



HAL ANTHONY

178 IBLA 238

Decided December 4, 2009



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

HAL ANTHONY

IBLA 2010-4

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Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring the God's Creation (ORMC 161053) unpatented mining claim forfeited by operation of law for failure to pay a \$140 per claim maintenance fee on or before September 1, 2009, for the 2010 assessment year.

Affirmed; petition for stay denied as moot.

1. Mining Claims: Special Acts

The 1866 Mining Law is not applicable to an unpatented placer mining claim located in 2006, because the law applied only to lode claims and pertinent portions were repealed by the 1872 Mining Law. Nothing in the 1866 Mining Law indicated that the exploration for and location of mining claims, without completing the patenting process, creates private property free of Federal regulation.

2. Mining Claims: Claim Maintenance Fees: Generally

BLM cannot accept a check made out to a third party in partial payment of claim maintenance fees. If the remaining payment is insufficient to pay the total maintenance fees, BLM will return the payment and, if the total maintenance fees are not paid by the due date, the claim will be forfeited.

APPEARANCES: Hal Anthony, *pro se*, Merlin, Oregon.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Hal Anthony has appealed from and petitioned for a stay of a September 3, 2009, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the God's Creation (ORMC 161053) placer mining claim forfeited for

failure to pay the \$140 per claim maintenance fee on or before September 1, 2009, for the 2010 assessment year. We affirm BLM's decision.

Under 30 U.S.C. § 28f(a) (2006), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a maintenance fee for each claim or site on or before September 1 of each year.¹ See 43 C.F.R. § 3834.11(a)(2). 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 (2006), 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) (2006), 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) (2006); 43 C.F.R. § 3834.11(a). As originally enacted, the claim maintenance fee was established at \$100 per mining claim or site. 30 U.S.C. § 28f(a) (2006). The Secretary of the Interior was authorized, however, to adjust the claim maintenance fee, and certain other fees, from time to time to reflect changes in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor. 30 U.S.C. § 28j(c) (2006). BLM adjusted the claim maintenance fee in 2004, increasing it to \$125 per mining claim or site for the 2005 assessment year. 69 Fed. Reg. 40294 (July 1, 2004). BLM recently adjusted the fee again, increasing it to \$140 per mining claim or site for the 2010 assessment year, beginning September 1, 2009. 74 Fed. Reg. 30959 (June 29, 2009).

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 (2006); see 43 C.F.R. §§ 3830.91(a), 3835.92(a).

FACTS

The God's Creation unpatented placer mining claim was located in late 2006 by Anthony, together with four other locators. The other locators deeded their interests to Anthony in June 2008. Anthony was required to submit the \$140 claim maintenance fee to BLM on or before September 1, 2009, for the 2010 assessment year. On August 21, 2009, BLM received from Anthony a Postal Money Order in the amount of \$120.00 made out to the Bureau of Land Management, and a check drawn on the United States Treasury in the amount of \$30.00 payable to Hal Anthony. Accompanying those documents was a letter from Anthony confirming that he intended to submit the two documents to BLM to pay the \$140 claim maintenance

¹ The Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, 2101 (2007), has made the Sept. 1 maintenance fee requirement permanent by removing the date range previously imposed by Pub. L. No. 108-108, 117 Stat. 1241, 1245 (2003) (years 2004 through 2008).

fee for the God's Creation placer mining claim and to pay a \$10 filing fee. Anthony also stated in the letter that:

I require the [BLM] Clerk to correct the record to fairly evidence the Location entry by its acceptance, and being one of them, of the original locators pursuant to the acknowledging Act of July 19, 1866 and obligation of Congress H.R. 365, approved July 26, 1866.

By notices dated August 26, 2009, BLM returned the Postal Money Order and the Treasury Check to Anthony. The BLM Notice accompanying the Postal Money Order states that it is "INSUFFICIENT FEE FOR MAINTENANCE PAYMENT ON CLAIM." The BLM Notice accompanying the Treasury Check states "THIS REMITTANCE IS NEGOTIABLE BY A PARTY OTHER THAN THE BUREAU OF LAND MANAGEMENT. PLEASE SUBMIT A NEW REMITTANCE MADE PAYABLE TO THE DEPARTMENT OF INTERIOR/BLM." BLM apparently received nothing more from Anthony until after it issued its decision on September 3, 2009.

BLM's decision stated that it could not accept the \$30.00 U.S. Treasury check made out to Anthony because "we could not accept a third party check even though it was from the US Treasury." BLM also pointed out that 43 C.F.R. § 3834.23 provides that if Anthony had paid the \$125 maintenance fee in effect immediately prior to the recent increase in maintenance fees to \$140 per claim, BLM would have allowed him 30 days to pay the balance. Because the \$120 submitted by Anthony was insufficient, BLM considered it a partial payment which they returned to Anthony so that he could resubmit sufficient funds prior to the September 1, 2009, deadline. Finally, BLM stated that if Anthony were to relocate the claim, mining claims are located under the General Mining Law of 1872, 30 U.S.C. §§ 22 - 54 (2006), and that BLM has no authority to record mining claims under the 1866 Mining Law, 14 Stat. 251.

In his Notice of Appeal and Statement of Reasons (SOR), Anthony argues that BLM's actions are unlawful and a violation of due process. He asserts that BLM should have accepted the Postal Money Order and the U.S. Treasury check, that he should have been given an opportunity to cure his failure to pay the maintenance fee timely, that the maintenance fee is excessive, and that his claim constitutes his private property, primarily based upon provisions of the 1866 Mining Law.

ANALYSIS

We first address Anthony's assertion that the God's Creation placer mining claim was located under the authority of the 1866 Mining Law and, therefore, constitutes private property not subject to the Federal Land Policy and Management Act, (FLPMA), 43 U.S.C. §§ 1701-1785 (2006), and related regulations.

The 1866 Mining Law (also known as the Lode Law) was the nation's first general mining law, and it generally recognized the validity of mining claims located under local mining rules. *Comstock Tunnel and Drainage Co.*, 87 IBLA 132, 133-34 (1985); see 1866 Mining Law, § 2, 14 Stat. 251-52. It declared mineral lands of the public domain open to exploration and location of lode mining claims. *Id.* It also outlined a process for acquiring patent to such claims. See 1866 Mining Law, § 3, 14 Stat. 252. The 1872 Mining Law, 17 Stat. 91, superseded the 1866 Mining Law, although it recognized existing rights arising under the earlier act. FLPMA later recognized the rights under the 1872 Mining Law of mining claim locators, while subjecting them to annual filing requirements and regulation of surface use. See 43 U.S.C. § 1732(b) (2006).

[1] Anthony is simply wrong when he asserts that the God's Creation placer mining claim was located under the authority of the 1866 Mining Law. First, that law addressed only lode mining claims, not placer claims like the God's Creation claim,² so the 1866 Mining Law is inapplicable to his claim. Second, section 9 of the 1872 Mining Law specifically *repealed* those provisions of the 1866 Mining Law opening mineral lands of the public domain to exploration and location (while providing its own similar provisions and recognizing existing rights). See 17 Stat. 94. As Anthony does not assert that the God's Creation claim was located before passage of the 1872 Mining Law (the administrative record confirms the claim was located in 2006), his claim simply could not arise under the authority of the repealed provisions of the 1866 Mining Law.

Further, Anthony's assertion that the God's Creation claim is "public domain private in-holdings" because its mineral deposits were claimed under the 1866 Mining Law also is patently wrong. Even if the 1866 Mining Law were applicable, which it is not, the language of the law itself simply declares that mineral lands of the public domain are "free and open to exploration and occupation by all citizens of the United States . . . subject to such regulations as may be prescribed by law," and establishes a mechanism for purchasing such lands and acquiring patent. 1866 Mining Law, §§ 1-2, 14 Stat. 251-52. Nothing in the law indicates that the

² "That whenever any person or association of persons claim a *vein or lode of quartz or other rock in place* . . . it shall and may be lawful for said claimant or association of claimants to file in the local land office . . . and to enter such tract and receive a patent therefor . . ." 1866 Mining Law, § 2, 14 Stat. 251-52 (emphasis added). Congress later passed the Placer Mining Act of 1870, 16 Stat. 217, to recognize the location of placer claims, and that act also was superseded by and incorporated into the 1872 Mining Law. See 1872 Mining Law, § 10, 17 Stat. 94-95.

exploration for and location of mining claims, without completing the patenting process, creates private property free of federal regulation.³

The Supreme Court has recognized that an unpatented mining claim is a “unique form of property.” *United States v. Locke*, 471 U.S. 84, 104 (1985), quoting *Best v. Humboldt Placer Mining Co.*, 371 U.S. 334, 335 (1963); see *Forbes v. Gracey*, 94 U.S. 762, 767 (1877). Nevertheless, “[t]he United States, as owner of the underlying fee title to the public domain, maintains broad powers over the terms and conditions upon which the public lands can be used” and “[c]laimants thus must take their mineral interests with the knowledge that the Government retains substantial regulatory power over those interests.” 471 U.S. at 104-05. In *Locke*, the Court rejected arguments similar to those raised in this appeal and sustained the provision of 43 U.S.C. § 1744(c) for the abandonment of mining claims if the claimant failed to file timely an affidavit of labor or notice of intention to hold the claims. *Id.* at 108. In *Locke*, the required filing was only one day late. Citing *Locke*, other courts have sustained the forfeiture provisions of statutes requiring the payment of annual rental or maintenance fees. *Jones v. United States*, 121 F.3d 1327, 1330 (9th Cir. 1997); *Kunkes v. United States*, 78 F.3d 1549 (Fed. Cir.), cert. denied, 117 S.Ct. 74 (1996) (upholding the rental fee provisions of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992)); see also *Harlow Corp.*, 135 IBLA 382 (1996), *aff'd*, *Harlow Corp. v. Norton*, No. 97-0320(RWR) (D.C.C. July 24, 2001), *aff'd*, 56 Fed. Appx. 513 (D.C. Cir.), cert. denied, 539 U.S. 959 (2003) (upholding 30 U.S.C. § 28i).

Even if the claim at issue had been located under the 1866 Act, we have recognized that a statutory forfeiture provision applies to all unpatented mining claims, regardless of whether they were located before the enactment of the Mining Law of 1872 or under some other statute. *Comstock Tunnel & Drainage Co.*, 87 IBLA 132, 133-34 (1985) (claims prior to 1866); *E.C. Yegen*, 145 IBLA 300, 301-02 (1998) (oil placer mining claims located pursuant to the Petroleum and Mineral Oils Act of Feb. 11, 1897, c. 216, 29 Stat. 526).

As for Anthony’s failure to timely pay the maintenance fee, he raises several untenable issues, including violation of due process and that the fees are excessive because the “COST OF LIVING [increase] is ARBITRARY AND CAPRICIOUS” (emphasis in original), and constitutes unlawful taxation of private property.

[2] The real issue in this case is that Anthony failed to submit the proper fee in a form that could be accepted by BLM. He submitted a Postal Money Order in the amount of \$120 together with an uncashed Treasury check in the amount of \$30

³ In fact, the language of the 1872 Mining Law mirrors that of the 1866 Mining Law. See 1872 Mining Law, § 1, 17 Stat. 91.

made out to Anthony himself. The applicable regulations provide that, among other forms of payment, BLM will accept a “[c]heck or other negotiable instrument payable in U.S. dollars to the Department of the Interior–Bureau of Land Management.” 43 C.F.R. § 3830.23(a)(3). BLM cannot accept a check made out to a third party. Because the Treasury check in this instance was made out to Anthony, not the BLM, BLM could not accept the check as partial payment for the maintenance fee. That meant that Anthony’s payment amounted only to \$120, in the form of the Postal Money Order. However, the \$120 was insufficient to trigger the provisions of 43 C.F.R. § 3834.23(d), which would have allowed Anthony an additional 30 days to pay the required fee, because Anthony’s \$120 was less than the \$125 maintenance fee in effect prior to the adjustment in maintenance fee for the 2010 assessment year.

BLM properly considered Anthony’s \$120 payment a partial payment of the maintenance fee and returned both the Postal Money Order and the uncashed Treasury check to Anthony’s last address of record as provided to BLM by Anthony in correspondence dated July 28, 2008. *See* 43 C.F.R. § 3830.94(a). Anthony then failed to pay the total maintenance fee by the due date of September 1, 2009, and BLM declared the claim forfeited by operation of law. *See* 43 C.F.R. § 3830.96(b). We find no error in BLM’s actions.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

/s/
H. Barry Holt
Chief Administrative Judge

I concur:

/s/
Bruce R. Harris
Deputy Chief Administrative Judge