

DAVID G. KUKOWSKI

IBLA 2004-68

Decided April 25, 2006

Appeal from a decision of the Northern Field Office, Alaska, Bureau of Land Management, declaring certain mining claims forfeited by operation of law for failure to either pay the annual maintenance fee or file a waiver certification for the 2004 assessment year. F-058607, et al.

Affirmed.

1. Statutes

Private legislation providing an exception from a legal requirement for one individual or company does not invalidate the application of that legal requirement to any other party.

2. Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

The requirement that each small miner seeking a waiver of the maintenance fee requirement file a waiver certification on or before September 1 of each calendar year the certification is due means that the certification may not be filed any earlier than during the assessment year immediately preceding the assessment year for which the waiver is sought.

APPEARANCES: Joseph J. Perkins, Jr., Esq., Guess & Rudd, P.C., Anchorage, Alaska, for appellant; Karen Hawbecker, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

David G. Kukowski appeals from the October 23, 2003, decision by the Northern Field Office, Alaska, Bureau of Land Management (BLM), declaring ten mining claims held by Kukowski, Nos. 1 through 5 Below Mouth of Ingle Creek, Association No. 2 Ingle Creek, and Nos. 1, 2, 2A, and 3 on Ingle Creek (F-058607 through F-058611, F-058613, and F-058615 through F-058618), forfeited by operation of law because neither the \$100 per claim maintenance fee nor a waiver certification was received on or before the September 1, 2003, due date for the 2004 assessment year.

The holder of an unpatented mining claim, mill site, or tunnel site is required to pay a \$100 per claim or site maintenance fee on or before September 1 of each year. 30 U.S.C. § 28f(a) (2000) as amended by the Department of the Interior and Related Agencies Appropriations Act, 2002, Pub. L. No. 107-63, 115 Stat. 414, 418-19 (2001). Failure to pay the fee “shall conclusively constitute a forfeiture of the unpatented mining claim \* \* \* by the claimant and the claim shall be deemed null and void by operation of law.” 30 U.S.C. § 28i (2000). Congress has granted the Secretary the discretion to issue a small miner a waiver of the fee if the claimant certifies in writing that on the date the payment was due the claimant and all related parties held not more than ten mining claims, mill sites, or tunnel sites on public lands and had performed annual assessment work required under the Mining Law of 1872. 30 U.S.C. § 28f(d)(1) (2000); see also Otto Adams, 155 IBLA 1, 2 (2001); Alamo Ranch Co., Inc., 135 IBLA 61, 75 (1996). BLM’s regulations require claimants to submit waiver certifications on or before September 1 of the calendar year the certification is due. 43 CFR 3833.1-7(d) (2003).<sup>1/</sup>

Kukowski acknowledges that he did not pay the fees required to maintain his claims for the 2004 assessment year. He also acknowledges that he did not file a waiver certification by the September 1, 2003, deadline. Instead, he claims that he attempted to file the waiver certification for the 2004 assessment year when he filed his certification for the 2003 assessment year on July 17, 2002. He states that BLM rejected his certification for the 2004 assessment year because it was too early.

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<sup>1/</sup> BLM revised and reorganized the regulations in 43 CFR Part 3800 effective Nov. 24, 2003. 68 FR 61046, 61064 (Oct. 24, 2003). Citations in this decision are to the regulations in effect prior to Nov. 24, 2003, when Kukowski’s waiver was due and when BLM issued its decision.

Kukowski admits that he did not again attempt to file the waiver certification for the 2004 assessment year until after the September 1, 2003, deadline. He attempted to file an untimely certification on September 30 or October 1, but was rejected once again by BLM, this time because the certification was late.<sup>2/</sup> BLM has not provided corroboration of these attempts.

BLM issued its decision announcing the forfeiture of the claims by operation of law on October 23, 2003. Kukowski makes two distinct arguments in his appeal.

First, Kukowski argues that the regulation imposing the September 1 deadline for the waiver certification, 43 CFR 3833.1-7(d), and our precedents upholding that regulation are contrary to Congressional intent. Specifically, Kukowski argues that 30 U.S.C. § 28f(d) (2000)<sup>3/</sup> creates a “dual system” that grants small miners certain privileges not available to other mining claimants, rather than one system in which

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<sup>2/</sup> Kukowski submitted a waiver certification with his Statement of Reasons (SOR). In the SOR it is described as “an original small miner waiver form signed by Appellant for the 2003-04 assessment year.” (SOR at 3 n.3.) In Kukowski’s Reply, the same exhibit is referenced as follows: “an original waiver form was filed with the BLM on January 26, 2003, and is now part of the administrative record in this case.” Without a BLM time-stamp on the waiver, and in the absence of circumstances rebutting the presumption of regularity owed to agency action, there is no basis to assume, as Kukowski would apparently have us, that it was timely filed on Jan. 26, 2003. See National Wildlife Federation, 162 IBLA 263, 266 (2004).

<sup>3/</sup> Subsection (d) reads in relevant part:

(d) Waiver.

(1) The claim maintenance fee required under this section may be waived for a claimant who certifies in writing to the Secretary that on the date the payment was due, the claimant and all related parties—

(A) held not more than 10 mining claims \* \* \* on public lands; and  
 (B) have performed assessment work required under the Mining Law of 1872 \* \* \* to maintain the mining claims held by the claimant and such related parties for the assessment year ending on noon of September 1 of the calendar year in which payment of the claim maintenance fee was due.

\* \* \* \* \*

(3) 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 Bureau of Land Management to: (A) cure such defect or defects, or (B) pay the \$100 claim maintenance fee due for such period.

small miners are granted exceptions to certain requirements. This dual system, he argues, requires BLM to issue Kukowski notice of the defect in his waiver certification, *i.e.*, the late filing fee, and provide him a grace period of 60 days to cure the defect. The Board has received a number of similar challenges, all of which we have rejected. See Otto Adams, 155 IBLA at 4; Goldie James, 143 IBLA 289, 294 (1998); Alamo Ranch, 135 IBLA at 75.

[1] Kukowski supports his argument by offering evidence of private relief legislation passed as part of the Department of the Interior and Related Agencies Appropriations Act, 2004, Pub. L. No. 108-108, 117 Stat. 1241 (2004). Section 144 of that bill required BLM to give Compass Mining Company notice of defect and opportunity to cure its late-filed waiver certification for specific claims that had been forfeited by operation of law for failure to pay the claim maintenance fee or file a waiver certification. *Id.*; see also Compass Mining Company, IBLA 2000-85, April 2, 2003, Order at 3-4. The Conference Report describes Section 144 as follows: “The conference agreement modifies Senate section 139 retroactively restoring a mining claim voided because of a defective waiver of the \$100 hard rock mining maintenance fee.” H.R. Rep. No. 108-330 at 121 (Oct. 28, 2003), reprinted in 2003 U.S.C.C.A.N. 1310, 1342. Kukowski argues that this legislation proves that Congress intended subsection (d)(3) to provide the grace period he describes because Congress “corrected” the Department’s action declaring forfeited a claim for which the waiver certification was untimely.

In fact, the legislation indicates just the opposite. Congress uses private legislation when it generally recognizes the consequences imposed by laws and regulations but wishes to provide an exception for a particular individual or company. If Congress had wanted to amend the statute to impose a 60-day grace period for all late-filed waiver certifications, it could have. Instead, it chose to grant relief only to one company in the form of private legislation. It is settled law that private legislation is binding only with respect to the specific subject matter addressed; it does not have general applicability. See Unity v. Burrage, 103 U.S. 447, 454 (1881) (“Special or private acts are rather exceptions than rules, being those which operate only upon particular persons and private concerns”) (quoting 1 Blackstone’s Commentaries \*86); see also Ram Petroleums, Inc. v. Andrus, 658 F.2d 1349, 1353 (9<sup>th</sup> Cir. 1981); Louis Samuel, 8 IBLA 268, 270 (1972) (stating that Congress passed Act of May 12, 1970, Pub. L. No. 91-245, a public law, in part to relieve itself of the burden of passing multiple private relief laws). Thus, Congress’ use of a private law to grant relief to Compass Mining Company indicates that Congress believes that forfeiture would result for all other claimants who miss the

September 1 deadline. Our interpretation of 30 U.S.C. § 28f(d)(3) is unchanged, and we adhere to our earlier precedents. A claimant who files a certification after the September 1 deadline has forfeited the claim by operation of law.

[2] Kukowski also maintains that he should have been allowed to file his waiver certification for the 2004 assessment year on July 17, 2002. Assuming, *arguendo*, that Kukowski did attempt to file his 2004 waiver certification in July of 2002, that attempt would still be insufficient to meet the requirements of 43 CFR 3833.1-7(d). As stated above, the Secretary has the authority to establish the rules under which waivers will be granted, including the discretion to establish the time period in which waiver certifications must be filed. Alamo Ranch, 135 IBLA at 75. Section 3833.1-7(d) states, “[e]ach small miner shall file a waiver certification on or before September 1 each year to hold the claims each assessment year beginning at 12 noon on September 1 of the calendar year the certification is due \* \* \*.” (Emphasis added.) This language shows that the Secretary intends the filing of the certification to be an annual requirement that must be met each year the waiver is sought, and the certification may not be filed any earlier than during the assessment year immediately preceding the applicable assessment year.

The factual representations statutorily required in the certification—ownership of not more than ten claims and performance of work for the assessment year—are time-specific. They must be true “on the date the payment was due.” 30 U.S.C. § 28f(d). Because a miner may oscillate between paying the maintenance fee and filing the waiver certification from year to year, it is reasonable for the Secretary to require that the certification be filed annually. Moreover, because of the potential criminal liability<sup>4/</sup> for misstatement in the waiver certification, it is in the claimant’s interest to verify annually the information being certified. Accordingly, we are unpersuaded by Kukowski’s argument.

In conjunction with his SOR, Kukowski petitioned for reconsideration of our order denying his request for a stay. That petition is denied as moot.

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<sup>4/</sup> Section 3833.1-7(d) also states that “[t]he small miner shall document, as provided in this paragraph (d), the claimed waiver for each assessment year a small miner waiver is claimed, certified, and attested to under penalty of 18 U.S.C. § 1001.” Section 1001 imposes criminal penalties for knowingly making a “materially false, fictitious, or fraudulent statement” in any matter within the jurisdiction of the executive, legislative, or judicial branch. Id. at (a)(2).

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 affirmed.

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H. Barry Holt  
Chief Administrative Judge

I concur:

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Bruce R. Harris  
Deputy Chief Administrative Judge