



CHRISTIAN F. MURER

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Decided June 5, 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

CHRISTIAN F. MURER

IBLA 2013-47

Decided June 5, 2013

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring certain mining claims forfeit and void for failure to pay additional maintenance fees within 30 days of receipt of notice.

Affirmed; Petition for Stay Denied as Moot.

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

A statute passed by Congress binds the public and the Department when it takes effect regardless of whether or how the Department promulgates implementing regulations. On December 23, 2011, Congress amended the maintenance fee statute to require holders of placer mining claims to pay the claim maintenance fee for each 20 acres of a placer claim or portion thereof. Such fees were due on or before September 1, 2012, for the 2013 assessment year.

2. Mining Claims: Generally--Mining Claims: Placer Claims--Mining Claims: Rental or Claim Maintenance Fees: Generally--Statutes

When Congress passes a statute modifying the method used to calculate maintenance fees for placer mining claims, such modification is not a fee adjustment made by the Secretary of the Interior under 30 U.S.C. § 28j(c). Therefore, the requirement at 30 U.S.C. § 28j(c)(3) that the Department provide notice to affected claimants before July 1 of the year an adjustment is made under that section is inapplicable to a fee adjustment imposed by other statutory authority.

APPEARANCES: Christian F. Murer, Denver, Co., *pro se*; Kendra Nitta, Esq., and Harvey Blank, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE H. BARRY HOLT

Christian F. Murer has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), declaring 49 unpatented association placer claims¹ forfeit and void for having failed to pay sufficient maintenance fees. For the reasons discussed below, we affirm BLM's decision.

Factual Background

Christian F. Murer is one of eight² locators of the subject association placer claims, each encompassing between 80 and 160 acres, located in an approximate crescent shape around Alkali Lake in Esmeralda County, Nevada. BLM received notices of location for the claims on July 20, 2011.³ BLM's records indicate that Murer paid the processing fees, location fees, and first year's maintenance fees on July 27, 2011. The 2011 maintenance fees paid by Murer totaled \$6,860, or \$140 per claim for 49 claims. On August 31, 2011, Murer again paid \$6,860 in maintenance fees, this time for the 2012 assessment year that began on September 1, 2011.

On August 13, 2012, BLM received \$6,860 from Murer for payment of the 2013 maintenance fees. This time, however, BLM responded to Murer with a notice dated August 27, 2012, indicating that the proffered maintenance fees for the 2013 assessment year were deficient. BLM gave Murer 30 days from receipt of the notice to submit an additional \$44,940 in maintenance fees. The record contains no evidence that Murer timely paid the additional fees or otherwise responded to BLM.

On November 8, 2012, BLM issued the decision under appeal, finding all 49 claims forfeit and void for failure to pay the additional 2013 maintenance fees,

¹ The claims are the "Pay 67" through "Pay 115" (NMC 1049367 through NMC 1049415) mining claims.

² The administrative record identifies the other locators as Donna J. Vrooman, Joe Kirn, Universal Oil & Gas LLC, Discovery Mining Company, Barbara Basile, Turell Enterprises Inc., and Pam Turell.

³ The administrative record contains an amended notice of location for the Pay 112 claim that BLM received on Sept. 26, 2011.

and indicating that a refund of the \$6,860 Murer had paid would be authorized following expiration of the appeal period. Murer timely appealed and requested a stay of BLM's decision.

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 to the extent provided in advance in Appropriations Acts.” 30 U.S.C. § 28f(a) (2006) *as amended by* Interior Department and Further Continuing Appropriations, Fiscal Year 2010, Pub. L. No. 111-88, 123 Stat. 2904, 2907-08; *see* 43 C.F.R. § 3834.11(a)(2).⁴ 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); *Art Anderson (On Reconsideration)*, 182 IBLA 27, 28 (2012).

On December 23, 2011, Congress amended the mining law to require that holders of placer mining claims pay “the claim maintenance fee . . . for each 20 acres of the placer claim or portion thereof.” Consolidated Appropriations Act, 2012, Division E § 430(1)(B), Pub. L. No. 112-74, 125 Stat. 786, 1047 (amending 30 U.S.C. § 28(f)(a)) (emphasis added). Previously, the statute did not differentiate between types of mining claims for the purposes of calculating annual maintenance fees, *see* 30 U.S.C. § 28f(a) (2006), and BLM accepted one maintenance fee per claim, including association placer claims of up to 160 acres, as evidenced by BLM's acceptance of Murer's payments for the 2011 and 2012 assessment years. *See* 77 Fed. Reg. 44155, 44156 (July 27, 2012).

Subsequently, pursuant to 43 U.S.C. § 28k (2006),⁵ BLM published an interim final rule in the *Federal Register*, effective immediately, implementing the new congressionally-required method of calculating maintenance fees for placer mining

⁴ 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 on Sept. 1 of the year payment is due. 30 U.S.C. § 28f(a) and (b) (2006); *see* 43 C.F.R. § 3834.11(a).

⁵ “The Secretary of the Interior shall promulgate rules and regulations to carry out the terms and conditions of section[] 28f . . . of this title as soon as practicable” 43 U.S.C. § 28k (2006).

claims, starting with maintenance fees due on or before September 1, 2012. 77 Fed. Reg. at 44156.

In this case, after Murer timely paid maintenance fees for the 2012 assessment year in the amount of \$140 per association placer claim, BLM determined that under the recent amendment to the mining law, Murer's payment was deficient. BLM then provided notice to Murer under 43 C.F.R. § 3834(d),⁶ giving him 30 days to pay the additional amount due for the maintenance fees or the claims would be forfeited. Murer failed to respond.

Analysis

[1] Murer's statement of reasons (SOR) conveniently discounts Congress' mandate that he and other locators of association placer mining claims must pay maintenance fees for each 20 acres or portion thereof.⁷ Instead, he asserts that BLM erred in promulgating the interim final rule and that, in doing so, BLM violated the notice-and-comment requirements of the Administrative Procedure Act, 5 U.S.C.

⁶ Part 3834 originally allowed no opportunity to cure a deficient maintenance fee payment. See 68 Fed. Reg. 61046, 61073 (Oct. 24, 2003). Shortly thereafter, however, the rule was revised on the occasion of BLM's first Consumer Price Index (CPI) adjustment in maintenance fees pursuant to 43 U.S.C. § 26(j)(c), and the revised rule allowed for notice and a 30-day opportunity to cure a deficient payment in any year in which BLM makes a CPI adjustment. See 69 Fed. Reg. 40294, 40296 (July 1, 2004). BLM revised the rule again the following year, and that revision, currently in effect at 43 C.F.R. § 3834.23(d), provided that notice and an opportunity to cure will apply to a deficient payment made in any year in which "the fees have changed through any means This rule will make this curing provision applicable whenever Congress enacts *any other statutes that require an adjustment of the fees.*" 70 Fed. Reg. 52028 (Sept. 1, 2005) (emphasis added). As a result, in this instance Murer was entitled to notice and an opportunity to cure his deficient payment, which BLM provided and Murer ignored. The rule also provides, however, that the failure to pay the additional amount due and cure the deficient payment will result in forfeiture of the affected mining claims. 43 C.F.R. § 3834.23(d).

⁷ Murer addresses Congress' action only by speaking disparagingly of a sponsoring member of Congress and characterizing the legislative process as a "clandestine means to underhandedly attempt to amend the General Mining Laws of this Great Nation, [which] is a[n] unconscionable travesty of American political process." SOR at 5. He then states that the change in the law was the result of "some sort of shuttered window, closed door, off the record, back room private political trade of favors." *Id.* at 6. Such diatribe is not helpful to Murer's argument.

§ 553 (2006) (APA). That argument is unavailing, and we reject it.

Regardless of the language in the interim final rule, and regardless of the steps taken in the rule-making process, *Congress* required Murer to pay the maintenance fee for each 20 acres of his placer mining claims for the 2013 assessment year, which requirement generally became effective upon the enactment of the Consolidated Appropriations Act, *see* 125 Stat. 1047, *not* upon publication of the interim final rule, which cannot vary the statutory requirement. *See Jim F. Rusher*, 141 IBLA 265, 267-68 (1997). Furthermore, the APA's requirement for notice and comment does not apply "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(3)(B) (2006). The Department made the required finding when it published the interim final rule. *See* 77 Fed. Reg. at 44155-56.

To the extent Murer finds compliance with the statute burdensome or questions the motivations of Congress, we are without jurisdiction to provide him relief.

[2] Murer also complains that by publishing the interim final rule addressing the maintenance fee adjustment on July 27, 2012, BLM violated 30 U.S.C. § 28j(c)(2), which states that "[t]he Secretary shall provide claimants notice of any adjustment made under this subsection not later than July 1 of any year in which the adjustment is made." *See* SOR at 3. We point out that Congress' action in the Consolidated Appropriations Bill changing the way maintenance fees are calculated for placer mining claims *was not* a fee adjustment under 30 U.S.C. § 28j(c). That statutory section requires the Secretary of the Interior to adjust fees based on the CPI, and the July 1 notice requirement applies to "any adjustment *made under this subsection* [§ 28j(c)]." (Emphasis added.) Accordingly, Murer's complaint is misdirected.

Finally, Murer tries to direct our attention to issues involving maintenance fees for lode mining claims, mill sites, and tunnel sites. *See* SOR at 2, 4. However, Murer's appeal involves his placer mining claims and his failure to pay the required maintenance fees for those claims. Maintenance fees for other types of mining claims are, therefore, not at issue in this appeal, and we decline to address them.

The statute is self-operative. It explicitly states that failure to timely pay the required maintenance fee automatically results in forfeiture of the mining claim by operation of law. 30 U.S.C. § 28i (2006); *see* 43 C.F.R. §§ 3830.91(a)(4), 3835.92(a). Also, in this case the failure to timely cure a deficient maintenance fee payment results in forfeiture of the involved claim. 43 C.F.R. § 3834.23(d). Murer

failed to cure his deficient maintenance fee payment, after BLM provided him notice and an opportunity to cure. As a result, BLM properly declared the mining claims at issue forfeited by operation of law.

Accordingly, 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 is affirmed and the petition for stay is denied as moot.

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

I concur:

_____/s/_____
James F. Roberts
Administrative Judge