



RANDALL STORY

IBLA 2014-152

Decided February 25, 2015



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

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Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring three unpatented placer mining claims forfeited for lack of compliance with the statutory maintenance requirements. ORMC 164486, *et al.*

Dismissed in part; affirmed.

1. Administrative Procedure: Standing--Rules of Practice--Appeals:
Standing to Appeal

A person must be both a party to the case and be adversely affected by a decision to have standing to appeal. 43 C.F.R. § 4.410(a). A party generally shows it is adversely affected by demonstrating it has a legally cognizable interest in the land, such as actual use of the land affected by the decision. Where a mining claimant transfers his or her interest in a claim via quitclaim deed, the claimant will not have standing to appeal a subsequent forfeiture decision without affirmatively demonstrating how the claimant is adversely affected by it.

2. Mining Claims: Rental or Claim Maintenance Fees:
Generally--Mining Claims: Rental or Claim Maintenance Fees:
Small Miner Exemption

A mining claimant with 10 or fewer mining claims may file a small miner waiver in lieu of paying the mining claim maintenance fees in any given year. To complete the claimant's obligations, he or she must subsequently perform assessment work on the claims during the assessment year and file with BLM an affidavit of labor on or before the December 30th following the end of the assessment year. 43 C.F.R. § 3835.31(a).

3. Mining Claims: Assessment Work--Mining Claims: Rental or Claim Maintenance Fees: Generally

Neither the Board nor BLM may provide relief to a mining claimant who fails to timely file an affidavit of labor when required by statute. 43 U.S.C. § 1744(c) (2012).

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

The Board adheres to the presumption that government officials have not lost or misplaced legally significant documents. Therefore, the absence of an annual filing from a government record invokes the presumption that the document was not filed. The Board gives great weight to this presumption, but it may be rebutted by probative evidence.

APPEARANCES: Randall Story, *pro se*.

OPINION BY CHIEF ADMINISTRATIVE JUDGE JONES

Randall Story has appealed from three decisions, all dated March 3, 2014, issued by the Oregon State Office, Bureau of Land Management (BLM). In the decisions, BLM separately declared the Big Bend (ORMC 164486), Eagle Mountain #1 (ORMC 169119), and Eagle Mountain #2 (ORMC 169120) unpatented placer mining claims forfeited. In each decision, BLM states that the forfeiture resulted from Mr. Story's failure to file affidavits of labor on or before December 30, 2013, for the 2013 assessment year. Based on the following analysis, we dismiss the appeal as to the Eagle Mountain #2 claim, and affirm BLM's decisions for the Big Bend and Eagle Mountain #1 claims.

The record shows that Larry and Suzanne Yarbrough located the Big Bend claim on October 2, 2008. These individuals later transferred their interest to Mr. Story via quitclaim deed recorded by the county recorder on May 8, 2009.

Mr. Story and three others co-located the Eagle Mountain claims on March 15, 2012, and paid the first year's maintenance fees.

In August 2013, Mr. Story submitted a maintenance fee waiver certification (Waiver Certification) for the Big Bend and Eagle Mountain claims. On August 15, 2013, Mr. Story executed a quitclaim deed granting his interest in the Eagle Mountain #2 to another party. BLM subsequently issued the decisions under appeal.

[1] The first issue is whether Mr. Story has standing to appeal BLM's decision regarding the Eagle Mountain #2 claim. To have standing to appeal, a person must be both a party to the case and be adversely affected by the decision. 43 C.F.R.

§ 4.410(a). A party may be adversely affected if he or she can show a legally cognizable interest in the lands in question, such as actual use of those or adjacent lands. *Western Aggregates, LLC*, 174 IBLA 280, 284 (2008). In this case, Mr. Story transferred his legal interest in the Eagle Mountain #2 claim via quitclaim deed prior to BLM issuing its decision. Mr. Story makes no assertion that he retained any interest that could be adversely affected by the forfeiture of the claim. Accordingly, we dismiss Mr. Story's appeal with regard to the Eagle Mountain #2 claim for lack of standing.

The remaining issue is whether Mr. Story completed assessment work and filed the required affidavits of labor to maintain the Big Bend and Eagle Mountain #1 mining claims. The holder of an unpatented mining claim is required to pay a maintenance fee for each claim or site on or before September 1 of each year. 30 U.S.C. § 28f(a) (2012); *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 (2012), and the related filing requirements of section 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (2012), for the upcoming assessment year. 30 U.S.C. § 28f(a) and (b) (2012); *see* 43 C.F.R. § 3834.11(a).

[2] The statute, however, grants the Secretary of the Interior the discretion to waive the fee 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. A claimant who has filed a Waiver Certification is required to (1) perform assessment work during the assessment year for which the waiver is granted, and (2) file an affidavit of labor on or before December 30 of the calendar year in which the assessment year ends. 43 C.F.R. §§ 3835.12, 3835.15, 3835.31(a); *see John J. Trautner*, 165 IBLA 265, 267 (2005); *Earl Riggs*, 165 IBLA 36, 39 (2005).

[3] The failure to timely file an affidavit of labor performed when required under the mining laws "shall be deemed conclusively to constitute an abandonment of the mining claim . . . by the owner," thereby rendering the claim void. 43 U.S.C. § 1744(c) (2012); *United States v. Locke*, 471 U.S. 84, 97-100 (1985). Unfortunately, the statute is self-operative. Neither BLM nor the Board has discretion to waive the maintenance requirements or provide relief from the consequences of noncompliance. *See Jon Roalf*, 169 IBLA 58, 62 (2006); *Carl A. Parker, Sr.*, 165 IBLA 300, 303-04 (2005), and cases cited.

[4] The Board adheres to the presumption that government officials have properly discharged their duties and not lost or misplaced legally significant files. *Christopher L. Mullikin*, 180 IBLA 60, 68-69 (2010), and cases cited. Since the record

before us does not include affidavits of labor filed with BLM by December 30, 2013, we presume Mr. Story did not timely file affidavits. To prevail in this appeal, Mr. Story must present evidence to rebut that presumption.

On appeal, Mr. Story asserts that on August 22, 2013, he mailed to BLM a check for \$30.00, two Waiver Certifications (“one for Claim Eagle Mountain #1 . . . and Eagle MT#2 . . . and one Big Bend”), and two notarized affidavits of labor. Notice of Appeal. Mr. Story asserts that BLM acted negligently “as to the disappearance of our proof of labor and the enclosed fees.” *Id.* To corroborate his assertions, Mr. Story provides a photocopy of a single Waiver Certification form listing all three claims at issue and a certified mail card. BLM’s records contain no evidence that Mr. Story submitted affidavits of labor for the Eagle Mountain #1 and Big Bend claims by December 30, 2013.

Mr. Story provides no documentary evidence to support his assertion that his mailing, received by BLM on August 22, 2013, contained anything more than this single Waiver Certification. Of particular note, Mr. Story has not provided evidence that the affidavits of labor were filed by December 30, 2013. We do not find Mr. Story’s statements sufficient to rebut the presumption articulated in *Mullikin*, and we find no evidence in the record to support such a ruling. Accordingly, we find no basis to reverse BLM’s decisions.

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 appeal is dismissed with regard to the Eagle Mountain #2 claim, and the decisions are affirmed with regard to the Eagle Mountain #1 and Big Bend claims.

_____/s/
Eileen Jones
Chief Administrative Judge

I concur:

_____/s/
Charles S. Yordy III
Acting Administrative Judge