintenance Fee Payment waiver certification was filed on August 28, 2000 at 2:49 PM.

[3] Assuming arguendo, that BLM had deemed the claims forfeited because Timmins used the wrong serial numbers, Timmins had, nonetheless, filed his maintenance fee payment waiver certificate in a timely manner and the claims are not forfeited for failure to file a payment waiver certification on or before September 1, 2000. The serial number requirement is regulatory rather than statutory and

Timmins satisfied the statutory requirement when he timely filed the waiver certification. See Tom L. Lee, 145 IBLA 272, 276 (1998); Thelma C. Satrom, 138 IBLA 180, 181 (1997). Failure to list the proper serial number is a curable defect. 43 CFR 3833.4(b); 3833.1-7(2). When a mining claimant has listed the correct claim names but has incorrectly identified the serial numbers of the claims. 43 CFR 3833.4-1 provides:

- (a) If BLM finds a defect in a waiver request, BLM will send a notice to the claimant by certified mail-return receipt requested, to the address given on the waiver request.
- (b) The claimant must cure the defective waiver or pay the annual maintenance fees within 60 days of receiving a BLM notification of the defects. Otherwise the claims covered by the defective waiver are forfeited.

See also 30 U.S.C. § 28f(d)(3).

The decision cannot be sustained on the record. Timmins has shown by a preponderance of the evidence that he timely filed a maintenance fee payment waiver certification for the named Gold Shot 1 and Gold Shot 2 lode mining claims on August 28, 2000. BLM's decision is vacated and remanded. On remand, BLM should review its records to determine the serial numbers assigned by BLM to the claims at issue. If Timmins correctly identified the serial numbers, BLM should inform Timmins of this fact. If upon review of its records, BLM determines that appellant incorrectly identified the serial numbers, BLM by notice prescribed in 43 CFR 3833.4-1 should inform Timmins of this fact and provide Timmins the necessary opportunity to cure, upon pain of forfeiture.

Therefore, 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 hereby set aside and remanded to BLM for action consistent with this decision.

R.W. Mullen
Administrative Judge

I concur:

Lisa Hemmer
Administrative Judge