



MELVIN PETERSON

180 IBLA 152

Decided November 30, 2010



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

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IBLA 2010-197

Decided November 30, 2010

Appeal from a decision of the California State Office, Bureau of Land Management, declaring unpatented mining claims forfeited for failure to pay the claim maintenance fee or to file an effective maintenance fee payment waiver certification (Waiver Certification) on or before September 1, 2009, for the 2010 assessment year because the defective Waiver Certification was not timely cured. CAMC 8441, *et al.*

Affirmed as modified; request for stay denied as moot.

1. Mining Claims: Defective Filing

A defective Waiver Certification must be cured, or the appropriate maintenance fees paid, within 60 days of receipt of BLM's written notice of the defect, or the involved mining claims will be forfeit by operation of law. The timely cure of some, but not all, of the defects is ineffective to cure the Waiver Certification, and the claims are properly declared forfeited.

2. Mining Claims: Defective Filing

Pursuant to 30 U.S.C. § 28f(d)(3) (2006), a claimant shall have 60 days after receipt of written notification from BLM in which to cure a defective Waiver Certification. BLM is without authority to extend that statutory deadline.

APPEARANCES: Melvin Peterson, Pacifica, California, *pro se.*

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Melvin Peterson has appealed from a June 23, 2010, decision of the California State Office, Bureau of Land Management (BLM), declaring seven unpatented mining claims¹ forfeited for failure to pay the claim maintenance fee or to file an effective Waiver Certification on or before September 1, 2009, for the 2010 assessment year because he failed to timely cure his defective Waiver Certification. We affirm BLM's decision as modified.

The holder of an unpatented mining claim, mill site, or tunnel site is required pay a maintenance fee for each claim or site on or before September 1 of each year.² 30 U.S.C. § 28f(a) (2006); *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) (2006), for the upcoming assessment year that begins at noon on September 1 of the year payment is due. 30 U.S.C. § 28f(a) and (b) (2006); *see* 43 C.F.R. § 3834.11(a).

The failure to timely submit 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)(3), 3835.92(a). Congress, however, has provided the Secretary with discretion to waive the fee for a claimant who has 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 has performed assessment work required under the Mining Law of 1872 with respect to the mining claims, 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);

¹ The mining claims are as follows: MT Quail (CAMC 8441), Mill Lodge Quartz (CAMC 8442), Tie Mining Quartz (CAMC 8443), Red Robin Quartz (CAMC 8444), Gov Johnson Quartz (CAMC 8445), Johnson Sink (CAMC 170169), and El Garcia (CAMC 170170). The claims are located in sec. 11, T. 17 N., R. 11 E., Mt. Diablo Meridian, Nevada County, California.

² The Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, 2101 (2007), has made the September 1st 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).

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 Waiver Certification must include, among other things, “original signatures of the claimants of the mining claims or sites who are requesting the waiver.” 43 C.F.R. § 3835.10(b)(2). In this case, the Waiver Certification for the seven mining claims for the 2010 assessment year was filed on August 27, 2009. The Waiver Certification included Peterson’s original signature, and a photocopy of the signature of Beverly D. Cook. BLM sent an undated letter titled “Request to Clarify Interest of Mining Claims” (Request to Clarify) to Peterson, Cook, and Robert E. Riddell, that was received by those parties on December 31, 2009, January 8, 2010, and January 2, 2010, respectively. The letter identified deficiencies in the Waiver Certification and stated first that the Waiver Certification did not include Cook’s original signature. It then stated that BLM records show that Riddell is an additional owner of record whose original signature must appear on the Waiver Certification, and that there are no records showing that Peterson has an interest in the claims. The letter explained that (1) if Riddell is still a claim owner, then his original signature must be included on the Waiver Certification, or (2) if an owner has died then a death certificate and either a will or a decree of distribution must be recorded with BLM (and service charges paid), and (3) if there has otherwise been a change of ownership, then the transferring document must be recorded with BLM (and service charges paid), and (4) if the appropriate signatures or documents cannot be obtained, then the claim maintenance fees must be paid. The letter concluded that the deficiencies must be cured, or the maintenance fees paid, within 60 days from receipt of the letter or the claims will be forfeited by operation of law. *See* 30 U.S.C. § 28f(d)(3) (2006); 43 C.F.R. § 3835.93.

Peterson responded by letter which was received by BLM on February 3, 2010. He explained that he submitted the Waiver Certification with his and Cook’s original signatures to the Nevada County Recorder (which explains why the document submitted to BLM did not have Cook’s original signature), but that he had since received the original document back and now enclosed it. As for his ownership, he enclosed a quitclaim deed signed by Patricia Riddell, who inherited her husband’s (presumably Robert’s) interest upon his death, transferring her interest to him. He enclosed the appropriate portion of the processing fees, and stated that he would continue to try and obtain the other necessary documents, and intended to complete the process within the required 60 days.

Peterson received BLM's Request to Clarify on December 31, 2009,³ which means the 60-day period to cure the Waiver Certification given by BLM expired on March 1, 2010. By that date, BLM had received no further communication from Peterson. On March 4, however, a BLM employee sent Peterson an email, acknowledging Peterson's February 3 response but stating that BLM still required inheritance documents (will or estate distribution) regarding Robert Riddell's interest. On April 20, 2010, that same BLM employee sent Peterson another email acknowledging his February 4 response, but again stating that BLM required inheritance documents regarding Robert Riddell's interest, this time stating that "[y]ou have 30 days from received [sic] of this e-mail to provide the required information or pay the \$140 maintenance fee per claim. If the information is not received a decision will be issued [and] the claims forfeit." No response was forthcoming from Peterson, and on June 23, 2010, BLM issued its decision.

In his Notice of Appeal, Peterson explains that Robert Riddell was deceased and his wife, Patricia Riddell had acquired her interest in the claims by inheritance. Patricia Riddell then sold her interest to Peterson. Peterson acknowledged that BLM's Request to Clarify asked him to supply both the original signature of Cook, which he did, and transfer papers and inheritance documents with respect to Robert Riddell's interest. In response, he forwarded to BLM the original Waiver Certification (which included Cook's original signature) and the quitclaim deed in his favor from Patricia Riddell. Peterson makes no reference to having received BLM's two emails. Instead, he states that upon his receipt of BLM's June 23, 2010, decision he obtained from Patricia Riddell her husband's death certificate and will, which he enclosed with his Notice of Appeal.

It is clear that Peterson submitted a defective Waiver Certification for the 2010 assessment year. We note that our examination of the administrative record uncovered another interesting circumstance. Peterson's Notice of Appeal included a copy of Robert Riddell's death certificate, confirming that Riddell passed away on February 24, 1998. The question then becomes who signed the Waiver Certifications for the claims after his death? The administrative record reveals that the Waiver Certification for the 1998 assessment year was signed by Robert E. Riddell with an address in Montara, California, but that the Waiver Certification for the 1999 assessment year (and for every year thereafter until the 2010 assessment year) was signed by *Robert E. Riddell, Jr.* with an address first in Watsonville, California, and then in Vacaville, California (2002 assessment year), and later in Charlotte, North Carolina (2006 assessment year).

³ Peterson's letter received by BLM on Feb. 3, 2010, states that BLM's Request to Clarify was received on Jan. 4, 2010. However, BLM's Request to Clarify was sent by certified mail, and the return receipt shows that the letter was delivered to Peterson on Dec. 31, 2009.

Presumably, Robert E. Riddell, Jr. is the son of the claimant Robert E. Riddell. Because the son, with no interest in the claims (because they passed by inheritance to his mother Patricia Riddell, according to the submitted inheritance documents), signed the Waiver Certifications for the 1999 through 2009 assessment years, those Waiver Certifications were defective and the claims subject to forfeiture. However, because BLM apparently failed to notice the defective Waiver Certifications during that 11-year period and therefore failed to provide the claimants with an opportunity to cure the defects, forfeiture could not be effectuated.

[1] As for the defective Waiver Certification submitted by Peterson for the 2010 assessment year, BLM notified Peterson of the defects and of the 60 days he had to cure the defects, in accordance with applicable legal authorities. *See* 30 U.S.C. § 28f(d)(3) (2006); 43 C.F.R. § 3835.93.⁴ Peterson complied in part, responding within the 60 days with Cook's original signature and a quitclaim deed, partially explaining his interest in the claims. However, he did not submit the inheritance documents requested by BLM which would have explained how title passed first to Patricia Riddell who then transferred title to Peterson. Because Peterson did not cure all of the defects or pay the appropriate maintenance fee by March 1, 2010, the end of the 60-day cure period, the claims were forfeited by operation of law.

[2] As for BLM's emails of March 4, 2010, and April 20, 2010, the latter purportedly giving Peterson an addition 30 days (until May 20) to cure the defective Waiver Certification, which by then would have amounted to an effective cure period of 140 days, BLM's actions clearly are not sustainable. First, email is a problematic mode of official communication, particularly with respect to documentation of receipt, as is evident in this case with Peterson not confirming receipt of the two BLM emails. Even more important, however, is that BLM simply is without authority to extend the statutory requirement that a claimant must cure a defective Waiver Certification within 60 days of receipt of written notification of defects. BLM's actions in this case violate BLM's own regulations, which mirror and implement the statutory requirement. Even though in this case the claims were forfeited by operation of law prior to transmission of the emails, actions such as those taken by BLM can at best only confuse the public as to their legal rights and obligations, and cloud the appropriate resolution of a dispute.

⁴ "[T]he claimant shall have a period of 60 days after receipt of written notification of the defect or defects . . . to: (A) cure such defect or defects, or (B) pay the . . . claim maintenance fee due for such period." 30 U.S.C. § 28f(d)(3) (2006). "You must cure the defective waiver or pay the annual maintenance fees within 60 days of receiving BLM notification of the defects, or forfeit the claim or site." 43 C.F.R. § 3835.93(c).

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 request for stay is denied as moot, and the decision appealed from is affirmed as modified.

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

I concur:

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