



NIELSON MINING GROUP

185 IBLA 394

Decided: June 25, 2015

**Editor's note: Erratum dated September 14, 2015.
See 185 IBLA 397A below.**



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

NIELSON MINING GROUP

IBLA 2015-1

Decided: June 25, 2015

Appeal from and petition for a stay of a September 15, 2014, decision of the Utah State Office, Bureau of Land Management. UMC 367634, *et al.*

Affirmed, as Modified; Petition for Stay Denied as Moot.

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

The owner of interests in more than 10 mining claims as of September 1 does not qualify for the small miner exemption from annual maintenance fees for the next assessment year. The failure of such owner to pay annual maintenance fees will result in forfeiture of the mining claims for which the maintenance fees were required.

2. Mining Claims: Claim Maintenance Fees: Mining Claims--Abandonment

The failure to pay annual maintenance fees timely is not a curable regulatory defect, and BLM has no authority to provide claimants with notice and an opportunity to cure the deficiency after the September 1 deadline has passed.

APPEARANCES: Scott Nielson, West Valley City, Utah, *pro se.*

OPINION BY CHIEF ADMINISTRATIVE JUDGE JONES

On September 30, 2014, the Nielson Mining Group (Nielson) appealed and petitioned for a stay of a September 15, 2014, decision of the Utah State Office, Bureau of Land Management (BLM). In that decision, BLM informed Scott Nielson he did not qualify to file a Small Miner Maintenance Fee Payment Waiver Certification (Waiver Certification) because he held interests in more than 10 mining claims. BLM further stated that the Kents Prophecy, Split Rock, Utopia 1 and 2 (UMC 367634-367637) and White Cloud No. 3 and Swede unpatented mining claims (UMC 420248-420249)

would be forfeited by operation of law in accordance with 43 C.F.R. § 3835.91 if Nielson did not pay the 2015 maintenance fees for each of the 6 claims within 30 days of receiving the agency's correspondence. The record does not have evidence showing Nielson timely paid the maintenance fees for the 2015 assessment year. For the reasons set forth below, we affirm, as modified.

On February 1, 2001, Scott Nielson and 7 other co-locators filed with BLM a notice of location for the 6 mining claims at issue. On April 19, 2014, Scott Nielson and others located 5 additional mining claims (the Limelite claims) and filed a notice of location with BLM on June 18, 2014. Nielson paid a location and an initial maintenance fee for the 2014 assessment year for the Limelite claims. The deadline for filing maintenance fees for the 2015 assessment year ended on September 2, 2014 (since September 1 fell on a Federal holiday). See 43 C.F.R. § 1822.14; *Underwood Livestock, Inc.*, 165 IBLA 128, 131 (2005). Nielson neither filed a Waiver Certification nor maintenance fees for the 2015 assessment year for the claims at issue.

By decision dated September 15, 2014, BLM advised the claimants that as of April 19, 2014, Scott Nielson had a total of 11 mining claims and did not qualify for a waiver for the 2015 assessment year. BLM instructed the claimants that the maintenance fees for the 6 claims at issue must be paid within 30 days from receipt of the decision, which was after the statutory deadline. Nielson did not pay those fees, but it did appeal BLM's decision to the Board.

There are three issues on appeal: One, did Nielson qualify for a small miner waiver for the 2015 assessment year when Scott Nielson held more than 10 mining claims on September 2, 2014; two, if not, were Nielson's mining claims forfeited by operation of law for failure to pay timely the 2015 maintenance fees, and; three, did Nielson have 30 days after receipt of written notification from BLM in which to cure nonpayment of the maintenance fees where BLM was without authority to extend the statutory deadline for filing those fees.

Based on the applicable law and facts of this case, we hold that Nielson was not qualified to file a Waiver Certification, that it failed to pay timely the requisite 2015 maintenance fees, which left the claims at issue forfeited by operation of law, and that BLM was not authorized to provide Nielson with an opportunity to cure the lack of payment after the September 2nd deadline.

[1] The first issue is whether Nielson qualified for a small miner waiver. Under applicable regulations, 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. 30 U.S.C. § 28f(a) (2012). However, BLM may waive the fee for a claimant who meets certain requirements, including a written certification that on the date the payment was due, the claimant and all related parties held not

more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands. See 30 U.S.C. § 28f(d)(1) (2012); 43 C.F.R. § 3835.1(b); *see id.* § 3835.11(a); *see also Audrey Bradbury*, 160 IBLA 269, 273-74 (2003).

Appellant does not contest that Scott Nielson held an interest in more than 10 mining claims as of September 2, 2014. Therefore, he did not qualify for a waiver of the maintenance fees for the 2015 assessment year. See 30 U.S.C. § 28f(d)(1) (2012). Consequently, Nielson had to pay the annual maintenance fee by the September 2, 2014, deadline for the 2015 assessment year in order to retain its claims. See 30 U.S.C. § 28f(a), (b) (2012); 43 C.F.R. § 3835.20(b).

The second issue before us is whether once Appellant did not qualify for a waiver, and did not pay maintenance fees on its claims, it forfeited the claims as a matter of law. The law of forfeiture was established by statute. The statute explicitly provides that failure to timely pay the required maintenance fee automatically results in forfeiture of the mining claim by operation of law. The term “forfeiture” “means the voidance or invalidation of an unpatented claim or site.” 43 C.F.R. § 3830.5; *see* 43 C.F.R. §§ 3830.5, 3830.91(a)(4), 3835.92(a); *Connie Bradshaw*, 179 IBLA 1, 6 (2010); *Howard J. Hunt*, 147 IBLA 381, 384 (1999). Once Appellant did not pay the maintenance fees on September 2, 2014, its claims were forfeited or void.

On appeal, Scott Nielson asserts that Appellant qualifies for a small miner waiver for all 6 claims at issue because “[i]n research of regulations in section 43 CFR 3835, I was unable to find anywhere that indicated that if I was over the Limit of 10 it would revoke my Small Miner Annual Maintenance Fee Waiver.” Notice of Appeal and Request for Stay at 1. As stated above, both statute and regulations require owners of mining claims to pay maintenance fees unless they qualify for a small miner waiver by holding 10 or less mining claims.

[2] The third issue for resolution is whether Nielson had 30 days after receipt of written notification from BLM in which to cure nonpayment of the maintenance fees where BLM was without authority to extend the statutory deadline for filing those fees. The Board has long held that a statutory requirement may not be treated as a curable defect. *Max Buckner*, 156 IBLA 30, 33 (2001); *N.T.M., Inc.*, 128 IBLA 77, 79 (1993); *Harvey A. Clifton*, 60 IBLA 29, 39 (1981). Failure to pay the maintenance fee by September 2 was not a curable defect because payment of the maintenance fee is required by statute (30 U.S.C. § 28f(a) (2012)). The same legal principle is provided by regulation: “If there is a defect in your compliance with a statutory requirement, the defect is incurable.” 43 C.F.R. § 3830.93(a). Thus under applicable law, BLM was not authorized to give Nielson a 30-day extension to pay maintenance fees when Nielson did not pay them on or before the September 2, 2014, deadline. See *Christopher Mullikin*, 180 IBLA 60, 76 (2010), *appeal dismissed per stipulation*, Civ. No.

3:10-cv-00235-HRH (D. Alaska Jan. 23, 2013). Therefore, once Appellant did not pay the maintenance fees by September 2, 2014, the claims were forfeited; the forfeiture could not be reversed by payment of fees after the deadline.

Citing to the Board's regulation at 43 C.F.R. § 3835.93(c), Scott Nielson also argues that Nielson cured the defective Waiver Certification within the time allotted by BLM. Notice of Appeal and Request for Stay at 2 ("So once we were informed that we had a defect in our annual maintenance fee waiver because we were over the 10 claims rule we rectified the problem in a timely manner and are now under that limit."). Nielson's argument is belied by both the record and applicable law. There is no evidence in the case file that Scott Nielson relinquished any of his 11 mining claims on or before September 2, 2014, and therefore Nielson was not eligible to file a Waiver Certification for the 2015 assessment year. Consequently, 43 C.F.R. § 3835.93(c), "What happens if BLM finds a defect in my waiver request?" is not applicable to Nielson's case because Scott Nielson held an interest in more than 10 mining claims and was therefore required to pay the maintenance fee for each claim at issue on or before the due date. 43 C.F.R. § 3835.92(d). As previously stated, a mining claimant holding an interest in more than 10 mining claims must pay a maintenance fee for each claim on or before September 1 of each year. 30 U.S.C. § 28f(a) (2012). The statutory mandate cannot be excused by either BLM or this Board. See *Christopher Mullikin*, 180 IBLA at 76.

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

_____/s/
Eileen Jones
Chief Administrative Judge

I concur:

_____/s/
James F. Roberts
Administrative Judge



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September 14, 2015

IBLA 2015-1) UMC 367634, *et al.*
)
NIELSON MINING GROUP) Mining Claim Maintenance Fees
)
) 185 IBLA 394 (2015)

ERRATUM

The decision in the above-captioned matter, *Nielson Mining Group*, 185 IBLA 394 (2015), contains the incorrect assessment year. The text should refer to the 2014 assessment year, not the 2015 assessment year.

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 is amended accordingly.

_____/s/
Eileen Jones
Chief Administrative Judge

I concur:

_____/s/
James F. Roberts
Administrative Judge