

FRANK E. & CAROL SIEGLITZ

IBLA 2006-240

Decided November 3, 2006

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring the Applegate 38-05-15-4A association placer mining claim forfeited by operation of law. ORMC-158917.

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(a), the transferee of a mining claim that is 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 claim. If that person qualifies for the waiver at the time of transfer, the assessment work for the assessment year for which the waiver was sought and obtained must be performed, as required by the Mining Law of 1872, and thereafter, as required by section 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (2000), the affidavit of having performed that work must be filed with BLM on or before December 30 following the end of that assessment year. If the transferee does not qualify for the waiver, 43 CFR 3835.20(b) requires that he/she must pay the annual maintenance fee for the assessment year for which the transferor obtained the waiver by the September 1 following the date the transfer became effective under state law. A transferee who qualifies for the waiver does not have the option of paying the maintenance fee.

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

The requirement to file an affidavit of assessment work with BLM arises from section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (2000), not the maintenance fee waiver requirement of 30 U.S.C. § 28f(d) (2000). 30 U.S.C. § 28f(d) (2000) only requires that a claimant certify that he/she has performed assessment work for the assessment year then ending, and does not render a waiver contingent on performance of assessment work and satisfaction of the FLPMA filing requirement for the subsequent assessment year, for which the waiver is sought. Failure to file an affidavit of assessment work is a violation of the FLPMA filing requirement, and not the waiver requirement of 30 U.S.C. § 28f(d) (2000), and results in abandonment of the claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (2000).

APPEARANCES: Frank E. and Carol Sieglitz, Sacramento, California, pro sese.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Frank E. and Carol Sieglitz have appealed from and petitioned for a stay of the effect of a June 28, 2006, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Applegate 38-05-15-4A association placer mining claim (hereinafter, 4A claim), ORMC-158917, forfeited by operation of law for failure to either pay a claim maintenance fee on or before September 1, 2005, or file an affidavit of annual assessment work on or before December 30, 2005, for the 2005 assessment year.

The copy of the location notice for the 4A claim filed for recordation with BLM, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (2000), on June 29, 2004, lists Russell J. Cox and seven other individuals, each with the surname Coroi, as co-locators of the claim, the claim having been located on May 10, 2004.^{1/} That notice describes the claim as

^{1/} The location notice appears to bear the signature of Cox, followed by the
(continued...)

encompassing 160 acres of public land in sec. 17, T. 38 S., R. 5 W., Willamette Meridian, Josephine County, Oregon. At the time of recordation, Cox paid an initial maintenance fee for the assessment year (2004) in which the claim was located. See 43 CFR 3834.11(a)(1).

On August 11, 2004, BLM received a “Maintenance Fee Waiver Certification” for six mining claims, including the 4A claim, apparently intended to cover the 2005 assessment year, commencing at noon September 1, 2004, and ending at noon on September 1, 2005. There is no evidence in the record that BLM informed Cox or the other claimants of the 4A claim of any defect in the certification. Therefore, we must assume that BLM allowed the waiver and that the claimants were required to perform assessment work and file evidence thereof with BLM on or before December 30, 2005, as required by section 314(a)(1) of FLPMA, 43 U.S.C. § 1744(a)(1) (2000). ^{2/}

On November 1, 2004, BLM received a “Mining Claim Quitclaim Deed,” which stated that it conveyed “all right, title and interest” to a mining claim, identified as the “Applegat[e] 38-05-15-4A,” located in sec. 17, T. 38 S., R. 5 W., with BLM serial number “158917.” The grantor was listed as “Russell J. Cox & Assoc[iates],” and the grantee as “Frank E. Sieglitz” and “Carol Sieglitz.” The deed bears the original signature of Cox, as attested to by the notary public before whom Cox executed the document on November 1, 2004, followed by the handprinted names of the other co-locators of the 4A claim. ^{3/}

^{1/} (...continued)

handprinted names Russell J. Coroi, Dana Coroi, Mackenzie Coroi, Michael Coroi, Anthony Coroi, Russell B. Coroi, and Landon Coroi.

^{2/} 43 CFR 3835.12 is titled: “**What are my obligations once I receive a waiver?**” It states that, “[i]f BLM allows you the waiver, you must then 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) (“[Filing of affidavit of assessment work required] by December 30 of each assessment year you obtained a small miner waiver”).

^{3/} BLM apparently did not question whether the quitclaim deed was effective under state law to transfer the record title interest in the claim from the eight co-locators to appellants. See 43 CFR 3833.32(a). While we presume for purposes of our adjudication that it was effective, even if it were not, the result would not change. We note also that, absent a discovery of a valuable mineral deposit on the 160-acre
(continued...)

On August 26, 2005, BLM received payment of a \$125 Maintenance Fee for the 4A claim from Frank Sieglitz for the 2006 assessment year, which began at noon on September 1, 2005, and ended at noon on September 1, 2006. BLM did not receive an affidavit of annual assessment work for the 4A claim for the 2005 assessment year on or before December 30, 2005.

In its decision declaring the claim forfeited by operation of law, BLM stated that in accordance with 43 CFR 3835.16, a claimant who files a waiver certification in one assessment year and pays the fee in the following assessment year “must perform the required assessment work in the assessment year for which you obtained a waiver from payment of the annual assessment fee, and file the proof of labor document by the December 30th immediately following the payment of the maintenance fee.” (Decision at 1.) BLM also interpreted 43 CFR 3835.20 as requiring that “if you purchase a mining claim subject to a waiver, you must either also qualify for the waiver, or pay the annual maintenance fee by the September 1 following the date the transfer became effective.” (Decision at 1.) Finally, BLM held, citing Dan Adelman, 169 IBLA 13 (2006), that the subject claim was forfeited “effective December 30, 2005,” because the claimants did not “pay the additional maintenance fee required for the 2005 assessment year required by September 1, 2005,” or file “a proof of labor for the 2005 assessment year.” (Decision at 1.)

Under 30 U.S.C. § 28f(a) (2000), as amended,^{4/} 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, for the upcoming assessment year that begins at noon on September 1 of the year payment is due. See 30 U.S.C. § 28f(b) (2000); 43 CFR 3834.11(a). The statute establishes the annual

^{3/} (...continued)

association placer claim prior to the transfer, the claim could be perfected after transfer only as to 20 acres per claimant. Dan Adelman, 169 IBLA 13, 16 n.8 (2006).

^{4/} 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 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 payment of the claim maintenance fee on or before September 1 of each year for the years 2004 through 2008).

maintenance fee as \$100 per claim.^{5/} 30 U.S.C. § 28f(a) (2000). Payment of the maintenance fee is “in lieu of the assessment work requirement [of the] Mining Law of 1872[, 30 U.S.C. §§ 28-28e (2000),] and the related filing requirements [of] * * * section [314(a) of FLPMA],” for the upcoming assessment year. 30 U.S.C. § 28f(a) (2000); see 30 U.S.C. § 28f(b) (2000); 43 CFR 3834.11(a). 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).

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, for the assessment year ending at noon on September 1 of the calendar year in which payment of the 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 (2005); 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. 43 CFR 3835.31(a) and (d); see 43 CFR 3835.10(a), 3835.12, 3835.15, and 3835.16(a); 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

^{5/} The statute also provides 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 (2005).

regulations, however, state at 43 CFR 3830.91(a) and 43 CFR 3835.91 that failure to file an affidavit of assessment work results in a “forfeiture” of the claim. See 43 CFR 3830.5.

[1] The regulation at 43 CFR 3835.20(a) is quite clear that, 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 to the mining claim[]” after the transfer. See Dan Adelman, 169 IBLA at 15. If that person qualifies for the waiver at the time of transfer, the assessment work for the assessment year for which the waiver was sought and obtained must be performed, as required by the Mining Law of 1872, and thereafter, as required by section 314(a) of FLPMA, the affidavit of having performed that work must be filed with BLM on or before December 30 following the end of that assessment year. Dan Adelman, 169 IBLA at 16-17.

On the other hand, in accordance with 43 CFR 3835.20(b), if that person does not qualify for the waiver at the time of transfer, he/she must pay the maintenance fee for the assessment year for which the transferor obtained the waiver by the September 1 following the date the transfer became effective under state law. 43 CFR 3835.20(b); see Dan Adelman, 169 IBLA at 16. Thus, the obligations of the transferee of a mining claim that is, at the time of transfer, subject to a waiver are dependent upon whether or not the transferee qualifies for a waiver. A transferee who qualifies for the waiver does not have the option of paying the maintenance fee.

If, at the time of transfer, the transferee and all related parties hold not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands, the transferee is qualified for a small miner waiver. See 30 U.S.C. § 28f(d) (2000); 43 CFR 3835.1(b) (“[T]able list[ing] the types of waivers available and how you qualify for them,” including in the case of a “Small Miner”). Appellants assert that they are small miners and, like their predecessors-in-interest, qualify for a waiver because they do not hold more than 10 mining claims, mill sites, tunnel sites, or any combination thereof, on public lands. Therefore, appellants were required to file an affidavit of assessment work with BLM on or before December 30, 2005.^{6/}

[2] In its June 2006 decision, BLM concluded that the 4A claim was properly declared forfeited because appellants failed to file the affidavit of assessment work

^{6/} We assume BLM’s reference in its decision to appellants’ failure to pay the additional maintenance fee required for the 2005 assessment year by Sept. 1, 2005, or to file a proof of labor for the 2005 assessment year by Dec. 30, 2005, was intended to cover the alternative situations of 43 CFR 3835.20(a) and (b), based on its lack of knowledge concerning whether or not appellants qualified for a waiver.

for the 2005 assessment year, thereby failing “to complete the 2005 waiver requirement.” (Decision at 1.) We clarify that the requirement to file an affidavit of assessment work is taken from the assessment work filing requirement of section 314(a) of FLPMA, not the maintenance fee waiver requirement of 30 U.S.C. § 28f(d) (2000). 30 U.S.C. § 28f(d) (2000) only requires that a claimant certify that he/she has performed assessment work for the assessment year then ending, and does not render a waiver contingent on performance of assessment work and satisfaction of the FLPMA filing requirement for the subsequent assessment year, for which the waiver is sought. Failure to file an affidavit of assessment work is a violation of the FLPMA filing requirement, and not the 30 U.S.C. § 28f(d) (2000) waiver requirement, and results in abandonment of the claim under section 314(c) of FLPMA. John J. Trautner, 165 IBLA at 267, 272.^{7/} To the extent that BLM’s June 2006 decision can be construed otherwise, it is hereby modified.

Since a waiver certification was filed for the 2005 assessment year, the affidavit of assessment work for that assessment year was required by section 314(a) of FLPMA and 43 CFR 3835.16(a) to be filed with BLM on or before December 30, 2005. Appellants assert that “the prior owner informed [them] that he had completed the labor between September and November 2004 and filed a proof of labor before November 1, 2004[,] for the 2005 assessment work.” (Notice of Appeal/Petition for Stay at 2.) However, even if the prior owners had filed an affidavit of assessment work for the 2005 assessment year before November 1, 2004, of which there is no evidence in the case record, we have long held that the early filing of evidence of annual assessment work does not satisfy the annual filing requirements of section 314(a) of FLPMA.^{8/} Ronald Willden, 97 IBLA 40, 42 (1987); James V. Joyce (On Reconsideration), 56 IBLA 327, 331 (1981).

Appellants do not offer any evidence of a FLPMA filing for the 2005 assessment year. No such affidavit is found in BLM’s records, and appellants’ unsubstantiated assertion that it was filed is not sufficient to overcome the presumption that no such filing occurred. John J. Trautner, 165 IBLA at 270.

^{7/} Because BLM does not distinguish between forfeiture and abandonment in the regulations (see 43 CFR 3830.5), it declared the claim forfeited by operation of law in accordance with 43 CFR 3835.91.

^{8/} The only record of the filing of an affidavit of assessment work in 2004 for ORMC 158917 indicates that Cox made such a filing on Aug. 11, 2004. No such filing, which related to the 2004 assessment year (not the 2005 assessment year) was required for the claim. As stated in sec. 314(a) of FLPMA, 43 U.S.C. § 1744(a) (2000), a proof of labor or a notice of intention to hold must be filed “prior to December 31 of each year following the calendar year in which the said claim was located.” (Emphasis added.) The claim in question was located in 2004.

While appellants complain that the requirement to file an affidavit of assessment work is not to be found in 43 CFR 3835.20, and that there was no notice of such a requirement until issuance of this Board's decision in Adelmann, which was issued after the December 30, 2005, deadline at issue in this case, they are mistaken. The requirement for such a filing may be found in both FLPMA (section 314(a)) and the regulations (43 CFR 3835.16(a)). The fact that Cox may have led them to believe that such a filing had been made does not excuse their failure to file. ^{9/}

Section 314(a) of FLPMA requires "[t]he owner of an unpatented * * * placer mining claim located after October 21, 1976," to file, "prior to December 31 of each year," an affidavit of annual assessment work. ^{10/} 43 U.S.C. § 1744(a) (2000). It imposed a filing obligation on every owner of a mining claim. That obligation passed to appellants when they became the owners of the 4A claim, following the November 2004 transfer. ^{11/} See Arlin D. Walkup, 137 IBLA 259 (1996); Donald L. Howard, 104 IBLA 374 (1988). Further, 43 CFR 3835.16(a) states that "[y]ou must perform the required assessment work in the assessment year for which you obtained a waiver from payment of the annual maintenance fee, and file the annual FLPMA document required by the December 30th immediately following the payment of the maintenance fee [for the subsequent assessment year.]" (Emphasis added.) See 43 CFR 3835.12, 3835.15, and 3835.31(a) and (d). While the "[y]ou" in the regulation was initially appellants' predecessors-in-interest, as the original owners of the claim, when they transferred their record title interest, the "[y]ou" plainly encompassed appellants, as the new owners of the claim. The obligation to file the affidavit of assessment work passed to appellants. Any other construction would allow the mere transfer of a mining claim to obviate the requirement of the applicable statute and regulations, which cannot be held to comport with their language or intent.

No affidavit of assessment work for the 2005 assessment year was filed with BLM on or before December 30, 2005, for the claim in question. Since the statute is self-operative, a claim must be deemed abandoned when an annual filing is not

^{9/} Given the existing statutory and regulatory filing requirements, the application of the Adelmann ruling to a factual situation predating that case is not, as alleged by appellants, an improper retroactive application of a new adjudicative ruling. See, e.g., Raymond G. Albrecht, 92 IBLA 235, 270-71, 93 I.D. 258, 277 (1986).

^{10/} Section 314(a) of FLPMA also provides for the filing of a notice of intent to hold a claim, in lieu of an affidavit of assessment work. The applicable regulations generally preclude the option to file such a notice when a waiver certification has been filed. See 43 CFR 3835.12, 3835.15, 3835.16(a), and 3835.31(d).

^{11/} As noted above at n.8, no such filing was required for 2004.

timely received. Ptarmigan Co., 91 IBLA 113, 118 (1986), aff'd, Bolt v. United States, 994 F.2d 603 (9th Cir. 1991). As Congress did not provide for waiver of this requirement, the Department is without authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 196, 88 I.D. 369, 372 (1981). Where an annual filing is not timely received, for whatever reason, the consequences must be borne by the claimant.

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. Appellants' petition for stay is denied as moot.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

H. Barry Holt
Chief Administrative Judge