

TOM L. LEE
JEAN M. LEE

IBLA 96-35 Decided August 27, 1998

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring six mining claims abandoned and void for failure to pay claim maintenance fees. MTMMC 183415 - MTMMC 183420.

Reversed.

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

Under section 10101(a) of the Omnibus Budget Reconciliation Act of Aug. 10, 1993, 30 U.S.C. § 28f(a) (1994), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of \$100 per claim on or before Aug. 31 of each year for the years 1994 through 1998 and failure to pay the fee conclusively constitutes a forfeiture and renders the claim null and void by operation of law. The statute gives the Secretary discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof.

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

The Omnibus Budget Reconciliation Act of Aug. 10, 1993, is silent regarding the situation in which a claimant has timely filed a waiver certification for an assessment year and during that year transfers the claim to a person who is not eligible for a waiver. The regulations have filled that void with the language of 43 C.F.R. § 3833.1-5(g), which requires that the transferee pay the maintenance fee at or before a particular time. However, failure to do so does not invoke the statutory conclusive presumption of forfeiture, absent notice and an opportunity to comply.

APPEARANCES: Tom L. Lee, Grand Rapids, Michigan, pro se, and for Jean M. Lee.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

On January 8, 1991, Charles Brand and Rick Beyer located a number of placer mining claims in Granite County, Montana, including the Blue Ruby #17 through #22. They recorded the claims with the Montana State Office, Bureau of Land Management (BLM), on January 30, 1991, and received recordation numbers MTMMC 183415 through MTMMC 183420 for the Blue Ruby #17 through Blue Ruby #22 claims.

In 1992, as part of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (the Rental Fee Act), Pub. L. No. 102-381, 106 Stat. 1378-79 (1992), Congress provided that each claimant "pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993," for each unpatented mining claim, mill site, or tunnel site to hold such claim or site for the assessment year ending at noon on September 1, 1993. (Emphasis added.) The Rental Fee Act also contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of an additional \$100 rental fee on or before August 31, 1993. 106 Stat. 1378-79. Congress further mandated that "failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant * * *." 106 Stat. 1379; see also 43 C.F.R. § 3833.4(a)(2) (1993).

The only exemption provided from this rental fee requirement was the so-called "small miner exemption," available to claimants holding 10 or fewer claims or sites on Federal lands who met all the conditions set forth in 43 C.F.R. § 3833.1-6(a) (1993). Washburn Mining Co., 133 IBLA 294, 296 (1995). The regulations required that a claimant apply for the small miner exemption by filing separate certificates of exemption on or before August 31, 1993, supporting the claimed exemption for each assessment year claimed. 43 C.F.R. § 3833.1-7(d) (1993). No grace period for filing late certificates of exemption was provided by Departmental regulation; those documents must have been received by BLM on or before the date required by regulation. See 43 C.F.R. § 3833.0-5(m) (1993); Nannie Edwards, 130 IBLA 59, 60 (1994). This strict filing requirement resulted from the requirement imposed by Congress that, for every unpatented mining claim, "each claimant shall, except as otherwise provided by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993." 106 Stat. 1378.

On July 19, 1993, Brand, Beyer, Matthew Steinbrueck, and Bronwen Miller filed a relinquishment of 25 mining claims with BLM. On August 20, 1993, the same four individuals filed a Certification of Exemption from Payment of Rental Fee for the 1994 assessment year for 10 claims, including the Blue Ruby #17 through #22. 1/

1/ The case file does not contain a separate certification for the 1993 assessment year for the claims.

[1] On August 10, 1993, Congress enacted the Omnibus Budget Reconciliation Act (Budget Act), section 10101(a) of which provided that the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of \$100 per claim on or before August 31 of each year for the years 1994 through 1998. 30 U.S.C. § 28f(a) (1994). Under 30 U.S.C. § 28i (1994), 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." Section 10101(d)(1) of the Budget Act gives the Secretary discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof, on public lands and has performed assessment work required under the Mining Law of 1872. 30 U.S.C. § 28f(d)(1) (1994). BLM has implemented this statute with a regulation that requires a claimant to file "proof of the * * * conditions for exemption * * * with the proper BLM office by the August 31 immediately preceding the assessment year for which the waiver is sought." 43 C.F.R. § 3833.1-6(d)(2).

On August 4, 1994, Brand, Beyer, Steinbrueck, and Miller filed a Maintenance Fee Payment Waiver Certification for the 1995 assessment year for 10 claims, including the Blue Ruby #17 through #22. ^{2/} On February 21, 1995, Tom L. Lee and Jean M. Lee filed a quitclaim deed with BLM showing that Brand and Beyer had transferred their interest in the Blue Ruby #17 through #22 claims to the Lees on January 6, 1995. ^{3/} On March 28, 1995, BLM acknowledged receipt of the quitclaim deed stating that "[o]ur records now show that Tom L. Lee and Jean M. Lee are the record title holders of these mining claims."

On August 24, 1995, BLM received a check from Tom Lee in payment of maintenance fees for 14 mining claims, including the Blue Ruby #17 through #22. BLM acknowledged that as payment for the 1996 assessment year.

In a decision dated September 25, 1995, the Montana State Office, BLM, declared the Blue Ruby #17 through #22 claims abandoned and void. The Lees filed a timely appeal.

^{2/} In a notice to Beyer and Miller, dated Feb. 17, 1995, BLM stated the notarized signatures of all owners were required. BLM noted that its records showed Beyer and Miller as owners of the Blue Ruby #3 (MTMMC 196918), one of the other claims included on the certification, and explained that Beyer had signed the certification for himself and as agent for Brand and Steinbrueck, but that Miller had not signed. BLM returned a copy of the certification so that the required signature could be supplied. Beyer provided Miller's notarized signature on Feb. 28, 1995.

^{3/} There is a discrepancy in the deed because it states that the transferees "executed this Deed this 6th day of January, 1994." However, the notary public's acknowledgment shows the actual date of execution to be Jan. 6, 1995. Other evidence in the record also supports a finding that the deed was executed on Jan. 6, 1995.

In its decision, BLM relied on the date on the face of the quitclaim deed, January 6, 1994, in stating that the transfer had taken place during the 1994 assessment year, but that the Lees had not provided it with notice of the transfer until the 1995 assessment year. BLM cited 43 C.F.R. § 3833.1-5(g), which provides:

If a waived mining claim or site is transferred in total or in part to a party not qualified for a waiver, the waiver is forfeited for the mining claim or site or portion of interest therein transferred to the unqualified party. The maintenance fee for the previously waived claim or site will be paid for the assessment year in which the transfer was effective under State law pursuant to § 3833.3. The applicable deadline is the August 31 on or immediately after which the transfer is effective under State law.

BLM did not make a specific finding as to the effective date of transfer under State law. However, BLM concluded that the Lees were not qualified for a waiver during the 1995 assessment year because they held more than 10 claims and that Brand and Beyer "forfeited" their waiver for the Blue Ruby #17 and #22 claims for the 1995 assessment year when they transferred their interest in the claims to the Lees. BLM declared the Blue Ruby #17 through #22 claims abandoned and void "for failure to furnish the required maintenance fee payment in the amount of \$100 per claim on or before August 31, 1995, for the 1995 assessment year."

During the 1995 assessment year the Lees acquired by quitclaim deed the interests of Brand and Beyer in the claims at issue. Because the Lees were the owners of more than 10 claims, they were not eligible to receive a waiver for the Blue Ruby #17 through #22. Therefore, in accordance with 43 C.F.R. § 3833.1-5(g), the Lees were required to pay the maintenance fee for the assessment year in which the transfer was effective under State law, the deadline for filing being the August 31 on or immediately after which the transfer is effective under State law.

In this case, the quitclaim deed was executed on January 6, 1995, recorded in Granite County on January 18, 1995, and submitted to BLM on February 21, 1995. Without deciding specifically the effective date of transfer under Montana law, it is clear that under the applicable regulation, maintenance fees for the 1995 assessment year were required to be paid on or before August 31, 1995, for the claims. The Lees paid maintenance fees for the claims on August 24, 1995. Although the cover letter accompanying their payment does not refer to any assessment year, the Lees state on appeal that they "inquired as to a requirement for paying maintenance fees for the newly transferred claims, and were telephonically informed by an agent of the BLM that no requirement for the payment of

such maintenance fees would arise until on or before August 31, 1995 for the next successive year, 1996." (Statement of Reasons (SOR) at 3.) Upon receipt of payment, BLM credited the fees to the 1996 assessment year. (SOR, Ex. 6.)

[2] It is well established that a statutory requirement may not be treated as a curable defect. N.T.M., Inc., 128 IBLA 77, 79 (1993); Harvey Clifton, 60 IBLA 29, 39 (1981). However, in this case, the requirement to pay fees for claims under a waiver that are transferred to a party who is not qualified for a waiver is not a statutory requirement. It is established by regulation, as is the deadline for filing those fees.

Thus, the question presented is whether the statutory conclusive presumption of forfeiture mandated by section 10104 of the Budget Act, 30 U.S.C. § 28i (1994), is applicable in this case. ^{4/} We conclude that it is not.

In so concluding, we are guided by this Board's precedents relating to section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1988), where we determined that, if a regulatory requirement did not replicate a statutory mandate, we would treat the failure to comply with the regulatory requirement as a curable defect. Harvey Clifton, 60 IBLA 29, 34 (1981); Robert P. Wilson, 57 IBLA 40, 42 (1981); Perry L. Johnson, 57 IBLA 20, 22 (1981); Harry J. Pike, 57 IBLA 15, 17 (1981); Feldslite Corporation of America, 56 IBLA 78, 81-83, 88 I.D. 643, 646 (1981); see Topaz Beryllium Co. v. U.S., 649 F.2d 775, 778 (10th Cir. 1981).

The Budget Act is silent as to the situation in which a claimant has timely filed a waiver certification for an assessment year and during that year transfers the claim to a person who is not eligible for a waiver. The regulations have filled that void by requiring that the transferee pay the maintenance fee at or before a particular time. However, we do not believe that BLM may declare the claim forfeited and null and void by operation of law for a failure to pay those fees on or before the established time, absent notice and an opportunity to comply.

In this case, the record indicates that the Lees enclosed with their notice of appeal filed with BLM a check in the amount of \$600 for the maintenance fees for the 1995 assessment year for the Blue Ruby #17 through #22. Thus, having received notice in the form of BLM's September 25, 1995, decision of the regulatory necessity to pay the fees, the Lees complied.

^{4/} Although BLM declared the claims abandoned and void, under 30 U.S.C. § 28i (1994), the failure to pay maintenance fees conclusively constitutes a forfeiture of the claims and they are deemed null and void by operation of law.

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 reversed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur.

John H. Kelly
Administrative Judge

