



DAVID MCCARTY

181 IBLA 224

Decided July 15, 2011



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

DAVID MCCARTY

IBLA 2011-140

Decided July 15, 2011

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring an unpatented mining claim abandoned and void for failure to file an affidavit of assessment work on or before December 30, 2010. ORMC 164433.

Affirmed as modified.

1. Regulations: Generally

An appellant's lack of familiarity with regulatory requirements provides no excuse for their violation. All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations regardless of actual knowledge of what is in the regulations or of the hardship resulting from innocent ignorance.

2. Small Miner Exemption: Generally--Mining Claims: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold

It is not necessary for a claimant to perform assessment work, or file an affidavit of assessment work, in the assessment year in which a claim is located. If, however, that claimant qualifies for and timely submits a small miner waiver form for the subsequent assessment year, the claimant must file a notice of intent to hold the mining claim, on or before the December 30 immediately following the September 1 for which the waiver was filed. BLM must reject an affidavit of assessment work filed in lieu of a notice of intent to hold, unless the affidavit meets the regulatory requirements for a notice of intent to hold.

If a notice of intent to hold must be filed on or before December 30 of the year following the calendar year in which the claim was located, the failure to file such notice of intent to hold shall be deemed conclusively to constitute an abandonment of the mining claim.

APPEARANCES: David McCarty, Fort Lauderdale, Florida, *pro se*.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

David McCarty has appealed a decision of the Oregon State Office, Bureau of Land Management (BLM), dated March 11, 2011, declaring the Boulder #1 mining claim (ORMC 164433) abandoned and void for failure to file an affidavit of annual assessment work on or before December 30, 2010.<sup>1</sup> 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.<sup>2</sup> 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 statute, however, grants the Secretary of the Interior the discretion to waive the fee payable in any year for a claimant who certifies in writing that, on the date the payment is due, the claimant and all related parties hold not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public

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<sup>1</sup> This decision is one of two issued by BLM on Mar. 11, 2011, invalidating claims owned by McCarty. The other decision addressed the Evelyn's Joy claim (ORMC 165352). Although McCarty submitted only one notice of appeal (NOA) addressing both BLM decisions, the issues involved, although related, sufficiently differ, so that we separately docketed the appeal of the decision involving the Evelyn's Joy claim as IBLA 2011-186. We will address that appeal in a subsequent disposition.

<sup>2</sup> 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).

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 claim maintenance fee is due.<sup>3</sup> 30 U.S.C. § 28f(d)(1) (2006); *see* 43 C.F.R. § 3835.11(a); *Frank E. & Carol Sieglitz*, 170 IBLA 286, 290 (2006). 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);<sup>4</sup> *see John J. Trautner*, 165 IBLA 265, 267 (2005); *Earl Riggs*, 165 IBLA 36, 39 (2005). As we stated in *Audrey Bradbury*, 160 IBLA 269, 274 (2003):

The cardinal rule is that for each and every assessment year, either (1) maintenance fees must be paid, or (2) a small miner waiver certification must be filed and assessment work performed and documented. The fact that [either] maintenance fees are paid, or the small miner waiver certification filed, *prior* to a particular assessment year, while any required assessment work must be performed *during* that assessment year and documented no later than December 30 *after* that assessment year, makes the process somewhat complex, but does not alter the rule. [Footnote omitted].

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) (2006); *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

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<sup>3</sup> When payment is not waived, failure to pay the claim maintenance 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 (2006); *see* 43 C.F.R. §§ 3830.91(a), 3835.92(a).

<sup>4</sup> 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.”

assessment work as a “forfeiture” of the claim.<sup>5</sup> 43 C.F.R. §§ 3830.91(a)(7), 3835.91. This is the forfeiture which we now review.

### *Factual Background*

The Boulder #1 mining claim was located on October 10, 2008. BLM records show that the location notice was recorded with BLM on December 4, 2008, and the location fee and initial maintenance fee were paid on that same date. *See* 43 C.F.R. § 3834.11(a)(1) (“When you first record a mining claim or site with BLM, you must pay a location fee and an initial maintenance fee for the assessment year in which you located the mining claim or site.”). As a result, the maintenance fee obligation was satisfied for the 2009 assessment year, September 1, 2008, to September 1, 2009, the assessment year in which the claim was located. On March 6, 2009, the claim was transferred by Quit Claim Deed to McCarty. McCarty filed a Waiver Certification on August 26, 2009, for the upcoming 2010 assessment year, and on September 2, 2009, the original locators filed an affidavit of assessment work for work performed during the 2009 assessment year. Despite having filed a Waiver Certification for the 2010 assessment year, McCarty failed to file an affidavit of assessment work on or before December 30, 2010, and BLM issued its decision declaring the Boulder #1 claim abandoned. McCarty then appealed.

### *Discussion*

McCarty filed his NOA on April 18, 2011, identifying the “Claims in question, ORMC 165352, ORMC 165352.”<sup>6</sup> McCarty’s reasons for his appeal were contained in a letter forwarded to the Board by McCarty’s Congressman (Letter).

#### *1. McCarty’s Arguments on Appeal*

McCarty first asserts that BLM “state[s] that I filed this and that form, but I failed to file a form of ‘work done.’ The facts are that I did what I thought I had to do to maintain my mineral claims. The form that they want is not available from them

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<sup>5</sup> The regulations at 43 C.F.R. § 3830.5 define “[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.”

<sup>6</sup> McCarty clearly made a mistake in his identification of the claims, since he repeated the serial number of the Evelyn’s Joy claim twice. Because the record indicates his appeal concerned two mining claims, we presume that he also intended to appeal BLM’s other Mar. 11 decision, invalidating McCarty’s Boulder #1 claim.

and they won't tell you where to get the form. Their rules are contrary, confusing, and conflicting." Letter at 1.

McCarty filed a timely Waiver Certification for the 2010 assessment year. Accordingly, he was not obliged to pay the claim maintenance fee required by the Mining Law, 30 U.S.C. § 28f(a) (2006), but instead was entitled, and in fact required, to perform "not less than \$100 worth of labor . . . or improvements made." 30 U.S.C. § 28 (2006); *see* 30 U.S.C. § 28f(d) (2006). Under section 314(a) of FLPMA, McCarty was then required to file with BLM on or before December 30, 2010, "an affidavit of assessment work performed." 43 U.S.C. § 1744(a)(1) (2006). FLPMA states "[t]he failure to file such instrument[] . . . shall be deemed conclusively to constitute an abandonment of the mining claim . . . by the owner." 43 U.S.C. § 1744(c) (2006).

[1] These requirements were imposed by Congress, not by BLM, and BLM's regulations merely reflect those congressional mandates. Unfortunately, McCarty's lack of familiarity with the requirements provides no excuse for his violation. The United State Supreme Court has stated emphatically that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations "regardless of actual knowledge of what is in the Regulations or of the hardship resulting from innocent ignorance." *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 385 (1947); *see Austen Shepard*, 178 IBLA 224, 234 n.8 (2009).

McCarty then states that "I have filed an appeal. That is also confusing. It seems that they will make a decision without any input from me." Letter at 1. McCarty is simply incorrect. Under 43 C.F.R. § 4.412, McCarty was entitled to submit a statement of reasons for his appeal, and we have considered his Letter as his input to his appeal.

Further in his Letter, McCarty states that "their [the Board's] rules and regulations are available on the internet for \$64.00." Letter at 1. McCarty provides no substantiation for this statement, which is patently incorrect. As stated in the Board's Docketing Notice dated April 21, 2011, and sent to McCarty, our current rules are available on the Board's website,<sup>7</sup> [http://www.oha.doi.gov/about\\_ibla.htm](http://www.oha.doi.gov/about_ibla.htm). There is no charge for viewing those regulations.

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<sup>7</sup> The Board's regulations also may be found in many public or college libraries that include in their holdings the Code of Federal Regulations, and the recent amendments to the regulations may be found in the Federal Register at 75 Fed. Reg. 64655 (Oct. 20, 2010), available in many locations on the internet and in libraries.

McCarty finally complains that the process is confusing and asks, “[i]s all this necessary for a mom and pop to go in the woods and pan for a little gold?” Letter at 1. As discussed above, the requirements in BLM’s regulations were promulgated as the result of statutory mandates imposed by Congress. BLM is responsible for the management of the public lands and their resources, and Congress provides the framework for that management through passage of laws that BLM implements. With its passage of the Mining Law and FLPMA, Congress determined that BLM’s management of mining activities on public lands is, indeed, necessary.

### 3. *Filing a Notice of Intent to Hold*

As discussed above, after the Boulder #1 claim was located and the initial maintenance fee paid, the locators conveyed the claim to McCarty. After McCarty filed his Waiver Certification for the 2010 assessment year, the original locators then filed an affidavit of assessment work for work performed during the 2009 assessment year.

[2] Because the initial maintenance fee had already been paid, and that fee covered the 2009 assessment year, there was no need for the locators, or McCarty, to perform assessment work during the 2009 assessment year. *See* 43 C.F.R. § 3835.31(b) (“You do not need to complete assessment work in the assessment year when you located your claim.”); *see also* 43 C.F.R. §§ 3835.14(b), 3835.31(c), 3836.11(a) (“Beginning in the assessment year that begins *after* you locate your mining claim, you must expend \$100 in labor or improvements for each claim.”) (emphasis added). Accordingly, there was no need to file an affidavit of assessment work. Under those circumstances, however, BLM’s regulations still require a claimant to file a notice of intent to hold the mining claim, on or before December 30. 43 C.F.R. § 3835.14(b) (After locating a claim and filing a Waiver Certification on or before the following September 1, you must “[f]ile on or before the December 30 immediately following the September 1st for which you applied for a waiver a notice of intent to hold the mining claim or site.”). In this case, McCarty did not file a notice of intent to hold by December 30, 2009, but BLM apparently determined that the affidavit of assessment work filed by the original locators satisfied that requirement. To the extent BLM made that determination, BLM was incorrect.

BLM’s regulations are quite specific that “[t]he notice of intent to hold must conform to §§ 3835.31 through 3835.33.” 43 C.F.R. § 3835.14(b). Those regulatory provisions state, among other things, that the notice of intent to hold must include the following:

An exact legible reproduction or duplicate of a letter or other notice with signatures of one or more of the claimants or their agent that states your intention to hold the mining claims or sites for the calendar

year in which the assessment year ends, and that you filed or will file a notice of intent to hold in the county where the claim is located.

43 C.F.R. § 3835.33(a). It must also include “[a]ny other documentation in the notice of intent to hold supporting why you are filing a notice of intent to hold instead of an assessment work filing.” 43 C.F.R. § 3835.33(b)(3).

Here, the locators’ affidavit of assessment work did not conform to these requirements. First, it was submitted by the original locators *after* they had conveyed the claim to McCarty and yet did not include McCarty’s signature, so it did not include the “signatures of one or more of the claimants” because the locators were no longer “claimants” and McCarty was the only claimant.<sup>8</sup> In addition, there is no indication that the document had been or would be filed in the county where the claim was located, and no documentation (no statement on the form, and no other documents attached) confirming why a notice of intent to hold was filed instead of an assessment work filing. As a result, BLM was obliged to reject the affidavit of assessment work as a notice of intent to hold.

McCarty did not file a notice of intent to hold the Boulder #1 mining claim. The claim was located in October 2008, McCarty filed his Waiver Certification in August 2009, and the notice of intent to hold was due on or before December 30, 2009, the year following the calendar year in which the claim was located. FLPMA requires that the owner of an unpatented mining claim must file, on or before December 30 “of each year following the calendar year in which the said claim was located” a notice of intent to hold the mining claim (if annual assessment work and an affidavit of performance of that assessment work is not required). 43 U.S.C. § 1744(a) (2006). The failure to file that document “shall be deemed to constitute an abandonment of the mining claim . . . by the owner.” 43 U.S.C. § 1744(c) (2006); 43 C.F.R. § 3835.91 (“If you fail to file an annual FLPMA document by December 30, as required in § 3835.31(d), you forfeit the affected mining claims or sites.”). As a result, the Boulder #1 claim was abandoned and void as of December 31, 2009, and BLM’s decision is modified accordingly.

As for McCarty’s failure to file an affidavit of assessment work on or before December 30, 2010, such failure would have triggered a statutory abandonment of the Boulder #1 mining claim, had the claim still been valid on that date. *See* 43 U.S.C. § 1744(c) (2006); 43 C.F.R. § 3835.91. This Board is without authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from the statutory consequences. *Lynn Keith*, 53 IBLA 192, 196, 88 I.D. 369, 372

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<sup>8</sup> There is no evidence in the record that the original locators were acting as McCarty’s agent for the purpose of filing a notice of intent to hold.

(1981). Where an annual filing is not timely received, for whatever reason, the consequences must be borne by the claimant.

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 as modified.

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

I concur:

\_\_\_\_\_/s/\_\_\_\_\_  
Bruce R. Harris  
Deputy Chief Administrative Judge