

MAX BUCKNER, ET AL.

IBLA 2000-119

Decided November 20, 2001

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring two placer mining claims forfeited by operation of law for failure to pay the \$100 per claim maintenance fee or file a waiver certification for the claims on or before September 1, 1999. ORMC 154684, ORMC 154685.

Affirmed.

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

Under 43 CFR 3833.4-1, BLM is required to provide notice to a claimant who has filed a maintenance fee payment waiver certification when it finds a "defect" therein. However, because the intent to seek a waiver is within the province of the claimant, BLM may accept that the claims or sites listed on a timely filed certification are those for which the waiver is sought. The fact that BLM records may show that the claimant owns one or more additional claims or sites not listed on the certification does not establish that there is a "defect" in the certification triggering the notice requirement of 43 CFR 3833.4-1.

APPEARANCES: Max Buckner, Laura Buckner, Ed Buckner, and Dawn Buckner, Vernonia, Oregon, pro sese.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Max Buckner, Laura Buckner, Ed Buckner, and Dawn Buckner have appealed a January 6, 2000, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Lucky Buck and Rhoda placer mining claims, ORMC 154684 and ORMC 154685, forfeited by operation of law because neither the \$100 per claim maintenance fee nor a waiver certification was filed for the claims for the 2000 assessment year on or before September 1, 1999.

Under the Maintenance Fee Act, 30 U.S.C. § 28f(a) (Supp. IV 1998), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of \$100 per claim or site on or

before September 1 of each year for the years 1999 through 2001. 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." 30 U.S.C. § 28i (1994). Congress, however, provides the Secretary with discretion to waive the fee for a claimant who certifies 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 combination thereof, on public lands and 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 "a waiver certification on or before September 1 each year to hold the claims each assessment year beginning at 12 o'clock noon on September 1 of the calendar year the certification is due, through September 1, 2002." 43 CFR 3833.1-7(d).

The record shows that on August 4, 1999, appellants filed a maintenance fee payment waiver certification with BLM listing two claims serialized as ORMC 154502 and ORMC 154503. On November 16, 1999, an affidavit of assessment work was filed, along with the pertinent filing fees, for four mining claims, ORMC 154502, ORMC 154503, ORMC 154684, and ORMC 154685. No other documents for the claims at issue, ORMC 154684 and ORMC 154685, were received in 1999.

On appeal, appellants state that BLM's determination "was the result of a clerical error." (Notice of Appeal at 1.) Appellants explain: "Although I placed the name and nomenclature of these claims on the assessment document, I inadvertently forgot to place their names and nomenclature on the Small Miner's Exemption form." 1/ Id. Appellants argue that, since this inadvertent omission was not an act of deception, they should be able to correct the waiver form to add the two claims at issue. They note that their waiver form was timely filed and their intent was evident as the assessment work had been done and the filing fees paid for all four claims.

Since the passage of the maintenance fee requirement, the Department has provided, at 43 CFR 3833.4(a)(4), that "[f]ailure to list the 10 or fewer claims and/or sites for which the fee is requested to be waived on the applicable waiver certification document * * * will result in the affected claims and/or sites being deemed abandoned by the owner or owners thereof." However, Congress amended 30 U.S.C. § 28f(d) by adding the following subsection through the Omnibus Consolidated Appropriations Act of October 21, 1998, Pub. L. 105-277, 112 Stat. 2681-235:

(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 by the Bureau of Land Management to: (A) cure such

1/ Although all four appellants signed the appeal, it is couched in the first person.

defect or defects, or (B) pay the \$100 claim maintenance fee due for such period.

Thus, the issue before us is whether the failure to list a claim on a waiver document should be among the "defects" which Congress intended to be curable.

The Board has held in a number of situations under a prior statute requiring the payment of a claim rental fee, the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. 102-381, 106 Stat. 1378-79, commonly referred to as the Rental Fee Act, that the failure to provide information that is required by regulation, but not by statute, is a curable defect, not a fatal one, and, absent an opportunity to cure the defect, the failure does not result in a conclusive presumption of abandonment of a mining claim. See, e.g., Kathryn Firestone, 148 IBLA 126, 130 (1999); Tom M. Lee, 145 IBLA 272, 276 (1998); Production Industries Corp., 138 IBLA 183, 188 (1997); Thelma C. Satrom, 138 IBLA 180, 181-82 (1997); Leber Mining Co., 131 IBLA 275, 277 (1994). See Topaz Beryllium Co. v. United States, 649 F.2d 775, 778 (10th Cir. 1981).

In Firestone, the appellant failed to include a claim name on the rental fee exemption certification form. We held that identifying the claims for which an exemption was sought was "at the heart of the certification process," that failure to list a claim on the form was a failure to timely file an exemption for that claim under 43 CFR 3833.1-7(a) (1992), as distinct from an unintentional failure to file complete information under 43 CFR 3833.1-7(d) (1992), and the "defect" could not be cured. 148 IBLA at 130-31. The question in this case is whether that rationale is appropriate under the Maintenance Fee Act, in light of 30 U.S.C. § 28f(d)(3)(Supp. IV 1998).

[1] Upon passage of 30 U.S.C. § 28f(d)(3)(Supp. IV 1998), the Department promulgated a regulation implementing that provision. That regulation, 43 CFR 3833.4-1, provides, as follows:

(a) If BLM finds a defect in a waiver request, BLM will send a notice to the claimant by certified mail—return receipt requested, to the address given on the waiver request.

(b) The claimant must cure the defective waiver or pay the annual maintenance fees within 60 days of receiving BLM notification of the defects. Otherwise the claims covered by the defective waiver are forfeited. [2]

^{2/} We note that the regulations contain another notice provision, which existed at the time of passage of the 1998 amendment. That provision, 43 CFR 3833.4(b), states that failure to file "the complete information" under various regulations, including those governing the filing of a maintenance fee waiver certification,

The regulation provides that "[i]f BLM finds a defect in a waiver request," it is required to provide notice. Because the intent to seek a waiver is within the province of the claimant, BLM may accept that the claims or sites listed on the certification are those for which the waiver is sought. The fact that BLM records may show that the claimant owns one or more additional claims or sites not listed on the certification does not establish that there is a "defect" in the certification triggering the notice requirement of 43 CFR 3833.4-1.

In addition, the notification provision establishes that the failure to comply timely with the notice will result in "the claims covered by the defective waiver" being forfeited. 43 CFR 3833.4-1(b). The logical conclusion is that claims or sites not listed on the waiver certification form for which timely payment of the fee had not been made already would have been forfeited under the statute. This is true because the requirement to pay the maintenance fee on or before September 1 is clearly expressed in the statute, and Congress unequivocally decreed that failure to comply would automatically result in forfeiture. See Howard J. Hunt, 147 IBLA 381, 384 (1999).

The Board has long held that a statutory requirement may not be treated as a curable defect. N.T.M., Inc., 128 IBLA 77, 79 (1993); Harvey A. Clifton, 60 IBLA 29, 39 (1981). The requirement to timely pay maintenance fees for each claim or site is a statutory mandate. Although Congress has also provided for curing defects in a "small miner waiver application," we cannot find that failure to list a claim or site on such an "application" is a "defect" in the "application," within the meaning of the statute, because no timely application was made for a claim or site not listed.

All persons dealing with the Government are presumed to have knowledge of those statutes and regulations relevant to their situation. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Harlow Corp., 135 IBLA 382, 385-87 (1996). Even when extenuating circumstances are asserted, BLM and this Board are without authority to excuse lack of

fn. 2 (continued)

when the document is otherwise filed on time, shall not be conclusively deemed to constitute an abandonment or forfeiture of the claim or site, but such information shall be submitted within 30 days of receipt of a notice from the authorized officer calling for such information. Failure to submit the information requested by the decision of the authorized officer shall result in the mining claim, mill site, or tunnel site being deemed abandoned by the owner.

It is not clear from the regulations how BLM administers this provision and 43 CFR 3833.4-1. However, our rationale for the necessity, under 43 CFR 3833.4-1, of notice from BLM in a case such as this, discussed infra, would be equally applicable for notice under 43 CFR 3833.4(b).

compliance with the maintenance fee requirement, to extend the time for compliance, or to afford any relief from the statutory consequences.

Richard W. Cahoon Family Limited Partnership, 139 IBLA 323, 326 (1997); Paul W. Tobeler, 131 IBLA 245, 249 (1994). In the absence of a timely-filed maintenance fee payment or qualifying waiver certificate, BLM properly declared the subject mining claims forfeited.

Therefore, 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.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

R.W. Mullen
Administrative Judge