



DONALD SUPER

179 IBLA 34

Decided March 29, 2010



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

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IBLA 2010-75

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Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring an unpatented mining claim forfeited for failure to pay the claim maintenance fee or to file an effective Maintenance Fee Payment Waiver Certification on or before September 1, 2009, for the 2010 assessment year when claimant failed to cure a defective Waiver Certification or pay the maintenance fee within 60 days. ORMC 154422.

Affirmed.

1. Mining Claims: Claim Maintenance Fees: Small Miner Exemption

The failure to include in a request for a waiver of claim maintenance fees the original signatures of all of the claim owners of record or their authorized agent constitutes a defect in the waiver request that must be cured within 60 days of receipt of notice of the defect from BLM. Failure to cure the defect or pay the maintenance fees with the 60-day period will result in forfeiture of the affected claims.

APPEARANCES: Donald Super, Methow, Washington, *pro se*.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Donald Super has appealed from a December 28, 2009, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Strawberry Rose unpatented mining claim (ORMC 154422) forfeited for failure to pay the claim maintenance fee or to file an effective Maintenance Fee Payment Waiver Certification (Waiver Certification) on or before September 1, 2009, for the 2010 assessment year when he failed to provide additional information requested by BLM. We affirm BLM's decision.

The holder of an unpatented mining claim, mill site, or tunnel site is required pay a maintenance fee for each claim or site on or before September 1 of each year.¹ 30 U.S.C. § 28f(a) (2006); *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. 30 U.S.C. § 28f(a) and (b) (2006); *see* 43 C.F.R. § 3834.11(a).

The failure to timely submit 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)(3), 3835.92(a). Congress, however, has provided the Secretary with discretion to waive the fee for a claimant who has 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 any combination thereof, on public lands and has performed assessment work required under the Mining law of 1872 with respect to the mining claims, 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) (2006); *see Audrey Bradbury*, 160 IBLA 269, 273-74 (2003). BLM implemented this statute with a regulation that requires a claimant to file “BLM’s waiver certification form on or before September 1 of each assessment year for which you are seeking a waiver.” 43 C.F.R. § 3835.10(a).

[1] The Waiver Certification must include, among other things, “original signatures of the claimants of the mining claims or sites who are requesting the waiver.” 43 C.F.R. § 3835.10(b)(2).² Failure to include such original signatures constitutes a defect in the Waiver Certification. In this case, the Waiver Certification for the Strawberry Rose claim for the 2010 assessment year was filed on August 24, 2009, by appellant. However, the owner of record for the claim was not appellant

¹ The Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, 2101 (2007), has made the September 1st 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).

² The Waiver Certification may include, instead, the signature of the authorized agent of the owner(s) of the claims or sites, if a power of attorney or other legal documentation naming the agent acting on behalf of the owner has been filed with BLM. 43 C.F.R. § 3835.10(a), (b)(2). No power of attorney or other documentation was filed with BLM with respect to the Strawberry Rose mining claim.

but instead was Kristen Super, who did not sign the Waiver Certification. In response to this defective Waiver Certification, BLM issued an Interlocutory Decision dated September 30, 2009, to both appellant and Kristen Super notifying them of the defect and requiring that within 60 days of their receipt of the Interlocutory Decision they submit either a Waiver Certification with original signatures of all owners of record or a notice of transfer of interest or a formal relinquishment of interest by nonfiling co-owners, or pay the maintenance fees. *See* 43 C.F.R. § 3835.93. Appellant and Kristen Super received the Interlocutory Decision on October 6 and 7, 2009, respectively.

The BLM received no response from either Kristen Super or appellant within the 60-day period. On December 23, 2009, BLM received a copy of a quit claim deed conveying Kristen Super's interest in the Strawberry Rose mining claim to appellant, together with a form Proof of Labor signed by appellant. On December 28, 2009, BLM issued its decision declaring the claim forfeited, and appellant timely appealed. In his statement of reasons, appellant explained that he had been awarded the Strawberry Rose mining claim as the result of a divorce settlement with Kristen Super. He believed that he had included a copy of the quit claim deed with the Waiver Certification filed on August 24, 2009. When he received BLM's Interlocutory Decision, appellant did not understand what additional signatures he had to produce. However, he included a copy of the quit claim deed when he filed the proof of labor in December 2009.

If a mining claimant submits a defective Waiver Certification, the claimant must within 60 days of receipt of written notification of the defect by BLM either cure the defect or pay the claim maintenance fee. 30 U.S.C. § 28f(d)(3); 43 C.F.R. § 3835.93. If the defect is not cured nor the maintenance fee paid within the 60-day period, the claimant forfeits the affected mining claims. 43 C.F.R. §§ 3835.92(c), 3835.93(c). In this case, appellant failed to cure the defective Waiver Certification or pay the maintenance fee within the prescribed period, and BLM appropriately declared the Strawberry Rose mining claim to be forfeited.

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