



BRADFORD KOLES, *ET AL.*

186 IBLA 149

Decided September 16, 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

BRADFORD KOLES, *ET AL.*

IBLA 2014-286

Decided September 16, 2015

Appeal from and request for a stay of an August 13, 2014, decision of the Idaho State Office, Bureau of Land Management, declaring unpatented mining claims forfeited by operation of law. IMC 187576-187578.

Reversed; Petition for Stay Denied as Moot.

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

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); *see* 43 C.F.R. § 3834.11(a)(2). BLM may waive the fee for a claimant who has certified in writing 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. 30 U.S.C. § 28f(d)(1) (2012). A claimant who files a Maintenance Fee Waiver Certification must perform assessment work with respect to the mining claims during the year for which a waiver is granted. The claimant must then file an affidavit of assessment work on or before December 30 of the calendar year in which the assessment year ends. 30 U.S.C. § 28 (2012).

2. Mining Claims: Abandonment--Mining Claims: Small Miner Exemption -- Mining Claims: Defective Filing

The Maintenance Fee Waiver Certification must include original signatures of the claimants, or the claimants' authorized representative, who are requesting the waiver. 43 C.F.R. § 3835.10(b)(2). When a Waiver Certification

does not meet the regulatory signature requirement and is filed by the September 1 deadline, BLM properly offers a claimant a chance to cure the defect within 60 days of receiving BLM's notification of the defects, to avoid forfeiting the claim. 43 C.F.R. § 3835.93.

3. 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 accords great weight to this presumption, but it may be rebutted by probative evidence.

APPEARANCES: Kenneth R. Arment, Esq., Cascade, Idaho, for appellants.

OPINION BY CHIEF ADMINISTRATIVE JUDGE JONES

Bradford Koles, Kenneth R. Arment, Wes Ellis, Christopher and Donna Caves, and Philip L. Swanson (Appellants), through counsel, have appealed from and requested a stay of an August 13, 2014, decision of the Idaho State Office, Bureau of Land Management (BLM). In its decision, BLM declared the Blue Bell, Blue Bell #2, and Blue Bell #3 (IMC 187576-187578) unpatented mining claims forfeited for failure to either pay the maintenance fee or file a valid Maintenance Fee Waiver Certification (Waiver Certification) for the 2011 assessment year. BLM determined that because Appellants submitted a defective Waiver Certification on August 30, 2010, and then failed to either timely cure the defect or pay the maintenance fee within 60 days of receipt of the defective notice, the claims were forfeited by operation of law effective September 1, 2010. Based on the evidence in this case, we reverse BLM's decision and deny Appellants' request for a stay as moot.

*Legal Framework*

[1, 2] Under applicable law, 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); *see* 43 C.F.R. § 3834.11(a)(2). BLM may waive the fee for a claimant who certifies in writing 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. 30 U.S.C. § 28f(d)(1) (2012). A claimant who files a Waiver Certification is required to perform assessment work with respect to the mining claims for the assessment year ending at noon on September 1 of the calendar year the waiver is granted, and then file an affidavit of assessment work (Affidavit) on or before December 30 of the calendar year in which the assessment year ends. 43 C.F.R. § 3835.31(a); *see Audrey Bradbury*, 160 IBLA 269, 273-74 (2003). The Waiver Certification must include original signatures of the claimants, or claimants' authorized representative, who are requesting the waiver. 43 C.F.R. § 3835.10(b)(2). When a Waiver Certification does not meet the regulatory signature requirement and is submitted before the regulatory deadline of September 1, BLM properly offers a claimant a chance to cure the defect within 60 days of receiving BLM's notification of the defects. 43 C.F.R. § 3835.93. If the claimant fails to do so, then the claim is forfeited by operation of law. *Id.*; *see Beverly D. Glass*, 167 IBLA 388, 393 (2006).

[3] The absence of an annual filing in a BLM case file invokes the supposition that the document was not filed. The supposition is based on the legal presumption that Government officials have properly discharged their duties and not lost or misplaced legally-significant files. *See Ronald W. Ruff*, 185 IBLA 320, 321 (2015); *Christopher L. Mullikin*, 180 IBLA 60, 68-69 (2010), and cases cited. The Board accords great weight to this presumption of regularity. *Art Anderson (On Reconsideration)*, 182 IBLA 27, 34 (2012). This presumption may, however, be rebutted. *Id.* The presumption may be rebutted by substantial evidence tending to show receipt of the document in question by the appropriate BLM office, but the party seeking to establish that a filing did occur must demonstrate by a preponderance of the evidence that the document was actually filed with BLM. *See U.S. v. Lyle I. Thompson*, 168 IBLA 64, 73 (2006), *aff'd*, *Thompson v. U.S. Dep't of the Interior*, 338 Fed. Appx. 570 (9th Cir. 2009).

#### *Factual Background and Analysis*

On September 1, 2009, Jess Ellis passed away. On October 2, 2009, Mr. Ellis' son, Wes Ellis, was named as the decedent's personal representative. *See* Administrative Record, Probate Case No. CV IE 0917274, District Court of the 4th Judicial District of the State of Idaho, Ada County, Acceptance of Appointment. On August 30, 2010, Appellants timely filed a Waiver Certification for the mining claims for the 2011 assessment year. Jess Ellis was still an owner of record at that time. However, the Waiver Certification did not include Jess Ellis' personal representative's (Wes Ellis) signature.

By Notice dated June 14, 2013, BLM notified Appellants that the Waiver Certification Appellants filed on August 30, 2010, was defective because Jess Ellis' signature was missing from the form. BLM instructed Appellants to re-submit the

Waiver Certification with the appropriate signatures, or pay the maintenance fees within 60 days from receipt of the letter or the claims would be forfeited by operation of law. See 30 U.S.C. § 28f(d)(3) (2012); 43 C.F.R. § 3835.93; *Melvin Peterson*, 180 IBLA 152, 156 (2010).

In response to BLM's Notice, on July 23, 2013, Mr. Cave and Wes Ellis met in person with the BLM land law examiner at that time, Bill Sackman. The administrative record contains a memorandum from that BLM official, which was dated the day of the meeting. Mr. Sackman stated in the memorandum:

Mr. Cave and Mr. Ellis came into the public room to take care of several issues identified in our notice dated June 14, 2013. Mr. Cave and Mr. Ellis were requested to provide signed waivers (amendments for 2011 . . . ) which they completed at the counter. . . . Mr. Jess Ellis (deceased) was signed for by his son Wes Ellis the representative of his estate.

The record also contains an email from Mr. Cave to BLM dated May 7, 2014. Mr. Cave states therein that he was in the BLM office "with Wes Ellis, in front of Bill Sackman . . . . All necessary documents were produced at that time, Bill verified this, and signed off. I witnessed the signature of Wes Ellis on a new waiver form, and it was submitted to Bill Sackman." BLM's acting land law examiner, Melanie Keyes, responded to Mr. Cave's email the same day, and stated that she could not find the "2011 amended waiver with Jess Ellis or Wes Ellis (representative for Jess Ellis) signature on it in the case file." BLM then issued the decision now on appeal.

The issue the Board must decide is whether Appellants timely perfected and filed with BLM an amended Waiver Certification after BLM notified them on June 14, 2013, that their 2011 Waiver Certification was defective and where Wes Ellis, the personal representative of Jess Ellis, amended the Waiver Certification in person on July 23, 2013. The evidence in the record shows Wes Ellis had the legal authority to sign the amended Waiver Certification. BLM's land law examiner at the time stated in his memorandum that Mr. Ellis executed the amended Waiver Certification on July 23, 2013, well within the 60-day cure period. BLM's land law examiner also accepted the amended form for filing, as reflected in his memorandum to the case file.

On appeal, BLM has not disputed these facts. Based on the evidence before us in this case, we find the record supports Appellants' assertion that "Wes Ellis and Cave traveled independently to Boise and met with William Sackman, Lead land law Examiner, at the Boise Office regarding the cure of the defects for the 2011 year fee waiver. Documentation for the cure was accepted and documents were executed in the presence of Mr. Sackman." Notice of Appeal/Statement of Reasons at 2.

Considering the corroborating statements of Appellants and BLM's law land examiner, we find Appellants have overcome the presumption of administrative regularity by showing it is more likely than not BLM timely received their amended Waiver Certification and the document was subsequently lost or misplaced by BLM. Accordingly, we reverse BLM's decision. *See Canadian Mining of Arizona Inc.*, 177 IBLA 368, 370-71 (2009); *Leon F. Scully, Jr.*, 104 IBLA 367, 370-71 (1988).

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 reversed and the requested stay is denied as moot.

\_\_\_\_\_  
/s/  
Eileen Jones  
Chief Administrative Judge

I concur:

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