



GERALD R. STUART, *ET AL.*

180 IBLA 20

Decided August 25, 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

GERALD R. STUART, *ET AL.*

IBLA 2010-120

Decided August 25, 2010

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring the Orotenango (MMC 209262) 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.

Reversed and remanded.

1. Notice: Constructive notice

Members of the public are charged with constructive knowledge of their obligations under statutes and related implementing regulations, and BLM generally owes no duty to send personal notification to mining claimants with respect to the enactment of new laws and promulgation of new regulations, including increases in annual maintenance fees.

2. Mining Claims: Claim Maintenance Fees: Generally

In any year in which BLM adjusts the maintenance and location fees, if a claimant pays the fees timely, but pays an amount based on the fee in effect immediately before the adjustment was made, BLM must send the claimant a notice providing a 30-day opportunity to cure the payment deficiency. A BLM decision made without providing such an opportunity to cure will be reversed and the matter remanded for BLM to issue the required notice.

APPEARANCES: Gerald R. Stuart, Vivian Stuart, John Durbin, *pro se*, Naples, Idaho.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Gerald R. Stuart, Vivian Stuart, and John Durbin have appealed from an April 14, 2010, decision of the Montana State Office, Bureau of Land Management (BLM), declaring the Orotenango (MMC 209262) unpatented mining claim forfeited for failure to pay the \$140 per claim maintenance fee on or before September 1, 2009, for the 2010 assessment year, because appellants paid only \$125 on August 24, 2009. We reverse BLM's decision and remand the matter for further action.

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.<sup>1</sup> 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*

Appellants were required to submit a \$140 claim maintenance fee to BLM for the Orotenango mining claim on or before September 1, 2009, for the 2010 assessment year. On August 24, 2009, BLM received from appellants payment in the

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<sup>1</sup> 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).

amount of \$125. BLM received nothing further from appellants and determined that appellants' payment was \$15 less than required for the 2010 maintenance fee. BLM then issued its decision, stating:

Because of the Maintenance Fee increase [of July 1, 2009, from \$125 to \$140] you were delinquent \$15. You had until September 1, 2009, to pay the additional \$15 for the 2010 Maintenance Fee. The BLM did not receive the additional \$15 on or before September 1, 2009.

...

**Therefore, the OROTENANGO (MTMMDC 209262) mining claim is deemed to be forfeited by operation of law for failure to furnish the required 2010 Maintenance Fee.**

(Emphasis in original).

This appeal followed. Appellants state: "We never received any notice of any increase in the amount due on the claim or any kind of billing packet for 2009 [2010 assessment year] at all." Statement of Reasons (SOR) at 1. They sent in their payment in the amount of \$125, based upon the amount due for the 2009 assessment year, and received no notice from BLM "of any difference in the fee amount. So, we were still unaware of the increase." SOR at 2.

#### ANALYSIS

[1] Appellants incorrectly assume that BLM must notify them of increases in maintenance fees. This Board has long held that members of the public are charged with constructive knowledge of their obligations under statutes and related implementing regulations, and that BLM generally owes no duty to send personal notification to claimants with respect to the enactment of new laws and the promulgation of new regulations. *Hugh D. Guthrie*, 145 IBLA 149, 152 (1998) and cases cited. In this case, notice of the increase in the mining claim maintenance fee for the 2010 assessment year was published in the *Federal Register*, and appellants appropriately are deemed to have constructive knowledge of the increase. See *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380, 384-85 (1974); *F.W.A. Holdings, Inc.*, 167 IBLA 93, 101 (2005). However, BLM's decision suffers from a different fatal error.

The annual maintenance fee was increased from \$125 per claim to \$140 per claim pursuant to a regulatory change published in the *Federal Register* at 74 Fed. Reg. 30959 (June 29, 2009), with the increased fee to be paid on or before September 1, 2009, for the 2010 assessment year. 74 Fed. Reg. at 30960. Appellants timely paid the maintenance fee for the 2010 assessment year, but paid the same amount, \$125, that they had paid for the 2009 assessment year. Without

contacting appellants, BLM merely accepted appellants' underpayment of the maintenance fee and, when no additional funds were received by September 1, 2009, BLM then deemed appellants' claim forfeited.

[2] In 2005, BLM itself addressed the dilemma in which appellants find themselves today, and took regulatory action to provide some limited relief to claimants by allowing an opportunity to cure such an underpayment of maintenance fees.

The clarification to the curing provision is a reasonable and equitable administrative way in which to handle fee adjustments and to avoid inadvertent loss of mining claims due to lack of actual notice of an adjustment. It is in the public interest to provide such equitable means for a mining claimant to be able to cure an underpayment of the fees when the claimant has shown an intent to maintain the claim by paying the pre-adjusted fee amount in a timely manner. This will avoid the disruption of mining operations that would be caused if the mining claimant unintentionally loses their [sic] mining claim or site due to a minimal underpayment of fees.

70 Fed. Reg. 52028 (Sept. 1, 2005). In that rulemaking, BLM promulgated 43 C.F.R. § 3834.23(d), which states:

[I]n any year in which BLM adjusts the maintenance and location fees, if you pay the fees timely, but pay an amount based on the fee in effect immediately before the adjustment was made, BLM will send you a notice, as provided in § 3830.94, giving you 30 days in which to pay the additional amount required to meet the adjusted fees. If you do not pay the additional amount due within 30 days after the date you received the notice, you will forfeit the affected mining claims or sites.

In this case, the mining claim maintenance fee was adjusted in 2009, for the 2010 assessment year. Appellants timely paid their maintenance fee for the 2010 assessment year on August 24, 2009, during the year in which the adjustment was made and based on the previous year's maintenance fee amount. Under those circumstances, BLM was obliged by its own regulation to send appellants notice of the deficiency in their maintenance fee payment and provide them with 30 days to submit the additional amount due. BLM sent no such notice and provided them no such opportunity to cure. Accordingly, we must reverse BLM's decision and remand the matter so that BLM can provide appellants with the proper notice and opportunity to cure.

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 reversed and the matter remanded to BLM.

\_\_\_\_\_/s/\_\_\_\_\_  
H. Barry Holt  
Chief Administrative Judge

I concur:

\_\_\_\_\_/s/\_\_\_\_\_  
Bruce R. Harris  
Deputy Chief Administrative Judge