

## MINERAL HILL VENTURE

IBLA 2000-157      Decided September 6, 2001

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, declaring mining claims void by operation of law for failure to timely record affidavits of assessment work. WMC 161920, etc.

Affirmed.

1.      Recordation of Affidavit of Assessment Work or Notice of Intention to Hold—Mining Claims: Rental or Claim Maintenance Fees: Generally— Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

The affidavit of assessment work performed by a small miner claiming a maintenance fee waiver must be filed with the proper BLM office in accordance with sec. 314 of the Federal Land Policy and Management Act, 43 U.S.C. § 1744 (1994), and 43 CFR 3833.1-7(b) (1994).

2.      Estoppel

Reliance on the oral misstatements of a BLM employee will not support a claim of estoppel; reliance must be predicated on a crucial misstatement in an official decision.

APPEARANCES: John Green, General Partner, Mineral Hill Venture, Austin, Texas, for appellant.

### OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Mineral Hill Venture (Mineral Hill), through John Green, its General Partner, has appealed a January 26, 2000, decision of the Wyoming State Office, Bureau of Land Management (BLM), declaring ten mining claims <sup>1/</sup> held by Mineral Hill void by operation of law for failure to file evidence of assessment work performed on the claims on or before December 30, 1999.

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<sup>1/</sup> Those claims are as follows: Arctic #1 (WMC-161920), Lookout (WMC-161978), Pathfinder (WMC-162002), Tin Fraction (WMC-162020), Treadwell (WMC-162021), Treadwell #1-#3 (WMC-162022-24), Zulu (WMC-162029), and the Baby Placer (WMC-162032).

The authority for BLM's decision derives from section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) and (c) (1994), and section 10101(a) of the Omnibus Budget Reconciliation Act of August 10, 1993, as amended, 30 U.S.C. § 28f (1994 and Supp. IV 1998) (the Maintenance Fee Act).

Prior to passage of mining claim fee legislation in 1992 and 1993, <sup>2/</sup> all owners of unpatented mining claims located on public land were required, pursuant to section 314 of FLPMA, to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to December 31 of each year. 43 U.S.C. § 1744(a) (1994). Failure to file one of the two instruments within the prescribed time period conclusively constituted an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1994). The mining claim fee legislation exempted mining claimants who paid annual rental or maintenance fees from the assessment work and concomitant filing requirements. As explained in more detail below, even if claimants availed themselves of a waiver of fees, they were required to perform annual assessment work and to file the appropriate affidavits of proof with BLM. See 30 U.S.C. § 28f (1994 and Supp. IV 1998); 43 CFR 3833.1-7(b).

The Maintenance Fee Act, enacted on August 10, 1993, required payment of a "claim maintenance fee" of \$100 per claim on or before August 31 of each year for years 1994 through 1998. That Act was amended and extended on October 21, 1998, to include years 1999 through 2001. 30 U.S.C. § 28f(a) and (d) (Supp. IV 1998). The 1998 amendments to the Act provide that the holder of an unpatented mining claim, mill site, or tunnel site is required, upon penalty of forfeiture of the claim, to pay a claim maintenance fee of \$100 per claim on or before September 1 of each year. Payment of the maintenance fee is in lieu of the assessment work requirements of the Mining Law of 1872, 30 U.S.C. §§ 28-28e (1994), and the related filing requirements of FLPMA. 30 U.S.C. § 28f(a) (Supp. IV 1998).

The Maintenance Fee Act also granted the Secretary discretion to waive the maintenance fee for a claimant who holds not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof, on public lands and has performed the assessment work required under the Mining Law. 30 U.S.C. § 28f(d)(1) (1994). Congress, however, stipulated that those claimants who qualify for the waiver and do not pay the fee are not excused from performing the required assessment work. 30 U.S.C. § 28f(d) (1994). Under Departmental regulation 43 CFR 3833.1-7(b), in order to qualify for a waiver of maintenance fees, the owner of an unpatented mining claim located on public land must file evidence of assessment work performed with the proper BLM office on or before December 30

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<sup>2/</sup> On October 5, 1992, Congress enacted the Rental Fee Act, officially entitled "The Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1993," Pub. L. 102-381, 106 Stat. 1378-79. That legislation was superseded by section 10101(a) and (d) of the Maintenance Fee Act, as amended, 30 U.S.C. § 28f(a) and (d) (1994 and Supp. IV 1998).

of each year. If he or she fails to make the required annual filings, the claim is forfeited by operation of law. 43 CFR 3833.4(a)(1).

In its January 26, 2000, decision, BLM stated that, although Mineral Hill timely submitted a maintenance fee payment waiver certification form for the 2000 assessment year on August 18, 1999, "[t]o complete the 2000 waiver filing, the 1999 annual assessment document was required to be filed on or before December 30, 1999." Because BLM did not receive the assessment document on or before December 30, 1999, it declared the claims forfeited by operation of law.

In its Statement of Reasons on appeal (SOR), Mineral Hill alleges three "grounds of error," on which BLM's decision should be reversed.

First, it claims that, by passage of the Rental Fee Act (see n.2), Congress intended to abandon the requirement for claimants to file evidence that they have performed assessment work on the claims imposed by FLPMA. It contends that this intent was also codified into the Maintenance Fee Act. Appellant maintains that, to the extent BLM regulations require such, they are in conflict with the rental and maintenance fee statutes and should not be given effect. Even if the requirements of FLPMA are applicable, appellant asserts, compliance is accomplished by the annual filing of a copy of either proof of assessment work performed or a notice of intention to hold the mining claim. Appellant argues that, on its face, the maintenance fee waiver certification states that, if properly filed, it shall constitute a notice of intention to hold the site. Therefore, appellant claims, it properly filed a notice of intention to hold using the form prepared by BLM and paid the required holding fee thereby meeting the requirements under FLPMA.

Second, appellant asserts that "[f]orfeiture is not warranted because BLM has failed to give a written notice of defect and the required 60 days to cure the defect. Alternatively, petitioner has cured the defect within the applicable period." (SOR at 9.)

Third, appellant argues that BLM officials have acted improperly since July 1993 by "illegally preclud[ing] a claimant with 10 or fewer claims from submitting the small miner's exemption form and including the rental fee in case the form should be rejected." (SOR at 10.) Appellant provides copies of two BLM notices in which it is stated that if a small miner exemption form and rental fees are submitted together, BLM will accept the rental fees and return the exemption form. Appellant claims that such a practice is "inconsistent with statutory authority in violation of petitioner's constitutional rights." Id.

On May 19, 2000, the Board received a motion for judgment from appellant which charges that a default judgment should be entered against BLM because BLM did not file a response to appellant's SOR. According to appellant, "[f]ailure to file a timely reply brief constitutes a waiver of specific factual contentions made by the opposing party." (Motion for Judgment at 1.) In the motion for judgment, appellant also raised the question of estoppel, claiming that BLM officials in the Wyoming State

Office misrepresented the filing requirements to Green, causing him to fail to timely file the affidavit of assessment work.

We deny appellant's motion for judgment against BLM because BLM did not file a response to the SOR. The Board's procedural regulation found at 43 CFR 4.414 provides that "[f]ailure to answer will not result in a default." See Ronald A. Pene, 147 IBLA 153, 156 (1999); Golden Valley Electric Association (On Reconsideration), 98 IBLA 203, 205 (1987). The regulation controls. Moreover, even if there were no regulation, aside from dismissals for lack of jurisdiction, the Board generally avoids dismissals for procedural deficiencies, except where to do so would prejudice an innocent party or cause significant problems with efficient operation of the appeals procedures. See Renewable Energy, Inc., 67 IBLA 304, 308, n.4 (1989). Neither of those exceptions is present in this case.

Appellant alleges that BLM's decision controverts the Rental Fee Act. The Rental Fee Act was superseded on August 10, 1993, by the Maintenance Fee Act (see n.2). We therefore reject arguments set forth in the SOR which claim that, under the Rental Fee Act, Mineral Hill is exempt from the filing requirements of FLPMA. It is clear, however, from a reading of that Act that all mining claim owners who availed themselves of the waiver provisions of that Act were required to perform assessment work and to comply with the filing requirements of FLPMA. See, e.g., Kathryn Firestone, 148 IBLA 126, 129-30 (1999). 3/

[1] The Maintenance Fee Act, as amended, provides, in pertinent part, as follows:

(a) Claim maintenance fee

The holder of each unpatented mining claim, mill, or tunnel site, located pursuant to the mining laws of the United States, whether located before or after October 21, 1998, shall pay to the Secretary of the Interior, on or before September 1 of each year for years 1999 through 2001, a claim maintenance fee of \$100 per claim or site. Such claim maintenance fee shall be in lieu of the assessment work requirement contained in the Mining Law of 1872 (30 U.S.C. 28-8e) and the related filing requirements contained in section 1744(a) and (c) of title 43.

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3/ In Kathryn Firestone, *supra* at 129, the Board stated:

"Congress left no doubt that a miner who gained an exemption from the rental fee requirements remained responsible for complying with the assessment work requirements of the Mining Law of 1872 and FLPMA. The Appropriations Act specifically provided that 'each claimant [qualifying as a small miner] may elect to either pay the claim rental fee \* \* \* or in lieu thereof do assessment work required by the Mining Law of 1872 \* \* \* and meet the filing requirements of FLPMA \* \* \* on such ten or fewer claims and certify the performance of such assessment work to the Secretary.' (Emphasis added.)"

## (d) Waiver

(1) The claim maintenance fee required under this section may be waived for a claimant who certifies in writing to the Secretary that on the date the payment was due, the claimant and all related parties--

(A) held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands; and

(B) have performed assessment work required under the Mining Law of 1872 (30 U.S.C. 28-28e) to maintain the mining claims held by the claimant and such related parties for the assessment year ending on noon of September 1 of the calendar year in which payment of the claim maintenance fee was due.

30 U.S.C. § 28f(a) and (d) (Supp. IV 1998).

Pursuant to 43 CFR 3833.1-7(b), "[t]he affidavit of assessment work performed by a small miner claiming a maintenance fee waiver shall be filed with the proper BLM office pursuant to [43 CFR] § 3833.2 and shall meet the requirements of [43 CFR] § 3833.2-4."

Appellant claims that the Act does not require the filing of proof of assessment work with BLM, but only requires that assessment work be performed on the claims. It contends that regulations to the contrary are outside the authority granted by the statute. Appellant is correct that nothing in the Maintenance Fee Act requires the filing of evidence of assessment work with BLM. However, that does not mean that the regulation, 43 CFR 3833.1-7(b), requiring the filing of the affidavit of assessment work with BLM has no statutory basis. The basis for that regulation is section 314(a) of FLPMA, 30 U.S.C. § 1744(a) (1994).

We also reject appellant's assertions that it complied with the requirement to timely record proof that annual assessment work had been performed simply by submitting the small miner waiver certification, which contains a statement that Mineral Hill intends to hold the claims. The Board addressed this same argument in Dale J. LaCrone, 135 IBLA 203, 206-08 (1996). In that case, BLM had declared LaCrone's claims void by operation of law because, although he had timely filed a small miner waiver certification for years 1993 and 1994, he failed to file an affidavit of assessment work with BLM by December 30, 1994. In that case, LaCrone argued that his small miner waiver certification constituted a notice of intent to hold his claims. Citing 43 CFR 3833.1-7(b), the Board stated:

LaCrone's argument fails because the regulations expressly require a small miner who claims a waiver from paying the maintenance fee to perform assessment work and file the affidavit of assessment work in accordance with section 314 of FLPMA and 43 CFR 3833.2. \* \* \* The option of filing a notice of intention to hold the claims is not contemplated

under 43 CFR 3833.1-7, the regulation which sets forth the filing requirements for the maintenance fee waiver.

Dale J. LaCrone, supra at 207.

The LaCrone opinion is also instructive concerning when it is appropriate to consider a small miner waiver certification to properly supplant a notice of intention to hold. The Board referred to 43 CFR 3833.1-7(c), which provides: "For mining claims and sites covered by a waiver, the filing of a waiver certification \* \* \* will satisfy the requirements for filing of a notice of intention to hold pursuant to § 3833.2-5, when such notice of intention to hold is otherwise required." The Board continued:

The wording of this regulation raises the obvious question of when the filing of a notice of intention to hold is otherwise required. In the preamble to the final rule, the Department noted that two comments stated that this section should specify the situation where filing a notice of intention to hold is required. In response, the Department stated that "[t]he primary case where this would apply would be as to mill and tunnel sites." 59 FR 44853 (Aug. 30, 1994).

A notice of intent to hold a mill or a tunnel site would otherwise be required, *i.e.*, if a certification waiver is not filed, because there is no requirement that the owner of a mill or tunnel site \* \* \* perform annual assessment on such sites. See 30 U.S.C. §§ 27, 28, and 42 (1994). The regulation relieves the claimant of the requirement to file a notice of intention to hold a mill site or tunnel site if it is covered by a certification waiver.

Id.

The documentation in the case file before us indicates that none of the ten claims at issue are mill sites or tunnel sites; therefore, a notice of intention to hold is not an appropriate filing for these claims.

As we stated in LaCrone, the result of filing a waiver certification rather than paying the maintenance fee for the claims is that the claimant is obligated to make the filings required of a small miner. As a small miner who did not pay the maintenance fee for its claims, Mineral Hill was not relieved of the requirement to file an affidavit of assessment work by December 30, 1999. It was required to perform assessment work for the assessment year beginning September 1, 1999, and file the affidavit of labor in the proper BLM office by December 30, 1999. 43 CFR 3833.1-5(d); 43 CFR 3833.1-7(b). See 59 FR 44847 (Aug. 30, 1994). See Dale J. LaCrone, supra at 208.

Appellant claims that it should be permitted to cure any defect in its filings pursuant to an amendment to the Maintenance Fee Act, 30 U.S.C. § 28(d)(3) (Supp. IV 1998), which provides:

(3) If a small miner waiver application is determined to be defective for any reason, the claimant shall have a period of 60 days after receipt of written notification of the defect or defects, or (B) pay the \$100 claim maintenance fee due for such period.

This provision will not save appellant's claims, because the claims were not declared void because of defects within the small miner waiver certification, but rather because appellant failed to timely submit the affidavit of assessment work performed. Under 43 CFR 3833.4(a)(1), failure to file this affidavit conclusively constitutes a forfeiture of the claims.

Appellant's argument concerning the notices issued by BLM regarding what BLM's policy was when a small miner submitted both an exemption form and the rental fees fails to show any error in the decision under appeal. Appellant fails to establish any link between the action taken by BLM in the decision under appeal and the complained of notices related to rental fee filings. Appellant's fatal error in this case was the failure to file evidence of annual assessment work with BLM on or before December 30, 1999.

[3] Finally, appellant maintains that BLM should be estopped from declaring Mineral Hill's claims void because BLM officials in the Wyoming State Office misrepresented the filing requirements to Green, causing him to fail to timely file the affidavit of assessment work.

This Board has well-established precedents governing when estoppel is applicable against the Government. See Martin Faley, 116 IBLA 398, 402 (1990); Cyprus Western Coal Co., 103 IBLA 278, 280-82 (1988); United States v. Georgia-Pacific Co., 421 F.2d 92 (9th Cir. 1970). Estoppel against the Government in matters concerning the public lands is an extraordinary remedy, and must be based upon affirmative misconduct, such as misrepresentation or concealment of material facts. United States v. Ruby Co., 588 F.2d 697, 703-04 (9th Cir. 1978).

Green claims that he faxed a maintenance fee waiver certification to BLM on August 11, 1999, with a request to BLM to review the documents submitted "to see if they are sufficient as I have never filed the waiver form before and want to make sure that I file correctly." (SOR, Ex. 1.) Green states that on August 12, 1999, he received a telephone call from Pamela J. Stiles, Land Law Examiner for BLM, "advising that a filing of assessment work was required to be filed with the county in which the claims were located to satisfy all requirements." (SOR at 1-2.) Green then filed the waiver certification with BLM and the affidavit of assessment work with the county recorder. When Green received notice of the forfeiture decision, he spoke with Julie Weaver, BLM Land Law Examiner, on the telephone. According to Green, "[i]n telephone conversation, Ms. Weaver did not deny that the instructions had been given but maintained that it was the duty of the claimants to know the law." (SOR at 2.)

Green claims that he then filed a notice of appeal on behalf of Mineral Hill Venture, and, on March 16, 2000, submitted for filing with BLM a certified copy of the "Affidavit of Labor and Improvements" which had been filed in Crook County in November 1999.

In considering assertions by other mining claimants that BLM misinformed them, we have noted that all persons dealing with the Government are presumed to have knowledge of relevant statutes and regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Lester W. Pullen, 131 IBLA 271, 273 (1994). We have further held that oral misstatements cannot support a claim of estoppel and that reliance must be predicated on a crucial misstatement in an official written decision. Kenneth Lexa, 138 IBLA 224, 230 (1997); Compare Leitmotif Mining Co., 124 IBLA 344, 347-48 (1992), with Martin Faley, supra. We further note that Departmental regulation 43 CFR 1810.3(c) provides that reliance on information or opinion of any officer, agent, or employee or on records maintained by land offices cannot operate to vest any right not authorized by law.

Accepting the facts as presented by Mineral Hill, the record in the case clearly supports the fact that Green should have known to file the evidence of annual assessment work with BLM and undercuts any claim of estoppel by Mineral Hill. By letter dated September 27, 1999, after the alleged oral misrepresentation, BLM informed Mineral Hill of the acceptance of the waiver certification. Therein, BLM stated: "The annual assessment filing for the 1999 assessment year must be submitted to this office in accordance with 43 CFR 3833.2-3 and 3833.2-4. The 1999 annual assessment filing document is due on or before December 30, 1999." In this case, there was no crucial misstatement in an official written decision.

BLM properly declared the claims in question forfeited by operation of law.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur:

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T. Britt Price  
Administrative Judge