

ERIC LUNDQUEST

IBLA 2003-183

Decided May 16, 2005

Appeal from a decision of the California State Office, Bureau of Land Management, declaring a mining claim forfeited and void for failure to pay the annual maintenance fee or file a timely maintenance fee waiver certification. CAMC 133047.

Set aside and remanded.

1. Mining Claims: Rental or Claim Maintenance Fees: Generally--Filing Requirements: Soldiers' and Sailors' Civil Relief Act

A mining claimant who is on active military duty is relieved, pursuant to the Soldiers' and Sailors' Civil Relief Act, of performing annual assessment work or paying claim maintenance fees while on active duty by filing a notice with BLM during the assessment year in which the claimant enters military service or, if active duty began prior to August 30, 1994, by filing the notice during the assessment year in which the claimant wishes to invoke the relief.

2. Mining Claims: Rental or Claim Maintenance Fees: Generally--Filing Requirements: Soldiers' and Sailors' Civil Relief Act

When a claimant invokes relief pursuant to the Soldiers' and Sailors' Civil Relief Act, after BLM has invalidated a mining claim for failure timely to pay the annual maintenance fee or file a waiver certification for that assessment year, BLM's decision will be set aside and the matter remanded for BLM to adjudicate the claimant's eligibility for relief under the Act.

APPEARANCES: Eric Lundquest, pro se, Wheatland, California.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Eric Lundquest has appealed the February 26, 2003, decision of the California State Office, Bureau of Land Management (BLM), declaring the Bent Prop #2 placer mining claim, CAMC 133047, forfeited by operation of law, for failure to pay the annual non-refundable maintenance fee for the claim of \$100, or submit a waiver certification on or before September 1, 2002.

Under the Maintenance Fee Act, the holder of an unpatented mining claim was required to pay a claim maintenance fee of \$100 per claim on or before September 1 of each year for the years 1999 through 2003. 30 U.S.C. § 28f(a) (2000), amended by the Department of the Interior and Related Agencies Appropriations Act, 2002, Pub. L. No. 107-63, 115 Stat. 414, 418-19 (2001). 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 (2000).

Congress provided the Secretary of the Interior with discretion to waive the fee for a claimant who 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 combination thereof, on public lands and had 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 was due. 30 U.S.C. § 28f(d)(1) (2000); see 43 CFR 3833.1-7(d) (2003); Audrey Bradbury, 160 IBLA 269, 273-74 (2003). A claimant must file the “waiver certification” on or before September 1 each year. 43 CFR 3833.1-7(d) (2003). If a waiver certification is filed, the claimant is required to perform assessment work during that upcoming assessment year and to file an affidavit of having performed the work on or before December 30 of the calendar year in which the assessment year ends. 30 U.S.C. § 28f(d)(1)(B) (2000); see 43 CFR 3833.2-2 (2003).

Lundquest, together with Jay Alm, Max Babbitt, and Horace L. Bundy (collectively, claimants), are identified as the owners of the Bent Prop #2 claim. In its decision, BLM noted that they had submitted their waiver certification and affidavit of assessment work on December 23, 2002. Although the affidavit of assessment work for the 2002 assessment year was timely (filed prior to December 30, 2002), the waiver certification for the 2003 assessment year had to be filed on or before September 1, 2002. BLM therefore considered their waiver certification untimely filed and the claim forfeited by operation of law.

In his letter dated March 26, 2003, appealing BLM’s decision, Lundquest stated that he and his co-owners wished to invoke the provisions of the Soldiers’ and

Sailors' Civil Relief Act (SSCRA), 50 U.S.C. App. § 565 (2000).<sup>1/</sup> He explained that “the military members of this mining claim” had found themselves in many faraway countries since September 11, 2001, and “unusual military commitments” caused them to submit their waiver certification late. In a letter to this Board dated May 9, 2003, Lundquest provided evidence of his and Alm’s active military duty status as of that date, and asserted that Babbit was currently deployed. No information or assertion was provided as to the possible active duty status of Bundy. The record in this case indicates that BLM provided information on the SSCRA to Bundy in January 2002.

[1] The SSCRA provides that active duty military personnel are relieved from performing annual assessment work on a mining claim during the period of active service and 6 months thereafter.<sup>2/</sup> See 43 CFR 3833.1-7(e)(1) (2003). To qualify for this relief, a claimant must file notice with BLM before the end of the assessment year during which military service begins. 50 U.S.C. App. § 565(2) (2000). The regulations state that if active duty began prior to August 30, 1994, the notice must be filed during the assessment year in which the claimant wishes to invoke the relief. 43 CFR 3833.1-7(e)(2) (2003). The relief also extends to payment of the claim maintenance fee.<sup>3/</sup> 43 CFR 3833.1-7(e)(1) (2003). If a claimant continues to qualify for the relief, the claimant will automatically be exempt from paying the maintenance fee or performing assessment work until the assessment year following the assessment year during which the claimant is released from active duty or a military hospital, whichever is later. 43 CFR 3833.1-7(e)(2), (3) (2003). In addition, to qualify for this relief the claimant cannot hold the claim with a related party who does not also qualify for the relief. 43 CFR 3833.1-7(e)(1).<sup>4/</sup>

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<sup>1/</sup> Congress made minor amendments to the SSCRA on Dec. 19, 2003. See Pub. L. No. 108-189, § 1, 117 Stat. 2856 (mining claim provisions codified at 50 U.S.C. App. § 564 (2004)).

<sup>2/</sup> This relief also extends throughout any period of hospitalization due to service-related injuries and for 6 months thereafter. 50 U.S.C. App. § 565(1) (2000).

<sup>3/</sup> The record reveals that, with respect to the claimants’ filing of a waiver certification for the 2002 assessment year, BLM advised claimants in a memorandum dated Jan. 24, 2002, that the SSCRA allowed them to file their waiver certification without the necessary signature/certification of one of the claimants who was on active duty and deployed overseas. We note that the SSCRA and its regulations do not provide for such relief, but that particular issue is not before us in this appeal.

<sup>4/</sup> These regulations were revised in October 2003, and they make clear that all co-claimants must be military personnel on active duty status to qualify for relief. See 68 FR 61073 (Oct. 24, 2003) (codified at 43 CFR 3835.1(b) (2004)).

[2] The SSCRA and the pertinent regulations state that a claimant on active military duty may notify BLM, and thereby obtain relief from paying the claim maintenance fee or conducting assessment work for that assessment year, before the end of the assessment year in which military service begins. If active duty began before August 30, 1994, the claimant must notify BLM during the assessment year for which the claimant is seeking relief. In this case, the claimants failed to pay the claim maintenance fee or file the waiver certification for the 2003 assessment year on or before September 1, 2002, and consequently, BLM's decision invalidated the Bent Prop #2 claim. Lundquest then invoked relief under the SSCRA on May 9, 2003, during the 2003 assessment year. BLM did not respond to Lundquest's invocation.

BLM is obliged to adjudicate Lundquest's request for relief under the SSCRA and determine whether the Bent Prop #2 mining claim should be reinstated. Accordingly, BLM's decision will be set aside and the matter remanded for such an adjudication.

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 set aside and the matter remanded to BLM for further action consistent with this decision.

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H. Barry Holt  
Chief Administrative Judge

I concur:

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Bruce R. Harris  
Deputy Chief Administrative Judge