

LARRY G. ANDRUS, JR.
SCOTT P. ANDRUS, SR.

IBLA 2005-121

Decided May 25, 2005

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring three mining claims, IMC 187480 through IMC 187482, forfeited by operation of law.

Reversed; petition for stay denied as moot.

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

In accordance with 43 CFR 3836.11(a), the obligation to perform assessment work for mining claims located in August 2004 did not arise until the 2005 assessment year, which commenced at noon on September 1, 2004. Thus, a decision declaring such mining claims forfeited by operation of law for failure to file with BLM an affidavit of assessment work or notice of intention to hold on or before December 30, 2004, will be reversed because the claimants had no obligation to file an affidavit of assessment work on or before December 30, 2004, for the 2004 assessment year.

APPEARANCES: Larry G. Andrus, Jr., and Scott P. Andrus, Sr. , Caldwell, Idaho, pro
sese.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Larry G. Andrus, Jr., and Scott P. Andrus, Sr., have appealed from and petitioned for stay of the February 10, 2005, decision of the Idaho State Office,

Bureau of Land Management (BLM), declaring three mining claims (IMC 187480-IMC 187482) forfeited by operation of law. BLM stated: “Because you failed to file an affidavit of annual assessment or a notice of intent to hold before December 30, 2004, for the 2004 assessment year, your 2005 waiver is rejected and your claims are forfeited by operation of law.”

Under 30 U.S.C. § 28f(a) (2000), as amended,^{1/} the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a \$100 maintenance fee for each claim or site on or before September 1 of each year for the years 2004 through 2008.^{2/} See 43 CFR 3834.11(a)(2). The 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 (2000). Congress, however, provided the Secretary 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. 30 U.S.C. § 28f(d)(1) (2000). BLM implemented this statute with a regulation that requires a claimant to file “a waiver certification form on or before September 1 of each assessment year for which you are seeking a waiver.” 43 CFR 3835.10.

The case record shows that appellants located the three claims at issue on August 24, 2004. On August 30, 2004, they filed for recordation with BLM copies of

^{1/} 30 U.S.C. § 28f(a) (2000) has been amended twice by Congress in the Department of the Interior and Related Agencies Appropriations Act, 2002, Pub. L. No. 107-63, 115 Stat. 414, 418-19 (2001), and the Department of the Interior and Related Agencies Appropriations Act, 2004, Pub. L. No. 108-108, 117 Stat. 1241, 1245 (2003).

^{2/} Congress also mandated the adjustment of the maintenance fee “to reflect changes in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor every 5 years after August 10, 1993, or more frequently if the Secretary determines an adjustment to be reasonable.” 30 U.S.C. § 28j(c)(1) (2000). Notice of any adjustment is to be provided “not later than July 1 of any year in which the adjustment is made.” 30 U.S.C. § 28j(c)(2) (2000). Adjustments are to be applicable “the first assessment year which begins after adjustment is made.” 30 U.S.C. § 28j(c)(3) (2000). BLM made its first adjustment of the maintenance fee in 2004, raising the fee from \$100 to \$125. 69 FR 40294, 40296 (July 1, 2004); see 43 CFR 3830.21.

the location notices for those claims, paying all necessary fees including maintenance fees for the assessment year (2004) in which the claims were located, as required by 43 CFR 3834.11(a)(1).^{3/} On the same day, appellants filed with BLM a waiver certification for eight mining claims, including the three at issue, for the 2005 assessment year.

In its decision, BLM states that “[c]laimants who file a new location notice during the current assessment year and file a waiver for the next assessment year must file an annual Federal Land Policy and Management Act (FLPMA) document in the form of an affidavit of annual assessment work or a notice of intent to hold, on or before December 30. If you fail to file an annual FLPMA document by December 30, you forfeit the affected claims (43 CFR 3835.91).” (Decision at 2.) BLM then declared the claims forfeited because no affidavit of annual assessment work was filed on or before December 30, 2004. However, none was required to be filed.

[1] 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 (2000), 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) (2000), for the upcoming assessment year that begins at noon on September 1 of the year payment is due. See 30 U.S.C. § 28f(a) and (b) (2000); 43 CFR 3834.11(a). For a new location, the Department has provided that, as noted above, the claimant must pay, at the time of recordation, an initial maintenance fee for the assessment year in which the claim was located. 43 CFR 3834.11(a)(1). Appellants paid that fee for the 2004 assessment year, the assessment year in which their claims were located. The obligation to perform assessment work on a mining claim, however, commences with the assessment year beginning at noon on September 1 following the date of location of the claim. 30 U.S.C. § 28 (2000); 43 CFR 3836.11(a). In this case, appellants located the claims in August 2004. Therefore, the assessment work obligation commenced with the 2005 assessment year beginning at noon on September 1, 2004. Appellants had no obligation to file an affidavit of assessment work on or before December 30, 2004. See James J. Holmberg, III, 160 IBLA 372, 374 (2004). Such evidence is only required to be filed on or before December 30 of the calendar year in which the assessment year ends, in this case December 30, 2005. 43 CFR 3835.31(a).

^{3/} That regulation states: “When you first record a mining claim or site with BLM, you must pay a location fee and an initial maintenance fee for the assessment year in which you located the mining claim or site.” A claimant cannot receive a waiver for the initial maintenance fee. 43 CFR 3834.14(a); 43 CFR 3835.1(a); .

The regulations at 43 CFR 3835.11(a) governing the information to be included in a waiver certification provide at subsection (3) that

[i]f you were not required to perform assessment work in the previous assessment year, you must include the reason why assessment work was not required in your certification, whether it is because:

- (i) Your claim was located in that assessment year;
- (ii) You paid a maintenance fee to maintain your claim during that assessment year;
- (iii) Assessment work was deferred for that year; or
- (iv) Any other reason recognized under Federal law.

Thus, when a claimant seeking a waiver for the 2005 assessment year was not required to perform assessment work and make a FLPMA filing on or before December 30, 2004, for the 2004 assessment year because the claim had been located in the 2004 assessment year, that claimant's only obligation, under 43 CFR 3835.11(a), was to include with his or her waiver certification a declaration stating why he or she was not required to perform assessment work in the previous assessment year.^{4/}

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 reversed and the case remanded to BLM. The petition for stay is denied as moot.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

H. Barry Holt
Chief Administrative Judge

^{4/} There is no evidence that appellants included such a declaration with their waiver certification filed on Aug. 30, 2004. If BLM considers the lack of such a declaration to be a defect, it clearly would be curable under 43 CFR 3835.93. See 43 CFR 3830.93(b) and 3830.94.