



RANDI ROVETTO, *ET AL.*

177 IBLA 257

Decided May 28, 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

RANDI ROVETTO, *ET AL.*

IBLA 2009-139, *et al.*

Decided May 28, 2009

Appeals from decisions of the Idaho State Office, Bureau of Land Management, declaring the Molly Hogan JRKM #1 (IMC 190302) through Molly Hogan JRKM #22 (IMC 190323) unpatented mining claims abandoned by operation of law for failure to file affidavits of assessment work on or before December 30, 2008, for the 2008 assessment year.

Decisions reversed; appeals in IBLA 2009-140 and IBLA 2009-141 dismissed; requests for stay denied as moot.

1. Mining Claims: Transfer of Interest

When mining claims are conveyed from one person to another, a notice of transfer of interest must be filed with the appropriate BLM State Office, and the consequences of failing to file a transfer notice are that BLM will continue to treat the last owner shown on its records as the responsible party for maintaining the claim, and a new claim owner cannot assert that BLM failed to give notice of any BLM action if no transfer notice was filed. However, the failure to file a transfer notice has no impact on the effectiveness under state law of the actual conveyance.

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

A BLM decision declaring mining claims abandoned for failure to file affidavits of assessment work will be reversed when a claimant who holds a claim subject to a maintenance fee waiver acquires so many additional claims subject to a waiver that the claimant then owns more than 10 claims and no longer qualifies for a waiver during that assessment year, but then, in accordance with 43 C.F.R. § 3835.20(b), pays maintenance fees for that

assessment year by the September 1 following the date the transfer became effective under state law.

APPEARANCES: Randi Rovetto, *pro se*, Middleton, Idaho; Karen Saleen, *pro se*, Middleton, Idaho; Joyce Rovetto, *pro se*, Clayton, Idaho.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Randi Rovetto, Karen Saleen, and Joyce Rovetto (appellants), have appealed from and requested a stay of three separate February 4, 2009, decisions¹ of the Idaho State Office, Bureau of Land Management (BLM), declaring the Molly Hogan JRKM #1 through Molly Hogan JRKM #22 (IMC 190302 - IMC 190323) unpatented mining claims² abandoned for failure to file affidavits of assessment work on or before December 30, 2008, for the 2008 assessment year. For reasons set forth below, we reverse BLM's decisions and dismiss the appeals in IBLA 2009-140 and IBLA 2009-141.

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.³ 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).

¹ BLM issued an additional decision to Mike Hammond, co-owner with Joyce Rovetto of the Molly Hogan JRKM #6 (IMC 190307) mining claim. However, Hammond did not file an appeal of that decision.

² The BLM decision addressed to Randi Rovetto involved the Molly Hogan JRKM #1 (IMC 190302), #4 - 5 (IMC 190305 - 06), #7 (IMC 190308), #9 - 10 (IMC 190310 - 11), and #12 (IMC 190313) mining claims. The decision addressed to Karen Saleen involved the Molly Hogan JRKM #2 - 3 (IMC 190303 - 04), #8 (IMC 190309), #11 (IMC 190312), and #13 - 15 (IMC 190314 - 16) mining claims. The decision addressed to Joyce Rovetto involved the Molly Hogan JRKM #6 (IMC 190307) and #16 - 22 (IMC 190317 - 190323) mining claims.

³ The Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, 2101 (2007), has made the Sept. 1 maintenance fee requirement permanent by removing the date range previously imposed by Pub. L. No. 108-108, 117 Stat. 1241, 1245 (2003) (years 2004 through 2008).

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), 3835.92(a). Congress, however, provided the Secretary with discretion to waive the fee for a claimant who certified 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 had 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 claim maintenance fee is 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). The fee waiver, however, is for the upcoming assessment year commencing at noon on September 1 of the calendar year in which the payment is due. Thus, a claimant who has filed a certification for waiver of the maintenance fee (Waiver Certification) is required to (1) perform assessment work during that upcoming assessment year for which the waiver is granted, and (2) file an affidavit of the assessment work on or before December 30 of the calendar year in which the assessment year ends. 43 C.F.R. §§ 3835.12, 3835.15, 3835.31(a);⁴ *see John J. Trautner*, 165 IBLA 265, 267 (2005); *Earl Riggs*, 165 IBLA 36, 39 (2005).

Congress has stipulated that the failure to timely file an affidavit of assessment work performed when required under the mining laws “shall be deemed conclusively to constitute an abandonment of the mining claim . . . by the owner,” thereby rendering the claim void. 43 U.S.C. § 1744(c) (2000); *United States v. Locke*, 471 U.S. 84, 97-100 (1985). The Department in its implementing regulations, however, defines the consequences resulting from such failure to file an affidavit of assessment work as a “forfeiture” of the claim.⁵ 43 C.F.R. §§ 3830.91(a)(7), 3835.91.

⁴ The regulation at 43 C.F.R. § 3835.12 is titled: “**What are my obligations once I receive a waiver?**” It states that, “[i]f BLM allows you the waiver, you must then perform annual assessment work on time and file annual FLPMA documents.” The regulation at 43 C.F.R. § 3835.31(a) is titled: “**When do I file an annual FLPMA document?**” It states that “you must file your annual FLPMA documents with BLM on or before the December 30th of the calendar year in which the assessment year ends.”

⁵ The regulation at 43 C.F.R. § 3830.5 defines “[f]orfeit or forfeiture” to mean “the voidance or invalidation of an unpatented mining claim or site,” adding that “[t]he terms ‘abandoned and void,’ ‘null and void,’ ‘void ab initio,’ and ‘forfeited’ have the same effect in these regulations.”

FACTUAL BACKGROUND

In this case, appellants each submitted Waiver Certifications for their respective claims on August 24, 2007, for the 2008 assessment year, which usually would require the performance of assessment work during the 2008 assessment year and the filing of affidavits of assessment work on or before December 30, 2008. BLM later received from Randi Rovetto, on August 22, 2008, a payment in the amount of \$2,750 accompanying a Claim Maintenance Fee List that listed all of the Molly Hogan JRKM #1 - #22 (IMC 190302 - 23) claims. The record indicates that BLM reported the payment as maintenance fees for each of the 22 claims for the 2009 assessment year. None of the appellants submitted affidavits of assessment work on or before December 30, 2008. As a result, BLM issued its February 4, 2009, decisions declaring all 22 claims abandoned for failure to file affidavits of assessment work. Each of the three appellants submitted timely notices of appeal and petitions for stay of the BLM decisions.

Randi Rovetto later submitted a letter to the Board, with several enclosures, that we deem to be her Statement of Reasons (SOR). In that letter she states that because of family considerations affecting the other appellants, she had acquired ownership of all of their claims by quit claim deed as of August 1, 2008. She included copies of the quit claim deeds with her letter. Upon acquiring title to the additional 15 claims, she realized that she then owned a total of 22 claims and no longer qualified for the claim maintenance fee waiver, which is limited to owners of no more than 10 claims.

[B]ecause I did not qualify for the waiver, I thought there was no point in submitting the affidavit of annual assessment work [citing 43 C.F.R. § 3835.20(b)]. . . . The transfer of claims to me was effective on August 1, 2008. Thus, I paid the fees because the claims were subject to a waiver, yet because I inherited everyone's claims, I did not qualify for a waiver.

SOR at 1-2.

The regulations at 43 C.F.R. § 3835.20(b) state:

If you purchase, inherit, or otherwise obtain mining claims or sites that are subject to a waiver and you do not qualify for the waiver, you must pay the annual maintenance fee by the September 1 following the date the transfer became effective under state law.

BLM filed a Response to Randi Rovetto's SOR (Response) which, among other things, questioned the effectiveness of the quit claim deeds. "[I]t appears that the

deeds . . . have not been properly filed under state law as of March 25, 2009. . . . To date, the deeds still have not been properly recorded in our [BLM's] office.”
Response at 5.

ANALYSIS

As an initial matter, the subject quit claim deeds appear to be valid and would have been effective as of August 1, 2008. BLM argues that the deeds had not been “properly filed under state law.” Under Idaho law, mining claims are real property, Idaho Code § 55-101, and may be conveyed by written instrument signed by the grantor which includes the name and complete mailing address of the grantee, Idaho Code § 55-601. Although a real property conveyance must be acknowledged and recorded to provide constructive notice to subsequent purchasers for value, Idaho Code § 55-811, unrecorded conveyances are valid as between the parties, Idaho Code § 55-815. “Even without recordation, an instrument is valid as between the parties thereto in accordance with the Idaho Code Thus, recordation of the deed is not essential to its validity (absent intervening rights).” *Aileen Mayes*, 153 IBLA 192, 198 (2000).

[1] As for the deeds not being properly recorded in BLM’s office, BLM’s regulations state that state law governs the transfer of mining claims, and “[a] transfer is effective in the manner and on the date provided by state law, not the date you file it with BLM.” 43 C.F.R. § 3833.32(a). However, a notice of the transfer of interest must be filed with the appropriate BLM State Office. 43 C.F.R. § 3833.32(b). The consequences of failing to file such a notice of transfer of interest are that BLM will continue to treat the last owner shown on its records as the responsible party for maintaining the claim, and a new claim owner cannot assert that BLM failed to give notice of any BLM action if no transfer notice was filed. 43 C.F.R. § 3833.92. However, the failure to file a transfer notice has no impact on the effectiveness under state law of the actual conveyance.

In this case, appellants Karen Saleen and Joyce Rovetto conveyed their interests in their mining claims to Randi Rovetto by signed written instruments that included the name and complete mailing address of Randi Rovetto, and the conveyances were effective as of August 1, 2008. As a result, we must dismiss the appeals of Karen Saleen and Joyce Rovetto because they lack standing to appeal BLM’s decisions. In order to appeal a decision to this Board, a person must be a party to the case who is adversely affected by the decision at issue. 43 C.F.R. § 4.410(a). As of the date of BLM’s decisions, February 4, 2009, neither Karen Saleen nor Joyce Rovetto had any interest in the subject mining claims (having conveyed their interests to Randi Rovetto) that was adversely affected by BLM’s decisions. However, considering that Randi Rovetto was, as of August 1, 2008, the owner of all 22 claims that were the subject of BLM’s three February 4, 2009, decisions, and considering

that Randi Rovetto explicitly referenced all three of BLM's decisions in her SOR, *see* SOR, Enclosure #1, we construe Randi Rovetto's appeal as involving all three of BLM's February 4, 2009, decisions.

[2] We now turn to the failure to file affidavits of assessment work for the 2008 assessment year for the Molly Hogan JRKM mining claims. Appellants, each owning no more than 10 mining claims, initially qualified to file Waiver Certifications, and each filed a Waiver Certification for their respective claims for the 2008 assessment year. On August 1, 2008, Randi Rovetto acquired title to the 15 claims of the two other appellants, resulting in her ownership of a total of 22 claims. Realizing that she no longer qualified for the maintenance fee waiver, she then paid maintenance fees for all 22 claims on August 22, 2008, prior to the September 1 following the date of her acquisition of the claims, all in accordance with the applicable BLM regulations. *See* 43 C.F.R. § 3835.20(b). It is clear from the timing of these circumstances, and Randi Rovetto's own statements in her SOR, that her \$2,750 payment on August 22, 2008, was for maintenance fees for the 22 claims for the 2008 assessment year. Although BLM understandably misconstrued the payment as being for the 2009 assessment year, not having been provided with notice of the transfer of interests in the claims of Karen Saleen and Joyce Rovetto, that does not change the fact that Randi Rovetto satisfied the statutory and regulatory requirements for maintaining the 22 claims for the 2008 assessment year.⁶ As a result, BLM's February 4, 2009, decisions must be reversed.

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 appeals in IBLA 2009-140 and IBLA 2009-141 are dismissed, BLM's February 4, 2009, decisions are reversed, and the requested stays are denied as moot.

_____/s/_____
H. Barry Holt
Chief Administrative Judge

⁶ However, there is no evidence in the record before us that Randi Rovetto paid the required maintenance fees for the 2009 assessment year on or before Sept. 1, 2008.

I concur:

_____/s/
Bruce R. Harris
Deputy Chief Administrative Judge