



CMCM INVESTMENTS LLC

185 IBLA 398

Decided June 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

CMCM INVESTMENTS LLC

IBLA 2015-81

Decided June 25, 2015

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring an unpatented mining claim forfeited and void for failure to cure defects within 30 days of receipt of notice. AMC 371403.

Affirmed; petition for stay denied as moot.

1. Federal Land Policy and Management Act of 1976:
Recordation of Mining Claims or Abandonment--Mining
Claims: Defective Filing--Mining Claims: Placer Claims

No placer location shall include more than 20 acres for each individual claimant, and may not exceed 160 acres for an association of up to 8 individual claimants. 30 U.S.C. §§ 35, 36 (2012); 43 C.F.R. § 3832.22(b). Upon transfer of an association placer claim to an individual or an association that is smaller in number than the association that located the claim, the transferor must either “have discovered a valuable mineral deposit before the transfer” or, “[upon] notice from BLM . . . reduce the acreage of the claim” to meet the 20-acre per claimant limit. 43 C.F.R. § 3833.33.

2. Administrative Procedures: Generally--Rules of Practice:
Generally--Notice: Generally--Notice: Constructive Notice

Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the post office of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

APPEARANCES: Mary Jean Mendoza, Las Vegas, Nevada, for CMCM Investments LLC.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

CMCM Investments LLC (Appellant) appeals from and petitions for a stay of a decision of the Arizona State Office, Bureau of Land Management (BLM), declaring the State Street mining claim (AMC 371403) forfeited and void for failure to respond to a notice affording it 30 days in which to file a claim amendment or documentation supporting a discovery of a valuable mineral deposit. BLM sent the notice to Appellant's address of record, as identified in Appellant's Waiver Certification received by BLM on August 29, 2013; Appellant's Affidavit of Performance of Assessment Work received by BLM on December 30, 2013; and a receipt for fees paid by Appellant and received by BLM on December 30, 2013. BLM stated in its decision that the claim was forfeited because Appellant failed to either amend the claim to reduce the number of acres in the claim, or in the alternative, to file documentation supporting a discovery of a valuable mineral deposit prior to the date of transfer of the claim. Administrative Record (AR) Tab 2 (Decision) at 1. BLM had previously issued a notice to Appellant affording it 30 days in which to file a claim amendment or documentation supporting a discovery of a valuable mineral deposit. AR Tab 3 (Notice) at 1. Based on the following analysis, we affirm BLM's decision and deny Appellant's petition for stay as moot.

Background

The placer mining claim at issue was originally located in Yavapai County, Arizona, by an association of 8 persons in 2006. AR Tab 7. Each of the 8 co-locators located 20 acres in each claim, so that each association placer mining claim contained 160 acres, the maximum permitted by law. 30 U.S.C. §§ 35, 36 (2012); 43 C.F.R. § 3832.22(b). The 8 original locators transferred the mining claim to Appellant on May 12, 2007. AR Tab 6. There is no record that any of those locators complied with the regulation applicable to a transfer of an association placer mining claim, which requires that upon transfer to an individual or an association that is smaller in number than the association that located the claim, the transferor must either "have discovered a valuable mineral deposit before the transfer" or, "[upon] notice from BLM . . . reduce the acreage of the claim" to meet the 20-acre per claimant limit. 43 C.F.R. § 3833.33.¹

BLM sent a Notice to Appellant alerting it to the fact that the claim at issue did not meet the 20-acre per locator limit in July 2014. BLM gave Appellant two options

¹ The record demonstrates that Appellant and prior holders of the claims made timely filings of maintenance fee waiver certifications, affidavits of performance of assessment work, and associated processing fees for the claim from 2006 to 2014. AR Tabs 4 and 5.

to remedy this problem. Appellant could submit documentation, dated prior to the date of transfer to the lesser number of claimants, supporting a discovery of a valuable mineral deposit. AR Tab 3 at 2. In the alternative, Appellant could amend the claim to reduce the acreage to meet the 20-acre per locator limit. *Id.* BLM provided Appellant 30 days from the date it received the notice to document a discovery of a valuable mineral deposit or to amend the claim. *Id.* BLM provided notice to Appellant that if the required documents or amendments were not received within the 30 day time period, the mining claim would be declared forfeited and void. *Id.*

The record contains no evidence that Appellant provided documentation supporting a discovery of a valuable mineral deposit or an amendment within the prescribed 30 day period. On November 28, 2014, BLM issued the decision under appeal, declaring the claim forfeited and void because Appellant had not filed an amendment to the claim or documentation supporting a discovery of a valuable mineral deposit within the 30 days provided.

Appellant timely appealed BLM's decision. Appellant does not state that it filed an amendment to the claim or provided the requested documentation by the deadline. Instead, Appellant states that it did not receive BLM's Notice. AR Tab 1, Notice of Appeal, Statement of Reasons, and Petition for Stay (Appeal) at 1. The record supports Appellant's statement. It shows that the Notice, sent July 21, 2014, went unclaimed by Appellant and was returned to BLM on September 9, 2014.

Analysis

[1] The law controlling the disposition of this appeal provides that no placer location shall include more than 20 acres for each individual claimant, and may not exceed 160 acres for an association of up to 8 individual claimants. 30 U.S.C. §§ 35, 36 (2012); 43 C.F.R. § 3832.22(b). Upon transfer of an association placer claim to an individual or an association that is smaller in number than the association that located the claim, the transferor must either "have discovered a valuable mineral deposit before the transfer" or, "[upon] notice from BLM . . . reduce the acreage of the claim" to meet the 20-acre per claimant limit. 43 C.F.R. § 3833.33.

When BLM determines that a claimant has filed any defective document, BLM must send the claimant a notice of the defect by certified mail—return receipt requested. 43 C.F.R. § 3830.94(a). The claimant must cure the defect within 30 days of receipt of BLM's notification of the defects for any document other than a defective fee waiver request. 43 C.F.R. § 3830.94(b). If a claimant fails to submit the required documentation within the 30-day period, the claimant forfeits the mining

claims or sites. 43 C.F.R. § 3830.91(a) (8); *see also* 43 C.F.R. §§ 3830.93(b), 3830.94(d).

In this case, the mining claim at issue comprised 160 acres and therefore did not comply with the 20-acre per claimant limit. 30 U.S.C. §§ 35, 36 (2012); 43 C.F.R. § 3832.22(b). By Notice sent to Appellant's last known address of record, BLM notified Appellant of that defect in the claim, and provided it with 30 days to cure the defect. 43 C.F.R. § 3830.94; *see also Bruce Curtis*, 185 IBLA 371, 374 (2015). The record shows that Appellant did not claim the Notice.

[2] The law governing constructive service is also relevant to the disposition of this appeal. The applicable regulation, 43 C.F.R. 43 C.F.R. § 1810.2 (b), provides:

Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities.

Our precedent clarifies that pursuant to this regulation, “when BLM sends a notice or decision, return receipt requested, to a party's last address of record and it is returned by the Postal Service because there is no forwarding address, or delivery was refused, or no such address exists . . . BLM is deemed to have met its obligation to notify the party and may act as if delivery had actually been made.” *J-O'B Operating Co.*, 97 IBLA 89, 91 (1987). Thus, the transmission of a decision to a party's last address of record by certified mail, return receipt requested, constitutes constructive service even though the delivery was not successful. *Robert W. Willingham*, 164 IBLA 64, 66 (2004), and cases cited. More specifically, we have held that when the U.S. Post Office has attempted to deliver a BLM notice sent via certified mail, return receipt requested, but returned the letter to BLM marked “Unclaimed,” the notice is considered constructively received despite the lack of actual receipt. *Bruce M. Lewis*, 156 IBLA 287, 290 n.3 (2002) and cases cited.

The notice in the instant case is considered to have been constructively received by Appellant despite its lack of actual receipt. Appellant failed to provide the required documentation that any claimant had “discovered a valuable mineral

deposit before the transfer” of the claims, or, in the alternative, amend the claim within the prescribed time period. 43 C.F.R. § 3833.33.

We have carefully considered Appellant’s Appeal. Its contents do not provide a basis on which to alter BLM’s decision. A mining claimant on Federal lands has a responsibility to respond to information requests from the agency charged by the United States Congress with managing the Federal lands and resources the claimant wishes to exploit. *Johnny Smith*, 185 IBLA 254, 255 (2015). The regulations and our precedent clearly establish that Appellant constructively received the Notice in this case despite the lack of actual receipt. *Bruce M. Lewis*, 156 IBLA at 290 n.3; *J-O’B Operating Co.*, 97 IBLA at 92; *see also David Robertson*, 107 IBLA 114, 116 (1989). Appellant failed to respond, and in accordance with the applicable regulations, 43 C.F.R. §§ 3830.91(a) (8), 3830.93(b), and 3830.94(d), we conclude that BLM properly declared the mining claims abandoned and void.

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 affirmed and Appellant’s petition for stay is denied as moot.

_____/s/
James F. Roberts
Administrative Judge

I concur:

_____/s/
Eileen Jones
Chief Administrative Judge