



ART ANDERSON

181 IBLA 270

Decided August 17, 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

ART ANDERSON

IBLA 2011-171

Decided August 17, 2011

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring unpatented mining claims forfeited for failure to pay the claim maintenance fee or to file a maintenance fee payment waiver certification (Waiver Certification) on or before September 1, 2010, for the 2011 assessment year. IMC 17188, IMC 17197.

Affirmed as modified.

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

To avoid the forfeiture for failing to pay the maintenance fee, a Waiver Certification must be filed at or before the time the maintenance fee is due, or, in other words, before the commencement of the assessment year.

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

Pursuant to The Consolidated Appropriations Act, 2008, 121 Stat. 2101, the annual assessment year begins at 12:01 a.m. on September 1.

APPEARANCES: Art Anderson, Boise, Idaho, *pro se*.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Art Anderson has appealed from a May 11, 2011, decision of the Idaho State Office, Bureau of Land Management (BLM), declaring seven unpatented mining claims<sup>1</sup> forfeited for failure to pay the claim maintenance fee or to file an effective Waiver Certification on or before September 1, 2010, for the 2011 assessment year. We affirm BLM's decision as modified.

The holder of an unpatented mining claim, mill site, or tunnel site is required to pay a maintenance fee for each claim or site 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 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).

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<sup>1</sup> The decision declared the following claims forfeited: Silver Gem #1-#3 (IMC 17183-17185; Black Daisy #3 (IMC 17188); Cloud Burst (IMC 17197); May Day (IMC 17200); and Lone Fir (IMC 17204). BLM records show that Art Anderson is an owner of only the Cloud Burst claim; however, in an undated statement (Statement) submitted by Anderson that appears in the administrative record, Anderson suggests that he is also representing his brother Don Anderson, an owner of the Black Daisy #3 claim. Because Art Anderson is entitled to represent his brother in this matter, *see* 43 C.F.R. § 1.3(b)(3)(i), we consider his appeal of BLM's decision limited to the effect of the decision on the Black Daisy #3 and Cloudburst claims. Although the record also suggests Anderson has acted as agent for Becky Caldwell, an owner of the Silver Gem #1-#3 claims, there is no evidence that Anderson is authorized under the regulations to represent her and, as a result, he is not entitled to maintain an appeal on Caldwell's behalf. *Helmut Rohrl*, 132 IBLA 279, 281 (1995).

<sup>2</sup> The Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, 2101 (2007), has made the Sept. 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). That provision of the Act also included "a technical change to mining law which clarifies the time of day annual work on claims must be registered." H.R. Rep. No. 110-187, at 23 (2007). That change amended 30 U.S.C. § 28 (2006) to move the beginning of the annual assessment year from 12:00 noon on Sept. 1 to 12:01 a.m. on Sept. 1, thereby changing the effective due date for payment of the maintenance fee to *before* 12:01 a.m. on Sept. 1. *See* 30 U.S.C. § 28 (Supp. I 2007).

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 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).<sup>3</sup>

#### *Factual Background*

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, appellant states that on September 1, 2010, he appeared at the BLM Idaho State Office and filed his affidavit of assessment work for the 2010 assessment year. He also attempted to file a Waiver Certification for the 2011 assessment year. “They would not accept the Maintenance Fee Waiver Certification form because it lacked the signature of Eleanor Richardson.”<sup>4</sup> Statement at 1. Appellant continues that he mailed the original

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<sup>3</sup> The Consolidated Appropriations Act, 2008, did not specifically amend the language of 30 U.S.C. § 28f(d)(1) to change the assessment year, as it did in § 28, and BLM has not yet amended its regulations. We need not determine whether § 28f(d)(1) has been amended by implication; however, we will interpret BLM’s regulations in a manner consistent with the statutory amendment. We also note that since the effective date of the amendment to § 28, the Board has issued a number of decisions referencing the unchanged language of § 28(d)(1) and BLM’s regulations. However, in none of those decisions was the specific time of the beginning of the assessment year a determinative factor in the decision.

<sup>4</sup> The Waiver Certification listed five mining claims, the Silver Gem #1-#3, the Black Daisy #3, and the Cloud Burst. The owners of the Silver Gem claims are Becky Caldwell and Eleanor Richardson, the owners of the Black Daisy #3 claim are Don Anderson and Eleanor Richardson, and the owners of the Cloud Burst claim are appellant, Bonnie Davis, and Eleanor Richardson. The Waiver Certification must

(continued...)

Waiver Certification to Eleanor Richardson “for her signature and submittal.” *Id.*<sup>5</sup> He concludes his argument by stating “[t]he law should not allow forfeiture of our interest [his and his brother’s] due to the lack of action or understanding of a third party.”

### *Discussion*

As for appellant’s complaint about the inaction of a third party causing a forfeiture of his interest, he chose to own a mining claim jointly with other owners. In addition, he always had the option of simply paying the annual maintenance fee, thereby avoiding the technical requirements of filing a Waiver Certification. Yet he chose not to take advantage of that option.

As for the Waiver Certification itself, it clearly was defective. Assuming appellant’s description of his effort to file the Waiver Certification is accurate, BLM’s rejection of its filing was violative of BLM’s regulations. If a claimant submits a timely Waiver Certification that is defective, BLM must provide the claimant with notice of the defect by certified mail-return receipt requested, and allow the claimant 60 days from receipt of the notice to cure the defect. 43 C.F.R. § 3835.93(a), (c). The claimant’s failure to cure the defect within that 60-day period results in forfeiture of the claim. 43 C.F.R. § 3835.93(c).

[1] In this case, however, the crucial issue is that to be entitled to cure a defective Waiver Certification, a claimant must submit a “timely” Waiver Certification. A claimant must pay an annual maintenance fee for each claim, and that maintenance fee must be paid timely or the claim is forfeited by operation of law. 30 U.S.C. § 28f(a) (Supp. I 2007); 30 U.S.C. § 28i (2006). To be timely, the maintenance fee must be paid “before the commencement of the assessment year.” 30 U.S.C. § 28f(b) (2006). Qualifying for and filing a Waiver Certification (followed by performing required assessment work on the claim) relieves a claimant from paying the annual maintenance fee. 30 U.S.C. § 28f(d) (2006). To avoid the forfeiture for failing to pay the maintenance fee, however, the Waiver Certification

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<sup>4</sup> (...continued)

include the names and addresses of all owners of the claims, and the original signatures of all of the owners or their authorized agent(s). 43 C.F.R. § 3835.10(b)(1) and (2). The Waiver Certification included the names and addresses only of appellant, Don Anderson, and Eleanor Richardson, and the original signatures only of appellant and Don Anderson. The Waiver Certification clearly was defective.

<sup>5</sup> Appellant does not state when the original Waiver Certification was mailed to Richardson (before or after his appearance at the BLM office).

must be filed at or before the time the maintenance fee is due, or, in other words, before the commencement of the assessment year.

[2] Prior to 2007, the assessment year began “at 12 o’clock meridian on the 1st day of September,” or at 12:00 noon each September 1.<sup>6</sup> See 30 U.S.C. § 28 (2006). The Consolidated Appropriations Act, 2008, however, not only made the annual maintenance fee requirement permanent, but it altered the time of the beginning of the assessment year by stating that it “shall commence at 12:01 ante meridian on the first day of September.” 121 Stat. 2101. This alteration has created some confusion among mining claimants, because BLM’s regulations and many of its public guidance documents<sup>7</sup> have not been changed to reflect the statutory language

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<sup>6</sup> The definition of the assessment year has fluctuated over the years. The 1872 Mining Law simply stated that assessment work must be completed “during each year.” Act of May 10, 1872, 17 Stat. 91, 92. The Act of Jan. 22, 1880, confirmed that the assessment year began on Jan. 1, but was not specific as to time of day. 21 Stat. 61. The Act of Aug. 24, 1921, changed the assessment year from the beginning of the calendar year to the beginning of the then-fiscal year on July 1, and stated for the first time that it “commence[d] at 12 o’clock meridian.” 42 Stat. 186. In 1958, Public Law No. 85-736 changed the beginning of the assessment year to 12:00 noon on Sept. 1. 72 Stat. 829 (Aug. 23, 1958). There were no further changes until 2007.

<sup>7</sup> BLM’s guidance is not consistent. For example, the BLM’s national website’s section on Mining Law: Mining Law Administration has a link to the brochure “Mining Claims and Sites on Federal Land,” the internet version of which, updated May 2011, provides: “The assessment year begins at noon on each September 1. It ends at noon September 1 of the next year (43 CFR 3836).” The BLM California website states: “If you choose to file a small miners waiver, then you must perform \$100 worth of labor or improvements on all placers or lode claims during the assessment year (September 1, noon[,] through September 1, noon).” The BLM Nevada website includes a document titled “Mining Law Requirements on Federal Lands” that provides that the assessment year “[b]egins at 12:00 noon September 1 through 12:00 noon September 1,” while the version of that same document on the BLM Eastern States website states that the assessment year “[b]egins at 12:01 a.m. September 1 through 12:00 p.m. August 31.” The BLM Arizona website simply states: “The current assessment year began on September 1, 2010 and ends on September 1, 2011.” However, the BLM Utah website correctly states: “The assessment year begins at 12:01 a.m. September 1 and ends at 12:01 a.m., September 1, of the next year.”

and generally they still indicate that maintenance fees, and therefore Waiver Certifications, are due “on or before September 1.” *See, e.g.*, 43 C.F.R. §§ 3834.11(a)(2) (annual maintenance fees), 3835.10(a) (Waiver Certification), 3835.14(a)(1) (Waiver Certification for newly-recorded mining claims). Notwithstanding the confusion, and the current state of BLM’s regulations and guidance, we must give effect to Congress’ change to the beginning of the assessment year.

In this case, appellant states that “[o]n 9/01/2010, I turned in the Affidavit of Assessment Work and a copy of the Maintenance Fee Waiver Certification to the BLM Office in Boise.” Statement at 1. The copy of the Affidavit of Assessment Work included in the record bears a BLM receipt stamp showing its receipt at 11:43 a.m. on September 1, 2010. It is evident from the record that appellant attempted to file his Waiver Certification *after* 12:01 a.m. on September 1 and thus, his attempt was untimely.

Unfortunately, the statute is self-operative. It explicitly states that failure to timely pay the required maintenance fee automatically results in forfeiture of the mining claim by operation of law. 30 U.S.C. § 28i (2006); *see* 43 C.F.R. §§ 3830.91(a)(4), 3835.92(a). When a claimant fails to timely file a Waiver Certification and no payment has been made, forfeiture results from the statutory directive. *Howard J. Hunt*, 147 IBLA 381, 384 (1999). BLM and this Board are without authority to excuse lack of compliance with the maintenance fee requirement, to extend the time for compliance, or to afford any relief from the statutory consequences. *Jon Roalf*, 169 IBLA 58, 62 (2006); *Carl A. Parker, Sr.*, 165 IBLA 300, 303-04 (2005), and cases cited. In the absence of a timely-filed maintenance fee payment or Waiver Certification, the appellant’s claims were forfeited by operation of law. 43 C.F.R. § 3835.92(a); *see Joe Bob Hall*, 135 IBLA 284, 286 (1996); *Alamo Ranch Co.*, 135 IBLA 61, 76 (1996).

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 decision appealed from is affirmed as modified.

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

I concur:

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