



DRILLING CONSULTANTS, INC.

177 IBLA 44

Decided March 30, 2009



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

DRILLING CONSULTANTS, INC.

IBLA 2009-62

Decided March 30, 2009

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring two lode mining claims forfeited and void for failure to pay the \$125 per claim maintenance fee or file a Maintenance Fee Payment Waiver Certification on or before September 1, 2008, for the 2009 assessment year. UMC-374063 and UMC-374103.

Affirmed; petition for stay denied as moot.

1. Mining Claims: Rental or Claim Maintenance Fees:  
Generally

When a claim maintenance fee is timely paid, but the filing deadline passes without the claimant providing identification of the claim for which payment is made, no payment has been made for the unidentified claim, and that claim is properly considered forfeited and void by operation of law, in accordance with 30 U.S.C. § 28i (2006). By failing to provide the identity of the claim, the claimant cannot shift to BLM the burden to create the nexus between a claim maintenance fee payment and the claim for which the payment is made.

APPEARANCES: K.C. Kane, President, Drilling Consultants, Inc., Spokane, Washington, for appellant.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Drilling Consultants, Inc. (DCI) has appealed from and petitioned for a stay of the effect of a November 6, 2008, decision of the Utah State Office, Bureau of Land Management (BLM), declaring two lode mining claims (HiLo #39 and HiLo #79, UMC-374063 and UMC-374103) forfeited and void for failure to pay the \$125 per claim maintenance fee or file a Maintenance Fee Payment Waiver Certification (Waiver Certification) on or before September 1, 2008, for the 2009 assessment year.

Because DCI has failed to establish that it complied with the maintenance fee requirement for the 2009 assessment year for the claims in question, we affirm BLM's decision and deny DCI's petition for a stay as moot.

### *Applicable Law*

Under 30 U.S.C. § 28f(a) (2006), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a maintenance fee for each claim or site on or before September 1 of each year.<sup>1</sup> See 43 C.F.R. § 3834.11(a)(2). Payment of the claim maintenance fee is in lieu of the assessment work requirements of the Mining Law of 1872, 30 U.S.C. §§ 28-28e (2006), and the related filing requirements of section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (2000), for the upcoming assessment year that begins at noon on September 1 of the year payment is due. See 30 U.S.C. § 28f(a) and (b) (2006); 43 C.F.R. § 3834.11(a).

The 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 (2006); see 43 C.F.R. §§ 3830.91(a) and 3835.92(a). Congress, however, provided the Secretary of the Interior with discretion to waive the claim maintenance fee for a claimant who certifies in writing that, on the date the payment was due, the claimant and all related parties held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands, and have performed assessment work required under the Mining Law of 1872, for the preceding assessment year ending at noon on September 1 of the calendar year in which payment of the fee was due. 30 U.S.C. § 28f(d)(1) (2006); see *Audrey Bradbury*, 160 IBLA 269, 273-74 (2003). BLM implemented this statute with a regulation that requires a claimant to file “BLM's waiver certification form on or before September 1 of each assessment year for which you are seeking a waiver.” 43 C.F.R. § 3835.10(a).

### *Background*

The record shows that in September 2008 DCI timely submitted a check to BLM in the amount of \$68,125, in payment of the claim maintenance fees for 545

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<sup>1</sup> Congress amended 30 U.S.C. § 28f(a) (2000) twice in Department of the Interior and Related Agencies Appropriations Acts. The first, Pub. L. No. 107-63, 115 Stat. 414, 418-19 (2001), required payment of the claim maintenance fee on or before September 1 of each year for the years 2002 and 2003, and the second “for years 2004 through 2008,” Pub. L. No. 108-108, 117 Stat. 1241, 1245 (2003). In the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, 2101 (2007), Congress struck the phrase “for years 2004 through 2008.”

claims for the 2009 assessment year. A handwritten note on BLM's receipt for that payment states that DCI "p[ai]d for 545 [claims]," but BLM only "accepted 543," and that BLM would issue a refund of \$250 "at a later time," presumably the \$125 per claim maintenance fee for the claims in question.

Submitted along with the check was a pre-printed "MAINTENANCE FEES" form executed by DCI's President on August 29, 2008, and which stated, in pertinent part: "MAINTENANCE FEE(S) in the amount of \$ 68125[.]00 is paid for the following 545 mining claim/site(s): . . . SEE EXHIBIT A[.]"<sup>2</sup> Attached to the form were three affidavits executed by DCI's President, each entitled "Affidavit of Payment of Maintenance Fees and Notice of Intent to Hold Mining Claims." Each affidavit attests to the fact that DCI was paying maintenance fees for a certain number of claims (351, 62, and 132, respectively), denoted on an attached Exhibit A. Each Exhibit A is two or more pages in length with each page labeled "EXHIBIT A." Each page also contains a statement that it is a list of a certain number of claims, followed by three columns labeled claim names, BLM serial numbers, and County recording book and page numbers.

At issue are two pages of Exhibit A attached to the affidavit relating to 351 claims, the first stating it is a list of 39 claims and the second stating that it is a list of 40 claims. The page of 39 claims provides a list of claim names beginning with "HI-LO #1" and continuing in sequential order to "HI-LO #37." Corresponding to the listing of claims is a list of sequential BLM serial numbers and a list of County book and sequential page numbers. Below the entries for "HI-LO #37" is a visible line running diagonally across the page, and the page is blank below that line. However, as the line runs across the page certain information is visible for two subsequent entries, the first contains the next sequential BLM serial number, "UMC 374062," and County book and next sequential page number "B 833 P 0635," and then for the next entry only the next sequential page number "P 0636."

Thus, the list of 39 claims only clearly provides complete information about 37 claims. Nevertheless, there was a BLM serial number for one more claim that provided BLM with sufficient information to identify that claim from its records as the Hi-Lo #38. BLM did not declare that claim to be forfeited and void. The only information available for the remaining claim was a County page number.

The page of 40 claims lists claim names beginning with "HI-LO #40" and continuing in sequential order to "HI-LO #78." Corresponding to the listing of claims is a list of sequential BLM serial numbers and a list of County book and sequential

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<sup>2</sup> The dollar amount and number of mining claim/site(s) were handwritten, the words "SEE EXHIBIT A" were typewritten, and the remaining text was part of the pre-printed form.

page numbers. At the bottom of the page, a visible line runs horizontally across the page under the information listed for the “HI-LO #78”. The page is blank below that line. Thus, the page provides information about only 39 claims, rather than 40.

DCI sought to cure the deficiencies by submitting copies of both “Exhibit A” documents, on which it wrote the missing claim names, BLM serial numbers, and County book and page numbers, for the HiLo #39 and #79 claims. However, BLM received that filing on December 9, 2008, well after the September 1, 2008, deadline.

In its single page notice of appeal, DCI contends that payments and filings were made in a timely manner for a number of claims but, for the two claims at issue, “[t]he paper shifted in the photocopier and cut off the bottom claims on 2 pages.” DCI attributes the alleged failure to pay claim maintenance fees to a “clerical error,” asserting that it had no intention of forfeiting the claims, since they are part of a block of claims for which it has been paying maintenance fees for several years.<sup>3</sup>

#### *Discussion*

The question presented in this case is whether payment of claim maintenance fees in an amount sufficient to cover 545 claims satisfies the maintenance fee requirement of 30 U.S.C. § 28f(a) (2006), and its implementing regulations, 43 C.F.R. Part 3834, as to all 545 claims, even though the claimant identified only 543 claims prior to the 2008 deadline for payment.

It is clear that if a claimant pays the maintenance fees for mining claims identified on an enclosed list, any claim omitted from that list for which no maintenance fee is timely paid is properly declared forfeited and void. *USA Mining, Inc.*, 156 IBLA 54, 58 (2001). The reason is that failure to timely pay the claim maintenance fee is what conclusively constitutes forfeiture of the unpatented mining claim. 30 U.S.C. § 28i (2006). In this case, however, the claimant timely paid fees for two claims not identified on the lists accompanying the payment. We conclude that such payment does not satisfy the statute as to those two claims.

A mining claimant may comply with the annual maintenance fee requirement by timely filing the maintenance fee or, if qualified for a waiver, by filing a timely

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<sup>3</sup> DCI’s prior compliance with the maintenance fee statute is borne out by the record, which discloses similar payments/filings to what occurred for the 2009 assessment year on Sept. 5, 2007, Sept. 1, 2006, and Aug. 30, 2005, respectively, for the 2008, 2007, and 2006 assessment years. In each of those years, the payments of \$70,250 for 562 claims in 2007, \$68,500 for 548 claims in 2006, and \$71,250 for 570 claims in 2005, were accompanied by lists including the HiLo #39 and HiLo #79 claims.

Waiver Certification. When a timely Waiver Certification is filed for certain claims and the claimant later asserts that other claims were omitted from the Waiver Certification due to clerical error, which the claimant asserted could be overlooked by BLM because its records disclosed that the claimant owned the other claims, BLM has properly declared the omitted claims forfeited and void. *Max Buckner*, 156 IBLA 30, 33 (2001) (“Because the intent to seek a waiver is within the province of the claimant, BLM may accept that the claims or sites listed on the certification are those for which the waiver is sought.”). In such a situation, forfeiture resulted because the filing deadline passed and the claimant had failed to pay the maintenance fee or seek a waiver in lieu thereof for the claims in issue.

The Board has reached similar results in cases involving the annual filing requirements of section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (2000), where the failure to comply likewise results in statutory voiding of the claim or site.<sup>4</sup> In those cases, we have consistently affirmed BLM decisions declaring a mining claim abandoned and void, by operation of law, for failure to make the filing required by statute, *i.e.*, a notice of intention to hold or an affidavit of assessment work identifying the claim for which it is filed, where, although such a document was filed on or before the December 30 deadline, the claimant failed to sufficiently identify the specific claim, by claim name, BLM serial number, or other suitable means. *Ethel Bilotte*, 99 IBLA 159, 162 (1987); *see Rand Mining Co.*, 142 IBLA 86, 89 (1997); *Douglas C. Liechty*, 108 IBLA 247, 248 (1989); *George M. Wilk Wilkinson*, 103 IBLA 121, 122 (1988); *Arley Taylor*, 90 IBLA 313, 314 (1986); *Arley R. Taylor*, 86 IBLA 283, 284 (1985).

In such cases, we held that BLM was not responsible for determining the claimant’s intent because the burden this imposes on BLM, in the normal course of implementation of such a statute, cannot be justified: “[B]ecause there is no

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<sup>4</sup> A failure to file the instruments required by section 314(a) of FLPMA is, in accordance with section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (2000), “deemed conclusively to constitute an abandonment of the mining claim.” Section 314(a) of FLPMA differs slightly from 30 U.S.C. § 28f (2006), in that it expressly states, in requiring the filing of an affidavit of assessment work or notice of intention to hold with BLM prior to December 31 of each year, that the document shall “includ[e] a description of the location of the mining claim sufficient to locate the claimed lands on the ground.” 43 U.S.C. § 1744(a) (2000). While 30 U.S.C. § 28f (2006) does not require such a description, it implicitly requires that the mining claim or site be identified. In fact, BLM has promulgated regulations dictating the form in which the claimant is to provide that necessary identification. The regulations state payment is to be accompanied by “a list of the mining claims or sites that you are paying for by claim name and by the BLM serial number if BLM has notified you what the serial numbers are.” 43 C.F.R. § 3834.12.

discretion under the statute for BLM to determine that a claim has been abandoned[,] speculation that a claimant intended to include a claim in a properly submitted document is outside the authority of the Department.” *Rand Mining Co.*, 142 IBLA at 89.<sup>5</sup> To hold otherwise would defeat the self-executing nature of section 314 of FLPMA, whereby the failure to file automatically results, without the need of any intervening action by BLM, in the statutory abandonment and voiding of the claim: “[T]he claims became abandoned and void when the annual filings were not timely made, not upon BLM’s declaration of that fact.” *Ptarmigan Co., Inc.*, 91 IBLA 113, 118 (1986); *see, e.g., United States v. Locke*, 471 U.S. 84, 98-100 (1985); *Lynn Keith*, 53 IBLA 192, 196, 88 I.D. 369, 371-72 (1981).

[1] Claim identification is key to compliance with both the Waiver Certification process of 30 U.S.C. § 28f(d) (2006) and the annual filing requirements process under section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (2000). In the context of maintenance fee payments under 30 U.S.C. § 28f(a) (2006), the burden on the claimant to identify the claim is the same. By failing to provide the identity of the claim, the claimant cannot shift to BLM the burden to create the nexus between a claim maintenance fee payment and the claim for which the payment is made.

In the present case, DCI paid maintenance fees for 545 claims, but only provided identifying information for 543 claims.<sup>6</sup> The regulations in 43 C.F.R. Part 3834 flesh out the statutory requirement of 30 U.S.C. § 28f(a) (2006) to identify the claim, by requiring in 43 C.F.R. § 3834.12 that the claim be identified by name and, where appropriate, by BLM serial number, but they do not impose any obligation on BLM to notify a claimant of an overpayment and inquire whether the claimant wants the overpayment to be applied to any other claims.<sup>7</sup> Therefore, we

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<sup>5</sup> In *Rand Mining*, although an affidavit of assessment work had been timely filed for the “groups of mining claims with which the [two claims at issue] . . . had been previously identified for reporting purposes,” those two claims were not identified in the filing because the claim names appeared at the bottom of two pages of an attachment to the affidavit and, as in this case, the photocopy machine did not copy the last lines. 142 IBLA at 88, 89. We affirmed BLM’s decision declaring the two claims statutorily abandoned and void because BLM did not have the discretion to determine whether the claimant actually intended to abandon the claims. *Id.* at 89.

<sup>6</sup> As previously noted, DCI paid fees for 562 claims in 2007. Therefore, whether or not the additional payment was to apply to any particular claims was not readily apparent.

<sup>7</sup> Compare that to the situation in which the claimant provides a partial payment of maintenance fees. In accordance with 43 C.F.R. § 3830.96(a), when a claimant “pay[s] . . . only part of the annual maintenance fees . . . for previously-recorded

(continued...)

are reluctant to impose any such obligation on BLM.<sup>8</sup> Moreover, BLM should not be required to speculate about DCI's intent concerning the identity of claims. Doing so would shift the identification burden to BLM.

When a claim maintenance fee is timely paid, but the filing deadline passes without the claimant providing identification of the claim for which payment is made, no payment has been made for the unidentified claim, and that claim is properly considered forfeited and void by operation of law, in accordance with 30 U.S.C. § 28i (2006).<sup>9</sup> BLM and this Board are without authority to excuse lack of compliance with the maintenance fee requirement of the Act, to extend the time for compliance, or to afford any relief from the statutory consequences. *Richard W. Cahoon Family Limited Partnership*, 139 IBLA 323, 326 (1997).

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, and DCI's petition for a stay is denied as moot.

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/s/  
Bruce R. Harris  
Deputy Chief Administrative Judge

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<sup>7</sup> (...continued)

mining claims . . . BLM will apply the partial payment in serial number order until the money runs out.” Such allocation will save the claims covered by the partial payment, but the remaining claims “not covered by your partial payment” “will [be] forfeit[ed][.]” 43 C.F.R. § 3830.96(b). We find nothing in the regulations that provides for allocation of the excess amount of maintenance fees to *unlisted claims* when a payment exceeds the number of listed claims.

<sup>8</sup> Imposing such an obligation could allow a mining claimant to abuse the fee payment system by claiming a refund for all or part of a purposeful overpayment. A claimant could knowingly submit a timely fee payment in excess of the number of claims properly identified on an accompanying list and, while awaiting notification from BLM of the overpayment, decide, after the filing deadline, whether or not it wanted to maintain its interest in one or more of its additional claims.

<sup>9</sup> Since identity of the claim is implicit in the statutory payment requirement, it is not curable. In accordance with 43 C.F.R. § 3830.93(a), “[i]f there is a defect in your compliance with a statutory requirement, the defect is incurable.”

I concur:

\_\_\_\_\_/s/  
H. Barry Holt  
Chief Administrative Judge