



CONSOLIDATED GOLDEN QUAIL RESOURCES, LTD, *ET AL.*  
(ON JUDICIAL REMAND)

183 IBLA 250

Decided March 14, 2013



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.*  
(ON JUDICIAL REMAND)

IBLA 2010-47-1

Decided March 14, 2013

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

Decision affirmed.

1. Fees--Mining Claims: Generally--Mining Claims: Rental or Claim Maintenance Fees: Generally

By the appropriations act passed March 11, 2009, Congress directed BLM to collect mining claim maintenance fees during fiscal year 2009 in the manner prescribed by 30 U.S.C. 28f and 28g (2006). Therefore, mining claimants had a statutory obligation to file claim maintenance fees or a small miner waiver certification on or before September 1, 2009, for the 2010 assessment year.

APPEARANCES: R. Timothy McCrum, Esq., Daniel W. Wolff, Esq., Washington, D.C., and Michael H. Singer, Esq., Las Vegas, Nevada, for appellants; Kendra Nitta, Esq., Washington, D.C., and Nancy S. Zahedi, Esq., Sacramento, California, Office of the Solicitor, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

This case returns to the Board on remand from the United States District Court for the District of Nevada (the Court). The Court remanded the case via a Stipulation to Vacate Decision and Remand jointly filed by the parties based on Defendant's Notice of Misstatement and Motion for Status Conference (Notice of Misstatement).

The Board previously determined that our consideration on remand “shall be limited in scope to any legal effect that amendments to the maintenance fee statute after 2006 may have had on appellants’ circumstances, as described in the Notice of Misstatement.” Jan. 17, 2013, Order. Because we find that those amendments did not have any legal effect on appellants’ circumstances, and that the maintenance fees were due but not paid on September 1, 2009, we affirm our prior decision.

### *Background*

Much of the background of this case is described in our previous decision in *Consolidated Golden Quail Resources, Ltd.*, 179 IBLA 309 (2010), and is only briefly recounted here. Appellants Consolidated Golden Quail Resources, Ltd., Beverly Wigglesworth, and James Wayne Cole held three unpatented mining claims in California. These claims were the subject of a mining claim contest, brought by the Bureau of Land Management (BLM) on behalf of the National Park Service, before the Departmental Cases Hearings Division of the Department’s Office of Hearings and Appeals. After conducting a hearing, the presiding Administrative Law Judge ruled in the case on April 23, 2008. The National Park Service appealed that decision to the Board, which set aside and remanded the case for a supplemental hearing on July 28, 2009.

Prior to any supplemental hearing, BLM issued a separate decision declaring the claims forfeited for failure to pay the maintenance fees or to file a maintenance fee waiver certification on or before September 1, 2009, for the 2010 assessment year. Appellants appealed that decision to the Board. The Board considered and rejected a number of arguments by appellants, ultimately holding that there was no evidence that appellants properly filed the required maintenance fees. Therefore, the Board affirmed BLM’s decision.

Appellants appealed the Board’s ruling to the Court. On October 9, 2012, the Court affirmed the Board’s decision. However, on November 30, 2012, counsel for Respondents filed the Notice of Misstatement indicating that neither the Board nor the Court were privy to amendments to the maintenance fee statute due to a failure of the parties to discuss or cite to these amendments in their briefs. Pursuant to a subsequent stipulation among the parties, the Court remanded the case to the Board to reconsider our decision.

The Board established a briefing schedule and the parties have since briefed the merits of the case on remand.

*The Maintenance Fee Statute*

The single issue to be determined by the Board is whether amendments to the maintenance fee statute had any material effect on the requirement for appellants to file maintenance fees or a maintenance fee waiver certification on or before September 1, 2009. To the extent appellants raise arguments already addressed by the Board in our final ruling in *Consolidated Golden Quail* and incorporate by reference prior briefs on matters not before us here, pursuant to our briefing order in this case we reject those arguments. See Jan. 17, 2013, Order; see also Supplemental Statement of Reasons (SSOR) at 5-6; *Id.* at Exs. 2, 3. Both this Board and the Court have already determined that appellants did not timely file maintenance fees for the 2010 assessment year. Therefore, appellants may prevail only if the requirement to file maintenance fees by September 1, 2009, was not in effect on that date.

The statutory history of mining claim maintenance fees is succinctly provided in the Notice of Misstatement. The basic and longstanding rule is that 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 or file a maintenance fee waiver certification if qualified. 30 U.S.C. § 28f(a) (2006); see 43 C.F.R. § 3834.11(a)(2). In 2003, Congress authorized the collection of maintenance fees from 2004 through 2008. Department of the Interior and Related Agencies Appropriations Act, 2004, Pub. L. No. 108-108, 117 Stat. 1241, 1245 (2003). The 2006 printing of the United States Code codified this requirement, including the specific date range.

In 2007, Congress passed a substantially similar amendment in the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, 2101 (2007), with the important difference being the removal of the date range. By removing the phrase “for years 2004 through 2008” Congress made the maintenance fee requirement permanent and indefinite. Then, on March 11, 2009, Congress again amended the statute by authorizing BLM to collect “mining law administration fees”<sup>1</sup> in fiscal year 2009, and every year thereafter “only to the extent provided in advance in appropriation Acts.” Omnibus Appropriations Act, 2009, Pub. L. No. 111-88, 123 Stat. 524, 704. That Act also repealed the 2007 amendment, thus replacing the phrase “for years 2004 through 2008.” However, in October 2009, when the relevant section of the United States Code was amended at 30 U.S.C. § 28f(a), it did not

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<sup>1</sup> As pointed out by BLM, “mining law maintenance fees” should properly be read as including maintenance and location fees and service charges. Supplemental Answer at 6 n.7.

include any such date range, but instead required the payment of maintenance fees “on or before September 1 of each year to the extent provided in advance in Appropriations Acts.” Interior Department and Further Continuing Appropriations, Fiscal Year 2010, Pub. L. No. 111-88, 123 Stat. 2904, 2907-08.

*Appellants’ Obligation to Pay Maintenance Fees*

BLM’s decision, affirmed by the Board in *Consolidated Golden Quail*, found that appellants had a statutory obligation to pay maintenance fees for their three claims on or before September 1, 2009, which occurred during fiscal year 2009, for the following 2010 assessment year. The amendment in effect as of September 1, 2009, was that passed by Congress on March 11, 2009. Appellants argue that “after Congress passed its appropriation act in March 2009, there was *no* statutory obligation to pay a maintenance fee by September 1, 2009, or at all, for the 2010 assessment year.” SSOR at 7. Appellants assert that the 2009 repeal of the language in the prior 2007 amendment, removing the date range, is the controlling statutory authority here and they argue that, by adding that limited 2004 through 2008 date range back to 30 U.S.C. § 28f(a), in 2009, Congress “negated the obligation of mining claimants to pay an annual maintenance fee in 2009 for the upcoming [2010] assessment year.” Reply at 5.

[1] Appellants ignore the fact that Congress, within the March 2009 appropriations act, directed BLM to collect maintenance fees in fiscal year 2009: “*In fiscal year 2009 and each fiscal year thereafter, the Bureau of Land Management shall collect mining law administration fees; such fees shall be collected in the same manner as those authorized by 30 U.S.C. 28f and 28g only to the extent provided in advance in appropriations Acts.*” 123 Stat. at 704 (emphasis added). Congress’ repeal of the 2007 amendment does not undermine the plain, controlling language directing BLM to collect maintenance fees in fiscal year 2009. The Department clearly did not desire that Congress place a moratorium on fee collection in 2009, and as pointed out here by BLM, Congress indicated that its March 2009 amendment included “the administrative provisions as requested [by the Department].” Supplemental Answer at 5 (quoting 155 CONG. REC. H1653, 2090 (daily ed. Feb. 23, 2009) reprinted in STAFF OF H.R. COMM. ON APPROPRIATIONS, 111TH CONG., REP. ON OMNIBUS APPROPRIATIONS ACT, 2009, at 1103 (Comm. Print 2010)). Congress’ stated intent was to ensure that “mining law administration can be supported with claim maintenance fees, as in the past,” not to suspend collection of fees in fiscal year 2009. *Id.*

Congress’ intent is further evident from its funding of the mining claim fee program in March 2009 and its requirement that the designated funding be defrayed

by maintenance fees collected during that fiscal year. 123 Stat. at 701. We reject the assertion that Congress would *sub silentio*, by replacing a few previously-repealed words of the United States Code (only to remove them again 7 months later), bar BLM from implementing a funded fee-collection program that would ultimately yield over \$55,000,000 in maintenance fees and service charges for as many as 375,000 mining claims in fiscal year 2009. Bureau of Land Management, Public Land Statistics 2009, Vol. 194 (May 2010) at Table 3-22, 3-25.

Appellants have twice sought to supplement their allotted briefing in this case. Appellants have provided a copy of BLM Instructional Memorandum No. 2009-206 (IM), providing guidance to BLM staff days before the payment deadline for the 2010 assessment year. Appellants suggest that this guidance shows uncertainty among BLM staff about the effect of the March 2009 amendment.<sup>2</sup> Appellants' Notice of Supplemental Authority at 1. But, in light of our discussion of the statute *supra*, the IM is inapposite to our analysis. We note, however, that the IM correctly stated that "the intent of Congress in this matter is clear that mining claimants are required to pay mining claim maintenance fees and location fees during FY 2009" and that BLM shall collect those fees in the same manner as in previous years, consistent with the intent of Congress. IM at 2; *see* 123 Stat. at 704.

Appellants also offer a Notice of Material Development in Related Case (Mullikin Notice) informing the Board that *Donald E. Mullikin et al. v. Kenneth Salazar, Secretary, U.S. Dept. of the Interior*, No. 3:10-cv-0235-HRH was resolved by the U.S. District Court for the District of Alaska pursuant to a settlement agreement. The Mullikin Notice asserts that the instant case and *Mullikin* are "indistinguishable," that the U.S. Department of Justice filed a Notice of Misstatement in that case that is materially the same as one filed with the Court in the instant case, and that the settlement of *Mullikin* "provides a further compelling reason for this Board to reconsider and reverse" our decision. *Id.* at 2-3. We disagree.

The Notice of Misstatement filed in *Mullikin* indeed is substantially similar to the one filed in the instant case in that it concludes, as we do here, that there was a requirement for mining claimants to file maintenance fees or waiver certifications on or before September 1, 2009, for the 2010 assessment year, notwithstanding the March 2009 statutory amendment. Mullikin Notice at 9. In any event, the Notice of Misstatement filed in *Mullikin* accurately predicted that its comprehensive discussion

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<sup>2</sup> The express purpose of the IM, however, was to provide guidance on "how to respond to inquiries [by the public] regarding the requirement to pay mining claim maintenance fees that are due September 1, 2009, and mining claim location fees that are due for mining claims located during Fiscal Year (FY) 2009." IM at 1.

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of the maintenance fee statute's history would be irrelevant in that case, because the parties had already concluded the terms of a settlement before the Notice of Misstatement was even filed. *Id.* at 9-10. The conclusion of that case has no bearing on appellants' obligations in the instant case or the facts on which we based our prior 2010 decision.

We find that appellants were statutorily obligated to pay mining claim maintenance fees on or before September 1, 2009, or else forfeit their claims by operation of law under 43 U.S.C. § 28i (2006). By the express terms of the amendments at issue in this remand, BLM's decision properly declared the claims 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, our decision in *Consolidated Golden Quail Resources, Ltd.*, 179 IBLA 309 (2010), is affirmed.

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

I concur:

\_\_\_\_\_/s/\_\_\_\_\_  
James F. Roberts  
Administrative Judge