



CONSOLIDATED GOLDEN QUAIL RESOURCES, LTD., *ET AL.*

179 IBLA 309

Decided July 19, 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

CONSOLIDATED GOLDEN QUAIL RESOURCES, LTD., *ET AL.*

IBLA 2010-47

Decided July 19, 2010

Appeal from a decision of the California State Office, Bureau of Land Management, declaring three lode mining claims forfeited and void for failure either to pay the \$140 per claim maintenance fee or file a Maintenance Fee Payment Waiver Certification on or before September 1, 2009, for the 2010 assessment year. CAMC 203865, CAMC 203867, and CAMC 203871.

Affirmed; request for hearing denied; request for remand denied, request for reopening public lands denied.

1. Fees--Mining Claims: Generally

BLM may refund a payment if such payment is not required or is an overpayment of a required fee. BLM is not required to apply an overpayment of maintenance fees to future maintenance fees, unless a mining claimant maintains a declining deposit account with the appropriate BLM State Office and BLM receives appropriate authorization from the claimant, or the claimant otherwise provides specific instructions to BLM. BLM is not required to inquire of a claimant as to his intention with respect to an overpayment.

2. Evidence: Presumptions--Evidence: Burden of Proof--Mining Claims: Rental or Claim Maintenance Fees

The presumption of regularity operates to compel a conclusion that, when BLM records do not contain a certain document date-stamped as timely received, the document was not timely filed. The appealing party can rebut the presumption by providing evidence that a filing was timely received by BLM. Mere assertions or uncorroborated statements that a document was mailed to BLM are insufficient to overcome the presumption of regularity. In addition, it is well established that a

claimant must bear the consequences if a filing is lost by a *bona fide* mail delivery service or if delivery does not follow within the time period allowed for filing.

3. Administrative Procedure: Hearings--Evidence: Sufficiency--Hearings--Rules of Practice: Hearings

The Board may, in its discretion, order a hearing on material issues of fact, but only if appellant raises an issue requiring such a hearing that cannot be decided based on the record or submissions by the parties.

4. Administrative Procedure: Hearings--Evidence: Sufficiency--Hearings--Rules of Practice: Hearings

A forfeiture decision based on a claimant's failure to make timely filings or payments moots the question of whether a discovery exists on the claims. Remand of such a matter to an administrative law judge for consolidation with a pending mining claim contest is unnecessary and not appropriate, and a request for remand will be denied.

5. Equitable Adjudication: Substantial Compliance--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

Equitable adjudication is not available to excuse failure to timely file maintenance fees or a waiver certification, because failure to timely file is, *ipso facto*, a failure to substantially comply with the law.

6. Withdrawals and Reservations: Generally

The Board lacks the authority to contravene a congressional withdrawal, and so cannot open lands to mineral entry that have been closed by Congress.

APPEARANCES: Daniel W. Wolff, Esq., Washington, D.C., for appellants; Nancy S. Zahedi, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Consolidated Golden Quail Resources, Ltd. (CGQ), Beverly Wigglesworth, and James Wayne Cole ¹ have appealed from a November 10, 2009, decision of the California State Office, Bureau of Land Management (BLM), declaring the Golden Quail (CAMC 203865), Golden Quail No. 2 (CAMC 203867), and the Golden Quail No. 6 (CAMC 203871) lode mining claims forfeited for failure to pay the \$140 per claim maintenance fee or to file a Maintenance Fee Payment Waiver Certification (Waiver Certification) on or before September 1, 2009, for the 2010 assessment year. For the reasons discussed below, we affirm BLM's decision.

Background

The claims here at issue were the subject of the Board decision in *United States v. Wigglesworth*, 178 IBLA 51 (2009). We explained there that the California Desert Protection Act, 16 U.S.C. §§ 410aaa-41 through 410aaa-59 (2006), withdrew lands within which these claims were located from mineral entry and created the Mojave National Preserve. The legislation further required BLM to transfer land encompassing the mining claims to the National Park Service (NPS), and prohibited the approval of any plan of operation prior to determining the validity of the associated existing unpatented mining claims within the Preserve area.

BLM filed, on behalf of NPS, a mining claim contest on August 10, 2001. After 8 days of public hearings, the administrative law judge (ALJ) found that the 3 claims involved in this appeal had valid mineral discoveries. *See* Administrative Record

¹ The record indicates that on March 23, 1988, Colin Redden located the claims here at issue, which are all situated within secs. 7 and 18, T. 13 N., R. 16 E., San Bernardino Meridian, San Bernardino County, California. Following a number of conveyances, ownership of the claims currently rests with Beverly Wigglesworth and CGQ (Golden Quail and Golden Quail No. 2 (CAMC 203865, CAMC 203867)), and with Beverly Wigglesworth, CGQ, and Mildred Wilson (Golden Quail No. 6 (CAMC 203871)). Wilson does not appeal BLM's decision. Also, James Wayne Cole does not appear to be a proper appellant, as Cole presumably has no current legally cognizable interest in the claims or this matter, *see, e.g., Consolidated Golden Quail Resources Ltd. v. James V. Golden*, No. 08-03084 (C.D. Calif. Aug. 25, 2008) (default judgment), a circumstance with which appellants' counsel should be familiar.

(AR) 2, ALJ decision, dated Apr. 23, 2008.² NPS appealed the ALJ's decision to this Board. On July 28, 2009, taking no position on the merits of the validity of the mining claims, we held that the ALJ failed to determine certain values and proportionate costs of mining operations relative to the 3 claims. See 178 IBLA at 60. We therefore set aside the ALJ decision and remanded the case for further proceedings.

Before the ALJ could conduct a supplemental hearing, BLM issued the decision at issue in this appeal, declaring the 3 claims forfeited, because the agency's records "indicate[d] that neither a waiver nor payment of the annual maintenance fee was received in this office on or before September 1, 2009, for the 2010 assessment year." AR 2, BLM Decision at 1. This appeal followed.

On appeal, appellants contest neither the statutory requirement to file a maintenance fee for each claim on or before September 1st of each year, nor the provision that failure to pay timely the maintenance fees automatically results in claim forfeiture. Instead, they argue that they timely made their payments and therefore BLM's decision should be set aside and their claims reinstated. They alternatively claim that if the fees were untimely, then equity requires the Board to overlook the error and reinstate their claims.

Legal Background

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. 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). See 30 U.S.C. § 28f(a) (2006); see also 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).

If a claimant pays maintenance fees by mail, the payment is considered timely when it is postmarked or otherwise clearly identified by the mail delivery service as being sent on or before the due date; and the BLM State Office must receive the

² The record contains two file folders and we refer to them accordingly.

payment no later than 15 calendar days after the due date. 43 C.F.R. § 3830.24(c). The failure to pay timely a claim maintenance fee on or before September 1st has severe statutory consequences: “Failure to pay the claim maintenance fee . . . conclusively constitute[s] a forfeiture of an unpatented mining claim . . . by the claimant,” and the claim is forfeited by operation of law. 30 U.S.C. § 28i (2006); *see* 43 C.F.R. § 3830.91(a)(3); *see also* *Estes R. Bazor*, 177 IBLA 39, 40 (2009) (citing *Audrey Bradbury*, 160 IBLA 269, 273-74 (2003)).

In this case, the principal questions are, first, did appellants timely pay the maintenance fees for the 2010 assessment year, and second, if they did not, can the Board grant them relief? Our answers follow.

I. Maintenance Fees for the 2010 Assessment Year

For the 2010 assessment year, appellants assert that Lawrence Schaffer, President of CGQ (L. Schaffer) mailed to BLM on August 27, 2009, authorization to use his credit card for the \$420 (\$140/claim) payment of the maintenance fees. However, there is no evidence in the record that BLM timely received L. Schaffer’s authorization.

Appellants provide two arguments supporting their contention that they timely paid the maintenance fees for the 2010 assessment year. We address first their contention that BLM should have applied an overpayment of the 2009 assessment year’s maintenance fees to the 2010 requirements and, in fact, was obligated to notify appellants and inquire as to whether to apply or refund that overpayment.

A. BLM Reasonably Did Not Apply Overpayments to Future Requirements

Appellants argue that maintenance fees owed for the 2009 assessment year for the three claims at issue were overpaid by \$375, and earlier processing fees were overpaid by \$100,³ and that BLM either should have applied the overpayments to the

³ L. Schaffer paid BLM processing fees of \$130 on May 7, 2008, relating to a notice of the transfer of interest of 13 mining claims, but considering the ALJ decision found that 10 of the claims were invalid, BLM applied \$30 to processing the notice with respect to the remaining 3 claims, and on May 8, 2008, authorized a refund of the \$100 overpayment. BLM Response to Statement of Reasons (Response) at 11-12 and Attach. 1. BLM manages processing fees separately from maintenance fees and reasonably would not apply an overpayment of processing fees to future maintenance fee requirements except under limited circumstances, *see* Response, Attach. 2, ¶ 21, (continued...)

maintenance fees owed for the 2010 assessment year or should have notified CGQ for instructions whether to refund those monies or apply them to future fee obligations.⁴ “BLM was obligated to contact the claimants for instruction on how to apply the overpayment. Had it done so, it would have given the claimants the opportunity to direct those monies to the 2010 maintenance year obligation” Statement of Reasons (SOR) at 8. We disagree.

The administrative record reveals that for the 2009 assessment year, BLM received two separate payments of maintenance fees for the 3 claims at issue. The first payment of \$375 (\$125/claim) was made by L. Schaffer, and received by BLM on August 15, 2008. The second payment of \$375 was made by Windham, on behalf of Benson Minerals, Inc. (Benson), and received by BLM on August 29, 2008. BLM determined that the second payment was duplicative, authorized a refund, and a check was issued on May 1, 2009, to Windham in the amount of the overpayment, \$375.

[1] BLM may refund a payment if such payment is not required or is an overpayment of a required fee. 43 U.S.C. § 1734(c) (2006). Only under limited circumstances may BLM apply overpayments to future charges. For example, if a mining claimant maintains a declining deposit account with the appropriate BLM State Office, BLM may add overpayments to the account, with the authorization of the claimant. 43 C.F.R. § 3830.23(a)(5). BLM also may apply overpayments of mining claim maintenance and location fees to such obligations for future years, if requested by the claimant. 43 C.F.R. § 3830.22(c). In this case, however, appellants

³ (...continued)

such as if those overpayments were deposited in a declining deposit account with BLM, and BLM received specific instructions from the payor, as discussed below. See 43 C.F.R. § 3830.23(a)(5)(ii).

⁴ Appellants argue strenuously that one reason BLM should have applied the overpayment to the 2010 maintenance fees was that “*there was a payment on account for the three mining claims through April 2009,*” SOR at 8 (emphasis in original), presumably focusing on the May 1, 2009, date of the U.S. Treasury check issued to Windham Resources, Inc. (Windham) refunding the \$375 duplicate payment of the 2009 maintenance fees. In fact, BLM records confirm that, in the absence of a request from appellants regarding use of the duplicate payment, BLM authorized the \$375 refund on Oct. 1, 2008, immediately after the due date for the 2009 maintenance fees. See Response, Attach. 1. The fact that it took the U.S. Treasury Department until May 1, 2009, to issue the check does not mean that BLM had the funds “on account” until May 1.

maintained no declining deposit account with BLM and BLM received no request from appellants that overpayment of maintenance fees for the 2009 assessment year should be applied to the 2010 maintenance fees. As a result, BLM had no authorization and, hence, no obligation to apply the overpayment to future fees appellants might owe, and BLM properly authorized a refund of the overpayment. *See Debra Smith*, 179 IBLA 220, 223-24 (2010). As for appellants' assertion that BLM had an obligation to inquire as to their intention with respect to the overpayment, the Board has rejected similar assertions because the regulations impose no such obligation and they would impose an unreasonable burden on BLM. *See Drilling Consultants, Inc.*, 177 IBLA 44, 48-50 (2009), and cases cited; *see also United States v. Locke*, 471 U.S. 84, 109 (1985). We reject appellants' assertion here also.

Appellants also make much of BLM's "erratic" management of the mining claim accounts, referring to similar refunds to CGQ for overpayments of maintenance fees for assessment years 2007 and 2008, "[d]espite the fact that CGQ was the operator of the mining project and a claimant of record." SOR at 9. The facts of BLM's management, although irrelevant to appellants' failure to authorize BLM to apply prior year overpayments of fees or their failure to file the 2010 maintenance fees, and clearly not dispositive of this matter, are interesting and provide some context to the circumstances of the case. In fact, the record actually reveals that any erratic management or confusion was likely appellants' alone.

The mining claims in question were located on March 23, 1988, by Colin Redden. On May 6, 1988, Redden deeded, among other claims, the Golden Quail and Golden Quail No. 2 claims (AMC 203865 and AMC 203867) to James Wayne Cole and Robert Wigglesworth, and the Golden Quail No. 6 claim (AMC 203871) to Cole, Wigglesworth, and Mildred Wilson. For most of the next few years,⁵ Redden made the annual filings to BLM on the claims⁶ as agent⁷ for the claim owners. In

⁵ The assessment work on the claims for the 1990 assessment year was performed by Atlas Precious Metals Inc., and the 1990 affidavit of assessment work was filed by Frank K. Fenne, agent for Atlas Precious Metals, Inc., on behalf of the claim owners.

⁶ Beginning in 1988, Molycorp, Inc., and Golden Quail Resources, Ltd., performed the annual assessment work on the claims, with the exception of the 1990 assessment year. In 1991 and 1992, annual assessment work was performed by Golden Quail Resources, Ltd., and Golden Hemlock Explorations. Redden made the annual filings, with the forms showing his return address the same as Golden Quail Resources, Ltd.

⁷ Redden also made annual filings for a number of other claims in the same general area, as authorized agent for Benson Minerals, Inc., at the same address as Golden

(continued...)

1993, Redden began making annual rental/maintenance fee payments on the claims, submitting the payments by letter under the Benson letterhead, with Benson sometimes identified as “Lessor.”⁸ Payments continued to be made in this fashion through the 2005 assessment year. The payment for the 2006 assessment year, in the total amount of \$5,250 for 42 claims (including the 3 claims at issue here), for the first time identified Windham as the payor, at the same address as Benson.

Windham also made the maintenance fee payments for the 2007 assessment year, again amounting to \$5,250 for 42 claims.⁹ Virtually simultaneous with its receipt of payment from Windham, BLM also received a payment from L. Schaffer in the amount of \$2,000 for maintenance fees for 16 of the 42 claims whose maintenance fees had already been paid. In the absence of instructions, BLM refunded L. Schaffer’s payment.¹⁰ L. Schaffer subsequently did not object to the refund, and did not provide any special instructions to BLM with respect to overpayments.

The same circumstance occurred with respect to the 2008 assessment year. Windham, on behalf of the claim holders and identifying Benson as lessor, paid a total of \$5,250 for 42 claims, including those at issue here. BLM also received a duplicate payment from L. Schaffer in the amount of \$2,000 for maintenance fees for 16 of the 42 claims. Again, in the absence of instructions, BLM refunded L. Schaffer’s payment. Again, L. Schaffer did not object to the refund and did not provide instructions to BLM.

In August 2008, Windham submitted to BLM payment in the amount of \$375 for maintenance fees for the 3 claims at issue here. As in earlier years, Schaffer also

⁷ (...continued)

Quail Resources, Ltd.

⁸ The amounts of the payments varied, depending upon the then-current amount of the rental/maintenance fee and the number of claims held by the claimants. Through the years, a number of claims were declared forfeited by BLM.

⁹ This payment showed Windham with an address in Hicksville, New York, although BLM’s receipt shows a return address for Windham in Boulder City, Nevada, the same address as claim holder James Wayne Cole.

¹⁰ We note that, based on the administrative record, L. Schaffer had never before made a payment of maintenance fees for these claims. L. Schaffer’s possible connections with Golden Quail Resources, Ltd., Consolidated Golden Quail Resources, Ltd., or Benson are not readily apparent in the public land records.

submitted \$375 for maintenance fees for those same claims. Again, in the absence of instructions, BLM refunded Schaffer's payment, about which circumstance appellants now complain.

Appellants state that BLM should not have accepted payment from Windham, because it is "not a claimant of record and did not hold a management position." SOR at 7. However, Windham made the maintenance fee payments for the 2006, 2007, and 2008 assessment years without provoking any objections from the claim holders or CGQ, and was clearly associated with Benson, and then-current claim holder James Wayne Cole. If we were to accept appellants' argument, then BLM should have rejected Windham's payment for the 2006 assessment year and the claims would have been forfeited at that time. Notably, CGQ itself did not become a claim holder of record until mid-2008, *after* Windham had made maintenance fee payments for the 2006, 2007, and 2008, assessment years, and the payment by Windham for 2009, was merely a continuation of that established procedure. After L. Schaffer made his duplicate payments for each of the assessment years 2007, 2008, and 2009, BLM each time reasonably refunded the money, provoking no objections or contrary instructions until the 2010 assessment year, after BLM failed to receive L. Schaffer's purported credit card authorization on or before September 1, 2009.

Appellants also complain that Windham made maintenance fee payments for a total of 42 mining claims, even though appellants assert that they had abandoned 26 of those claims.¹¹ SOR at 9. Apparently, appellants failed to communicate that intention to Windham, notwithstanding the fact that Windham was "affiliated with the Golden Quail mining operation as an investor *who made the payment[s] for the benefit of the mining claimants,*" SOR at 7 (emphasis in original), or to Benson, which had long been involved in making annual filings and maintenance fee payments for those claims. Although appellants suggest that BLM's acceptance of Windham's payments somehow demonstrates BLM's "erratic management" of the claim accounts, BLM accepted maintenance fee payments for the 42 claims because they were valid claims at the time. In fact, the status of 26 of those claims did not change until

¹¹ Michael A. Schaffer, CEO of CGQ, has asserted that "[b]eginning in 1996, we submitted a mining plan of operations to the National Park Service for 16 of those mining claims . . . with the intent of abandoning the other 26," and that those claims had been abandoned by the time Windham made maintenance fee payments for them in 2006 and 2007. Declaration of Michael A. Schaffer, SOR Ex. 1, ¶¶ 2, 7. Regardless of those intentions, the fact remains that the claimants or their representatives paid maintenance fees for the 26 claims every year after 1996 through the 2008 assessment year.

September 1, 2008, when the 2009 assessment year maintenance fees were due and no fees were paid, and BLM declared them forfeited on March 13, 2009.¹²

Despite appellants' arguments, we find that BLM's management of the claim accounts was reasonable,¹³ that BLM reasonably accepted payment from Windham for the 3 claims at issue for the 2009 assessment year and reasonably refunded L. Schaffer's duplicate payment, and that BLM had no obligation to contact the claimants for instructions with respect to the duplicate maintenance fee payment.

B. Appellants Fail to Show BLM's Timely Receipt of 2010 Maintenance Fees

Appellants generally assert that the credit card authorization for maintenance fee payments for the 2010 assessment year was mailed timely but that BLM lost it. SOR at 10, 16. According to L. Shaffer, he mailed the authorization in late August, but once he realized that BLM failed to receive that correspondence, he resubmitted an authorization by mail, postmarked on September 9, 2009, which BLM received and stamped on September 11, 2009. SOR at 4-5, and Ex. 2, ¶¶ 4, 6.

1. Presumption of Government Regularity

[2] BLM regulations state that for a document to be filed, it must be “[r]eceived by BLM on or before the due date.” 43 C.F.R. § 3830.5 (emphasis added); see also 43 C.F.R. § 3830.24(c). This Board has long recognized that “[t]he absence of a document in the record generally indicates that the document was not filed, based on the legal presumption that Government officials have properly discharged their duties and have not lost or misplaced legally significant documents filed with them.” *Canadian Mining of Arizona Inc.*, 177 IBLA 368, 370 (2009) (citing *Ed Sorrells*, 164 IBLA 379, 382 (2005)). The presumption of regularity operates to compel a conclusion that, when BLM records do not contain a certain document date stamped as timely received, the document was not timely filed. The appealing party can rebut the presumption by providing evidence that a filing was timely received by

¹² This information is available on the Serial Register Pages for those claims.

¹³ Any confusion or lack of communication over these issues seems likely to have been on the part of CGQ and its associates, which may have arisen during the course of litigation involving ownership and management of these claims. See *Consolidated Golden Quail Resources Ltd. v. James V. Golden*, No. 08-03084, (C.D. Calif. Aug. 25, 2008) (default judgment); *Consolidated Golden Quail Resources, Ltd. v. Windham Resources, Inc.*, No. 09-01078 (C.D. Calif. complaint filed Feb. 13, 2009; stipulation for dismissal Dec. 21, 2009).

BLM. See *Darrell Palmer*, 156 IBLA 360, 362 (2002). But, mere assertions or uncorroborated statements that a document was mailed to BLM are insufficient to overcome the presumption of regularity. *Canadian Mining of Arizona Inc.*, 177 IBLA at 370, and cases cited. In addition, it is well established that a claimant must bear the consequences if a filing is lost by the U.S. Postal Service or if delivery does not follow within the time period allowed for filing. *Paul C. Lewis v. BLM*, 150 IBLA 76, 82 (1999) and cases cited.

To support their assertion that the 2010 maintenance fees were timely filed but then disappeared because of BLM's mistake, appellants submit a letter displaying a date of August 27, 2009, signed by L. Schaffer but with no BLM-received date stamp, and an undated attachment, containing credit card information. See SOR, Ex. 2B. This letter apparently was sent by L. Schaffer to BLM on September 9, 2009, after he realized BLM had no record of payment of the 2010 maintenance fees. *Id.*, Ex. 2, ¶ 6. Appellants also submit a declaration by L. Schaffer stating that the maintenance fees were mailed before the September 1, 2009, deadline and that a BLM employee mentioned that BLM "recently switched around its mailroom." *Id.*, Ex. 2, ¶¶ 3, 4. Finally, appellants contend that they actually did make the maintenance fee payment because the authorization for the payment was mailed before the deadline. SOR at 10.

Appellants simply offer insufficient evidence. A copy of a letter, bearing a particular date but no BLM-received date stamp, that was sent to BLM after the deadline, and L. Schaffer's uncorroborated statement that the letter was mailed before the deadline and that there may have been confusion in BLM's mailroom does not prove the letter was timely mailed and received by BLM and cannot overcome the presumption of regularity in BLM's actions. See *Paul C. Lewis v. BLM*, 150 IBLA at 82; see also *Red Top Mercury Mines, Inc. v. U.S.*, 887 F.2d 198, 202-03 (9th Cir. 1989) (uncorroborated statement that filings were believed to have been mailed timely does not overcome presumption of regularity when there is no evidence filings were received). More than self-serving testimony is required. Consequently, appellants' argument that they timely paid the 2010 maintenance fees and that BLM lost the payment authorization fails, and appellants must bear the consequences of a filing "lost in the mail."

2. An Evidentiary Hearing is not Appropriate in this Case

Appellants argue that "as a matter of fundamental due process" they are entitled to an evidentiary hearing to examine BLM officials about their mailroom policies. SOR at 11. They also ask that the maintenance fee matter be consolidated

with the pending mining claim contest and remanded to the ALJ for resolution. With respect to the first issue,

BLM does provide for notice and a hearing on the adjudicative fact of whether the required filings were actually made, and appellees availed themselves of this process by appealing, to the Department of Interior Board of Land Appeals, the BLM order that extinguished their claims for failure to make a timely filing.

United States v. Locke, 471 U.S. at 109 n.17; see *Philip A. Cramer*, 74 IBLA 1, 3 (1983). With their appearance before us, appellants have received the process they are due.

[3] As for a hearing on factual matters, the Board may, in its discretion, order such a hearing. 43 C.F.R. § 4.415. In this case, however, appellants have presented no issue that requires a hearing. The administrative record shows that the maintenance fees for the 2010 assessment year were not timely paid, and appellants proffer no evidence otherwise, except for an uncorroborated declaration that is insufficient to overcome the presumption of regularity with respect to BLM's actions. And, to the extent appellants argue that a hearing would confirm allegedly faulty BLM mail room procedures, the submitted declarations of BLM employees show otherwise. See Response, Attach. 2, ¶¶ 5, 11 (Declaration of BLM Supervisor for the Branch of Minerals Adjudication) ("All documents sent to the BLM California State Office are processed in a single mailroom location," and that mail is "processed according to the mailroom's standard operating procedures," and "[a] search was carefully performed and no missing documents were found.") and Attach. 3 (Declaration of BLM Chief of the Branch of Fiscal and Business Services).¹⁴ A hearing is not necessary, and appellants' request is denied. See *Orion Reserves Ltd. Partnership v. Salazar*, 553 F.3d 697, 707-08 (D.C. Cir.), cert. denied, 130 S. Ct. 110 (2009).

[4] As for appellants' request that this matter be consolidated with the pending mining claim contest before the ALJ, we have held that, "[a]s our ruling [that mining claims are null and void] moots the question of whether a discovery exists on the claims, it renders it unnecessary to proceed with the contest as to these three claims, thus economizing decisionmaking resources." *Ronald A. Pene*, 147 IBLA 153, 155 (1999). Our decision here affirms BLM's decision declaring the claims

¹⁴ Both BLM declarants refer to the standard operating procedures for processing all mail addressed to BLM. Those standard operating procedures are appended to BLM's Response as Exhibit 1.

forfeited. Remand of this matter to the ALJ is unnecessary and not appropriate, and appellants' request is denied.

II. Equitable Adjudication and Re-Opening the Land

Appellants deem the loss of their claims a “grave injustice” and believe they should, as a matter of fairness, “be allowed . . . to re-submit to the BLM the \$420 fees,” SOR at 9, or “should be recognized as having the legal right to re-stake and reinstate their mining claims” in lands currently withdrawn by statute from mineral entry. SOR at 17. The claimants “are fully aware that the Board has historically seen itself as without authority to grant relief to avoid injustice,” but request that we reconsider our many years of jurisprudence on the subject “because the statute does not close the door on equitable relief.” SOR at 11. No statutory or regulatory authority relating to mining claims and no Board precedent is cited to support such relief.

For years, Federal courts and this Board have found that Congress was clear in imposing the penalty of forfeiture with respect to mining claims when their owners failed to make timely filings or payments.

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).

Hal Anthony, 178 IBLA 238, 242 (2009).

[5] As generous as is appellants' invitation for us to ignore, alter, or bend the mandates of Congress, that is not within our authority. This Board must apply the laws, rules, and applicable policies of the Department in deciding cases presented to us; we do not generally “sit as a tribunal for meting out equitable relief.” *Kerr-McGee Oil & Gas Corp.*, 172 IBLA 195, 202 n.6 (2007). Moreover, we have explicitly held that “equitable adjudication is not available to excuse failure to timely file maintenance fees or a small miner waiver under the Maintenance Fee Act [30 U.S.C.

§ 28f] because failure to timely file is, *ipso facto*, a failure to substantially comply with the law.” *Goldie James M.B.M. Mining Corp.*, 143 IBLA 289, 294 (1998). Because the consequence in this case is a matter of law, this Department has no authority to waive the statute to afford equitable relief. *See Jon Roalf*, 169 IBLA 58, 62 (2006), and cases cited.

[6] As for appellants’ request that we reopen the lands on which the claims are located so that the claims may be relocated, Congress withdrew those lands from mineral entry, subject to valid existing rights, under the California Desert Protection Act. 16 U.S.C. § 410aaa-47. Our affirmation of BLM’s decision here confirms that appellants forfeited any existing rights with respect to those claims when the maintenance fees for the 2010 assessment year were not timely filed, and so we have no legal basis for lifting the withdrawal just so appellants can relocate the claims.

[T]he Secretary’s broad plenary powers can furnish no lawful basis for taking actions that are not consistent with such laws as Congress may enact to govern the disposition and administration of the public lands. In section 204(j) of FLPMA, 43 U.S.C. § 1714(j) (2000), Congress has expressly provided that the Secretary “shall not make, modify, or revoke any withdrawal created by Act of Congress.” Accordingly, lands are not open to entry or appropriation when by statute Congress declares them withdrawn

. . . To grant the relief [appellant] requests would require nothing less than the negation or evasion of Congress’ plainly expressed will. *See Richard Barga*, 117 IBLA 231, 241-42 (1991). Manifestly, neither this Board nor BLM can wield greater authority than that vested in the Secretary, who has no authority to modify or revoke a Congressional withdrawal. *Id.* at 242.

Wolfram Jack Mining Corporation, 176 IBLA 183, 189-90 (2008) (footnote omitted).¹⁵ Appellants’ request is denied.

¹⁵ Even where the Secretary has been given authority to make, modify, or revoke withdrawals (other than withdrawals by Congress), such authority is not delegable to this Board. *See* 43 U.S.C. § 1714(a) (2006).

Conclusion

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, appellants' request for hearing is denied, appellants' request for remand is denied, appellants' request that we reopen the withdrawn public lands is denied, and the decision appealed from is affirmed.

_____/s/_____
H. Barry Holt
Chief Administrative Judge

I concur:

_____/s/_____
Bruce R. Harris
Deputy Chief Administrative Judge