

DAN ADELMANN

IBLA 2006-120

Decided April 24, 2006

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring the Gold Ingot association placer mining claim forfeited by operation of law. ORMC 157558.

Affirmed as modified; 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

Under 43 CFR 3835.20, the transferee of mining claims, mill sites, or tunnel sites that are subject to a waiver of the maintenance fee requirements of 30 U.S.C. § 28f(a) (2000), as amended, must also qualify for the waiver in order for BLM to continue to apply that waiver to the transferred claims or sites. If the transferee does not qualify for the waiver, it must pay the annual maintenance fee by the September 1, following the date the transfer became effective under state law.

APPEARANCES: Dan Adelman, Penns Grove, New Jersey, pro se.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Dan Adelman has appealed and petitioned for a stay of a January 31, 2006, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Gold Ingot association placer claim (ORMC 157558) forfeited by operation of law effective December 30, 2004, in accordance with 43 CFR 3835.91.

Under 30 U.S.C. § 28f(a) (2000), as amended,<sup>1/</sup> the holder of an unpatented mining claim is required to pay a claim maintenance fee for each claim on or before September 1 of each year through the year 2008. See 43 CFR 3830.21 and 3834.11(a).<sup>2/</sup> The statute establishes the annual maintenance fee as \$100 per claim or site. 30 U.S.C. § 28f(a) (2000).<sup>3/</sup> 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.<sup>4/</sup> See 30 U.S.C. § 28f(a) and (b) (2000); 43 CFR 3834.11(a).

The statute, however, grants the Secretary of the Interior the discretion to waive the fee payable in any year for a claimant who certifies in writing that, on the date the payment is due, the claimant and all related parties hold not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands and have performed assessment work required under the Mining Law of 1872,

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<sup>1/</sup> 30 U.S.C. § 28f(a) (2000) has been amended twice by Congress, specifically by the Department of the Interior and Related Agencies Appropriations Act, 2002, Pub. L. No. 107-63, 115 Stat. 414, 418-19 (2001) (requiring the payment of the claim maintenance fee on or before September 1 of each year for the years 2002 and 2003), and the Department of the Interior and Related Agencies Appropriations Act, 2004, Pub. L. No. 108-108, 117 Stat. 1241, 1245 (2003) (requiring the payment of the claim maintenance fee on or before September 1 of each year for the years 2004 through 2008).

<sup>2/</sup> Unless otherwise indicated, regulatory citations herein are to the regulations in 43 CFR Parts 3830, 3834, and 3835, revised and reorganized effective Nov. 24, 2003. See 68 FR 61064, 61069, 61073 (Oct. 24, 2003).

<sup>3/</sup> The statute also provides, however, for periodic adjustments in the fee “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.

<sup>4/</sup> When payment is not waived, 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); see 43 CFR 3830.91(a) and 3835.92(a).

for the preceding assessment year ending at noon on September 1 of the calendar year in which payment of the claim maintenance fee is due. 30 U.S.C. § 28f(d)(1) (2000); see 43 CFR 3835.1, 3835.10(a), and 3835.11(a); John J. Trautner, 165 IBLA 265, 267 (2995); Audrey Bradbury, 160 IBLA 269, 273-74 (2003). The waiver, however, is for the upcoming assessment year commencing at noon on September 1 of the calendar year in which the payment is due. The claimant is then required by the Mining Law of 1872 to perform assessment work during that assessment year and, by section 314(a) of FLPMA, to file an affidavit of having performed such work on or before December 30 of the calendar year in which the assessment year ends.<sup>5/</sup> 43 CFR 3835.31(a) and (d); see 43 CFR 3835.10(a), 3835.12, 3835.15, and 3835.16(a); John J. Trautner, 165 IBLA at 267; Earl Riggs, 165 IBLA 36, 39 (2005); Audrey Bradbury, 160 IBLA at 274-75.

Under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (2000), the failure to file an affidavit (or other evidence) of assessment work “shall be deemed conclusively to constitute an abandonment of the mining claim \* \* \* by the owner,” thereby rendering the claim void. United States v. Locke, 471 U.S. 84, 97-100 (1985); John J. Trautner, 165 IBLA at 267; Audrey Bradbury, 160 IBLA at 275. The current regulations, however, state at 43 CFR 3830.91(a)(7) and 43 CFR 3835.91 that failure to file an affidavit of assessment work results in a “forfeiture” of the claim.<sup>6/</sup>

[1] When an individual purchases, inherits, or otherwise obtains a claim subject to a waiver, that person must also qualify for the waiver in order for BLM to continue to apply the waiver after the transfer. 43 CFR 3835.20(a). If that person does not qualify for the waiver, he or she must pay the annual fee by the September 1 following the date the transfer became effective under state law. 43 CFR 3835.20(b); see also 43 CFR 3833.1-5(g) (2003).

On July 22, 2003, eight co-locators located a 160-acre association placer mining claim, the Golden Ingot, which is situated in the SW1/4 sec. 24, T. 36 S.,

<sup>5/</sup> The regulation at 43 CFR 3835.12 is titled: “What are my obligations once I receive a waiver?” It states: “If BLM allows you the waiver, you must perform annual assessment work on time and file annual FLPMA documents.” There is no formal procedure for allowing a waiver. If a claimant timely files a waiver certification and BLM finds no defects, the waiver is apparently allowed and the obligation to file an affidavit of assessment work is triggered. See 43 CFR 3835.31(d).

<sup>6/</sup> BLM defines “[f]orfeit or forfeiture” in 43 CFR 3830.5 to mean “the voidance or invalidation of an unpatented mining claim or site.” It adds that “[t]he terms ‘abandoned and void,’ ‘null and void,’ ‘void ab initio,’ and ‘forfeited’ have the same effect in these regulations.”

R. 10 W., Willamette Meridian, Josephine County, Oregon, within the Siskiyou National Forest. The locators recorded the claim with BLM on August 20, 2003, and paid the requisite fees, including the \$100 claim maintenance fee for the assessment year ending on September 2003 (2003 assessment year), at that time. See 43 CFR 3833.1-5(a)(1) (2003); 43 CFR 3834.11(a)(1). On August 29, 2003, the locators filed a maintenance fee waiver certification for the 2004 assessment year. <sup>7/</sup>

Adelmann purchased the claim from the locators on November 12, 2003. On November 14, 2003, the locators filed a copy of the quitclaim deed transferring their interest in the claim to Adelmann. In a document dated November 19, 2003, BLM notified the locators that it could not complete the transfer of interest unless they paid the proper processing fee. On December 5, 2003, they paid the proper fee. <sup>8/</sup>

On August 23, 2004, Adelmann paid the \$125 claim maintenance fee for the 2005 assessment year. <sup>9/</sup> However, because the claim in question was under a waiver at the time of purchase by Adelmann, he had to pay the maintenance fee for the 2004 assessment year on or before September 1, 2004, if he did not qualify for a waiver. See 43 CFR 3835.20(b). Adelmann did not pay the 2004 maintenance fee by September 1, 2004; therefore, assuming, as BLM apparently did, that Adelmann

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<sup>7/</sup> The locators subsequently filed an affidavit of performance of annual assessment for the 2003 assessment year. Although BLM's decision states that the affidavit was filed on Dec. 30, 2003, the copy of the affidavit in the case file was date-stamped Dec. 31, 2003, one day late. While no affidavit of annual assessment work for the 2003 assessment year was required because the obligation to perform assessment work begins with the assessment year commencing September 1 following the date of location of the claim, which in this case was the 2004 assessment year beginning on September 1, 2003 (see James J. Holmberg, III, 160 IBLA 372, 374 (2004)), the regulations do require the filing of a notice of intent to hold. 43 CFR 3835.31(c).

<sup>8/</sup> BLM apparently raised no objection to the transfer. However, in accordance with 43 CFR 3833.33, regulating the transfer, sale, or conveyance of an association placer mining claim, the co-locators may transfer, sell, or convey the claim "to an individual or an association that is smaller in number than the association that located the claim," only if the co-locators "have discovered a valuable mineral deposit before transfer," or, upon notice from BLM, they "reduce the acreage of the claim" to meet the 20-acre per locator claim limit. Unless a discovery is made prior to the transfer of an association placer claim to a single claimant, the transferee is only entitled to perfect the claim as to 20 acres. United States v. Harenberg, 9 IBLA 77, 86 (1973).

<sup>9/</sup> On September 1, 2005, he paid the \$125 claim maintenance fee for the 2006 assessment year.

qualified for a waiver, <sup>10/</sup> he had to meet the requirements for the existing waiver on the claim by filing an affidavit of assessment work on or before December 30, 2004. See 43 CFR 3835.20(a). He failed to do so.

In its decision, BLM declared the Golden Ingot forfeited effective December 30, 2004, citing 43 CFR 3835.91, which provides that failure to file an annual FLPMA document on or before December 30, as required by 43 CFR 3835.31(d), results in forfeiture of the mining claims or mill or tunnel sites. <sup>11/</sup> (Decision at 1.)

On appeal, Adelman does not dispute that he did not pay the maintenance fee for the 2004 assessment year or file an affidavit of annual assessment work on or before December 30, 2004. Rather, he asserts that he exercised due diligence in inquiring about the background and history of the claim, including contacting BLM by telephone to gather information about the claim and governing laws. He states that none of his discussions with BLM revealed that he had additional requirements to fulfill for the 2004 assessment year. He speculates that the time period between the August 29, 2003, filing of the waiver certificate and his early November 2003 inquiries was too short for the paperwork documenting the status of the claim to reach appropriate BLM personnel which prevented him from learning the true status of the claim. He requests that he be allowed to pay any back fees to bring the claim into good standing so he will not lose the purchase price of the claim and will be able to pursue his lifelong dream of prospecting for gold.

Adelman appears to be arguing that BLM's failure to inform him of the statutory and regulatory requirements for purchasers of mining claims subject to a maintenance fee waiver estops BLM from declaring the claim forfeited and mandates that he be allowed to comply retroactively. This Board has well-established precedents governing when estoppel is applicable against the Government. See United States v. Georgia-Pacific Co., 421 F.2d 92 (9th Cir. 1970); Mineral Hill Venture, 155 IBLA 323, 329 (2001); Martin Faley, 116 IBLA 398, 402 (1990). 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

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<sup>10/</sup> We base this assumption on the fact that BLM invalidated the claims as of Dec. 30, 2004, the date the affidavit of annual assessment work was due, rather than as of Sept. 1, 2004, the date by which he would have been required to pay the additional maintenance fee for the 2004 assessment year if he did not qualify for a waiver.

<sup>11/</sup> BLM also cited Adelman's failure to pay the additional maintenance fee for the 2004 assessment year on or before Sept. 1, 2004, as required by 43 CFR 3835.20. See n.10, supra.

F.2d 697, 703-04 (9th Cir. 1978). Oral misstatements cannot support a claim of estoppel; reliance must be predicated on a crucial misstatement in an official written decision. Mineral Hill Venture, 155 IBLA at 330; Kenneth Lexa, 138 IBLA 224, 230 (1997); compare Leitmotif Mining Co., 124 IBLA 344, 347-48 (1992), with Martin Faley, *supra*. Moreover, estoppel will not lie if the effect of such action would be to grant a person an interest not authorized by law. Alfred G. Hoyle, 123 IBLA 194A, 194V, 100 I.D. 34, 44-45 (1993), *aff'd*, 927 F. Supp. 1411 (1996); *aff'd*, 129 F.3d 1377 (10th Cir. 1997); *see also* 43 CFR 1810.3(c). Finally, 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, 384-85 (1947); Lester W. Pullen, 131 IBLA 271, 273 (1994) .

Adelmann's estoppel argument rests on oral, telephonic communications with BLM, not on an official written decision, and would grant him a right not authorized by law by allowing him to avoid the statutory and regulatory consequences of his failure to comply with the statutory requirements. Accordingly, we find that estoppel is not warranted here.

Adelmann did not file the affidavit of annual assessment work for the 2004 assessment year on or before December 30, 2004, as required by sec. 314(a) of FLPMA, 43 U.S.C. § 1744(a) (2000), and 43 CFR 3835.16. That failure to file resulted in a statutory abandonment of the claims under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (2000), and we modify BLM's decision in that regard. *See John J. Trautner*, 165 IBLA at 272.

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 as modified. The petition for stay is denied as moot.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur:

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H. Barry Holt  
Chief Administrative Judge