



THOMAS A. NEAL

181 IBLA 141

Decided May 24, 2011



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

THOMAS A. NEAL

IBLA 2011-115

Decided May 24, 2011

Appeal from a decision of the California State Office, Bureau of Land Management, declaring unpatented mining claims forfeited by operation of law for failure to pay the \$140 per claim maintenance fee on or before September 1, 2010, for the 2011 assessment year. CAMC 44434, *et al.*

Reversed and remanded; request for stay denied as moot.

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

A decision rejecting Maintenance Fee Payment Waiver Certifications and declaring mining claims forfeited and void for failing to pay maintenance fees on the grounds that the claimant owned more than 10 claims is properly reversed where the claimant shows he filed Waiver Certifications for only 10 claims and other evidence demonstrates that claimant abandoned his interest in any additional claim previously held, as of the date the Waiver Certification was filed.

APPEARANCES: Thomas A. Neal, *pro se*, French Gulch, California.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Thomas A. Neal has appealed from and requested a stay of a February 4, 2011, decision of the California State Office, Bureau of Land Management (BLM), declaring ten unpatented mining claims¹ forfeited for failure to pay the \$140 per claim maintenance fee on or before September 1, 2010, for the 2011 assessment year, because he did not qualify to file a Maintenance Fee Payment Waiver

¹ The 10 claims are the Hobo 1 (CAMC 44434), Hobo 2 (CAMC 44435), Catgut (CAMC 261024), New Backbone Ext (CAMC 275625), New Rose (CAMC 275626), Tom's Tom Green (CAMC 276485), Tom's Lark (CAMC 296256), Tom's Brown Bear (CAMC 296257), Tom's Cross Cut (CAMC 296258), and Tom's Galena Consolidated (CAMC 296259).

Certification (Waiver Certification). Because we find that appellant was qualified to file a Waiver Certification, we reverse BLM's decision and deny appellant's request for a stay as moot.

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.² 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 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 preceding assessment year ending at noon on September 1 of the calendar year in which payment of the claim maintenance fee is due.³ 30 U.S.C. § 28f(d)(1) (2006); *see* 43 C.F.R. § 3835.11(a); *Frank E. & Carol Sieglitz*, 170 IBLA 286, 290 (2006).

FACTS

On August 19, 2010, appellant filed with BLM a Waiver Certification for the subject claims for the 2011 assessment year. BLM records identify appellant as the owner of each of those ten claims.⁴ In its decision, BLM acknowledged that appellant had filed a Waiver Certification for the subject claims, but then stated that appellant

² 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).

³ 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 (2006); *see* 43 C.F.R. §§ 3830.91(a), 3835.92(a).

⁴ Thomas A. Neal is identified as a co-owner with James Westlake of the Hobo #1 and #2 claims (CAMC 44434 and CAMC 44435), but Thomas A. Neal is identified as the sole owner of the remaining 8 claims.

had an interest in and paid the maintenance fee for the 2011 assessment year for an eleventh claim. The interest in an eleventh claim disqualified appellant from filing a Waiver Certification, because the principal qualification for use of a Waiver Certification is that a claimant have interests in ten or fewer claims, mill sites, or tunnel sites nationwide. *See* 30 U.S.C. § 28f(d)(A) (2006); 43 C.F.R. § 3835(a)(1). Because appellant was not qualified to file a Waiver Certification, BLM found that appellant had to pay maintenance fees for all of the claims, and because he paid no fees for the ten claims listed on his Waiver Certification, those claims were forfeited. BLM identified the eleventh claim as the Hartman 1 (CAMC 86363) unpatented mining claim. The Hartman 1 claim was located on January 29, 1981, and the original locators were Tim Neal (appellant's brother), Tom Neal (appellant), and Henry Bauer. Currently, BLM records still show those three individuals as owners of the Hartman 1 claim.⁵

In his Notice of Appeal (NOA), appellant states that BLM is incorrect, in that he did not pay the maintenance fee for the Hartman 1 claim, but his brother Tim Neal did. Appellant also states that currently he has no ownership interest in the Hartman 1 claim. Appellant admits that he and two partners, Tim Neal and Henry Bauer, located the claim around 1980, and that all three names were listed on the Assessment Work Notices filed for that claim until Bauer passed away, in the mid-1980s.⁶ After that, only appellant and Tim Neal were listed on the Assessment Work Notices, until the 2000 assessment year. Also, beginning in the mid-1990s, appellant started filing his own assessment documents for other claims in which he maintained an ownership interest, and never included the Hartman 1 claim on any of those filings. He states that his name has not appeared on any filings for the Hartman 1 claim since 2000.⁷ He asserts that “this constitutes a written abandonment on my part of any interest I had in [the Hartman 1 claim].” NOA at 1. He suggests that Board precedent supports his position.⁸

⁵ BLM's decision states that because the maintenance fee for the 2011 assessment year had been paid for the Hartman 1 claim, that claim was not affected by the decision.

⁶ Appellant submitted Bauer's death certificate, which establishes that Bauer's death actually occurred on Jan. 28, 1991. The NOA also states that Bauer's wife died 8 days later, and there were no heirs. NOA at 2

⁷ Appellant states that at some point, in 1999, he became aware that his brother Tim Neal “was still listing me on his paperwork for CAMC 86363 [Hartman 1 claim]. At this time I requested to him to cease in doing so.” NOA at 1.

⁸ Appellant alludes to a similar circumstance in 1999, in which claims he owned were declared void by BLM “based on some other claims owned by Tim Neal. This
(continued...)

He also submits copies of Shasta County property tax bills on the Hartman 1 claim for the fiscal years July 1, 2005, through June 30, 2006, and July 1, 2009, through June 30, 2010, that show Tim Neal as the sole owner of the claim. Finally, he offers two maintenance fee documents submitted to BLM by Tim Neal, one of which includes the Hartman 1 claim and identifies Tim Neal as the sole claim owner, and another that does not include the Hartman 1 claim and identifies Tim Neal and J.N. Marin as claim owners. Appellant asserts that these documents evidence that Tim Neal customarily disclosed additional claim owners when there were additional claim owners, showing that because the recent documents relating to the Hartman 1 claim do not identify Tom Neal as an additional owner, then Tom Neal was not an owner of that claim. Appellant declares that “[t]his clearly shows that it was my intent to abandon my interest in this ([CAMC] 86363) claim at least ten years ago.” NOA at 2. BLM has not responded to appellant’s arguments.

ANALYSIS

Abandonment of an interest in an unpatented mining claim is based upon traditional real estate concepts of abandonment, which include “relinquishment of possession together with the subjective intent to abandon.” *Department of the Navy*, 108 IBLA 334, 338 (1989) (quoting *Oregon Portland Cement Co.*, 66 IBLA 204, 207 (1982)). As the U.S. Supreme Court has said:

“His [locator’s] interest in the claim may also be forfeited by his abandonment, with an intention to renounce his right of possession. It cannot be doubted that an actual abandonment of possession by a locator of a mining claim, such as would work an abandonment of any other easement, would terminate all the right of possession which the locator then had.

An easement in real estate may be abandoned without any writing to that effect, and by any act evincing an intention to give up and renounce the same. . . .”

Farrell v. Lockhart, 210 U.S. 142, 147-48 (1908) (quoting *Black v. Elkhorn Mining Co.*, 163 U.S. 445, 450 (1896)).

[1] The Board many times has addressed the issue of abandonment of interests in mining claims in the context of qualification to file a Waiver Certification. *See, e.g., Andy D. Delcomte*, 165 IBLA 247 (2005); *Little Bear Mining & Exploration, Inc.*, 138 IBLA 304 (1997); *William J. Montgomery*, 138 IBLA 31 (1997); *Burbank*

⁸ (...continued)

decision was found to be in error, and subsequently reversed.” NOA at 1. We found no additional information about this circumstance in the record.

Gold, Ltd., 138 IBLA 17 (1997); *The Big Blue Sapphire Co., Inc.*, 138 IBLA 1 (1997); *Washburn Mining Co.*, 133 IBLA 294 (1995). We have considered a variety of evidence in examining the possible existence of an intent to abandon mining claims, including the absence of claims listed on a Waiver Certification, *Washburn Mining Co.*, 133 IBLA at 296; statements of abandonment included on a Waiver Certification, *Andy D. Delcomte*, 165 IBLA at 250-51; board of director's declaration of abandonment of claims, *Little Bear Mining & Exploration*, 138 IBLA at 305; claimants' statements asserting abandonment, and departure from past practice of listing claims on affidavits of assessment work, *William J. Montgomery*, 138 IBLA at 32-33; and the absence of contradictory record evidence, *Burbank Gold, Ltd.*, 138 IBLA at 20.⁹ What is clear, however, is that:

So long as a claimant who sought a small miner exemption can establish that, with respect to any claims in excess of 10, the elements of abandonment predated August 31 [], he or she has met the statutory and regulatory requirements with respect to the limitation on claim ownership, regardless of the point in time at which these facts are communicated to BLM.

The Big Blue Sapphire Co., Inc., 138 IBLA at 5.

The record here generally supports many of appellant's statements in his NOA. The Hartman 1 claim was located January 29, 1981, by appellant, Tim Neal, and Henry Bauer. From 1981 through 1984, the Assessment Work Notices filed with BLM

⁹ We have previously noted that "BLM has recognized that the actual ownership, not the ownership as shown on BLM records, is controlling when determining whether a claimant qualifies for [a Waiver Certification], and that BLM's records may not accurately reflect the actual ownership on the date the claimant files [his Waiver Certification]. Instruction Memorandum No. 94-20 (Oct. 15, 1993)." *Edna Jarvis*, 128 IBLA 143, 145 (1994). One example of this is Bauer's interest in the Hartman 1 claim, as Bauer clearly retained no interest in the claim after his death in 1991, despite BLM records showing him as a current owner. BLM records establish a presumption of ownership that a claimant can overcome by providing evidence of abandonment. This issue has been addressed at different times by BLM treating record contradictions in ownership as a curable defect, providing the claimant with an opportunity to cure prior to BLM's decision, and through the claimant offering evidence after BLM's decision, during the appeal process. See *Lee H. and Goldie E. Rice*, 128 IBLA 137, 140 & n.2 (1994) (referencing BLM Instruction Memorandum No. 94-20).

identified all three claim owners.¹⁰ Beginning in 1985, through 1992, Tim Neal and appellant, but not Bauer, were listed as claim owners on the Assessment Work Notices. On August 30, 1993, rental fees for the Hartman 1 and other claims for the 1993 and 1994 assessment years were filed with BLM by Tim Neal alone. From that time on through the filing on August 27, 2009 (the most recent information in the record), maintenance fees on those same claims, including the Hartman 1 claim, were paid by Tim Neal,¹¹ who was identified on the accompanying forms as the sole owner of the claims.¹² Appellant began filing Waiver Certifications on a number of claims in 1994, and the Hartman 1 claim was never included on those Waiver Certifications. Except for the 1981 Location Notice and the Assessment Work Notices filed through 1992, no other evidence in the record identifies appellant as an owner of the Hartman 1 claim.

Appellant's assertion that he abandoned his interest in the Hartman 1 claim many years ago, the absence of appellant's name from all annual filings relating to the Hartman 1 claim after 1992, appellant's filing of Waiver Certifications for other claims but not the Hartman 1 claim beginning in 1994, Shasta County tax records showing Tim Neal as sole owner of the Hartman 1 claim, and Tim Neal's consistent practice of listing on annual filings the co-owners of his claims and appellant not being listed after 1992, coupled with the absence of contradictory evidence in the record, all convince us that appellant intended to abandon his interest in the Hartman 1 claim prior to September 1, 2010. Thus, based on the record before us, appellant was qualified to file a Waiver Certification for the ten claims that are the subject of this appeal.

¹⁰ The Assessment Work Notice form filed on Nov. 17, 1982, identified only appellant and Tim Neal as claim owners, but an accompanying note to BLM included Bauer's name in addition to the names of the other 2 owners.

¹¹ We are cognizant that a Waiver Certification presents more determinative evidence of claim ownership, because the Waiver Certification must include names and original signatures of all claimants, 43 C.F.R. § 3835.10(b), while paying annual maintenance fees has no similar requirement, 43 C.F.R. § 3834.11, and the absence of a claim on a Waiver Certification generally results in forfeiture of the claim, 43 C.F.R. § 3835.92(b).

¹² The maintenance fee payment for the 1995 assessment year, filed with BLM on Aug. 30, 1994, included "Claimant Name: Tim Neal *et al.*" That was the only instance in which any of the filed maintenance fee forms indicated that there may have been an additional owner of the Hartman 1.

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, the request for stay is denied as moot, and the matter is remanded to BLM for reinstatement of appellant's claims and updating of BLM's ownership records for the Hartman 1 claim.¹³

/s/

H. Barry Holt
Chief Administrative Judge

I concur:

/s/

Bruce R. Harris
Deputy Chief Administrative Judge

¹³ The disposition of the ownership interest of Henry Bauer may be problematic. Unless there is evidence that Bauer abandoned his interest in the claim prior to his death in 1991, then the disposition of his interest depends upon Bauer's testamentary directions. If, as appellant intimates, Bauer and his wife died without heirs and, possibly, intestate, then Bauer's interest in the Hartman 1 claim may even have escheated to the State of California, which may now hold an undivided ½ interest in the claim. In the absence of a sale or bequest of Bauer's interest, that interest does not likely reside with Tim Neal.