



MICHAEL WARHOLIC

186 IBLA 358

Decided December 22, 2015



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IBLA 2015-224

Decided December 22, 2015

Appeal from a decision of the California State Office, Bureau of Land Management (BLM). In that decision, BLM declared an unpatented placer mining claim, CAMC 279265, abandoned, null, and void.

Decision Affirmed; Petition for Stay Denied as Moot.

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

Payment of the annual maintenance fee for a mining claim 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 (FLPMA), 43 U.S.C. § 1744(a) (2012), for the upcoming assessment year that begins at noon on September 1 of the year payment is due. However, where a waiver certification is filed for that assessment year, the claimant is required, by the Mining Law of 1872, to perform assessment work during that assessment year and, by section 314(a) of FLPMA, to file an affidavit of having performed such work on or before December 30 of the calendar year in which the assessment year ends. If the claimant fails to timely file the evidence of assessment work, the result is a statutory abandonment of the claims in accordance with 43 U.S.C. § 1744(c) (2012).

APPEARANCES: Michael Warholic, *pro se*.

OPINION BY CHIEF ADMINISTRATIVE JUDGE JONES

Michael Warholic (Appellant) has appealed a June 12, 2015, decision of the California State Office, Bureau of Land Management (BLM). In that decision, BLM declared the Nugget unpatented placer mining claim (CAMC 279265) abandoned, null, and void. BLM stated in its decision the claim was null and void because Appellant failed to file an affidavit of assessment work (Affidavit) on or before December 30, 2014, for the 2014 assessment year.

Issue

The issue before us in this case is: In order to retain his unpatented placer mining claim, was Appellant required to file an Affidavit for the 2014 assessment year before December 30, 2014, since he had timely filed a Waiver Certification for the 2014 assessment year? For the reasons following, we answer the question in the affirmative and therefore uphold BLM's decision under appeal.

Legal Standards

Analysis of this issue is guided by statute and applicable regulations. 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. See 30 U.S.C. § 28(a)(2012); 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 (FLPMA), 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).

The Secretary of the Interior may waive the claim maintenance fee if certain conditions are present. 30 U.S.C. § 28f (2012). Namely, a claimant may certify 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, tunnel sites, or any combination thereof, on public lands (Waiver Certification). See 30 U.S.C. § 28f(d)(1)(A). A claimant who files a Waiver Certification must meet two additional requirements. First, the claimant must perform assessment work during the assessment year for which the waiver is granted. See 30 U.S.C. § 28f(d)(1)(B). "Assessment year" means the 12 months running from 12 noon on September 1 until 12 noon of September 1 the following year. See 43 C.F.R. § 3830.5. Second, the claimant must file an Affidavit of the assessment work on or before December 30 of the calendar year in which the assessment year ends. 43 U.S.C. § 1744(a)(1)(2012); 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).

If a claimant does not timely file an Affidavit, then the mining claim is deemed abandoned, and BLM may declare the claim forfeited, or meaning the same, “null and void.” 43 U.S.C. § 1744(c) (2012); 43 C.F.R. § 3835.05 (definition of forfeit or forfeiture); 43 C.F.R. § 3836.15; *United States v. Locke*, 471 U.S. 84, 97-100 (1985). Neither BLM nor the Board has discretion to waive the maintenance requirements or provide relief from the consequences of noncompliance. See *Ronald W. Ruff*, 185 IBLA 320, 322 (2015) (citing *Carl A. Parker, Sr.*, 165 IBLA 300, 303-04 (2005)). See also *Beverly D. Glass*, 167 IBLA 388, 394 (2006) (“Absent submission of a proper maintenance fee payment or waiver request [by the deadline for paying maintenance fees], BLM properly declared the claim forfeited and void by operation of law.”); *Audrey Bradbury*, 160 IBLA 269, 275 (2003) (filing an Affidavit “is an absolute requirement that cannot be waived” and failure to make the filing automatically results in forfeiture of a claim).

Further guidance is provided at 43 C.F.R. § 3835.16, quoted in full below:

If I am a qualified small miner, and I obtained a waiver in one assessment year, what must I do if I want to pay the maintenance fee for the following assessment year?

- (a) You must perform the required assessment work in the assessment year for which you obtained a waiver from payment of the annual maintenance fee, and file the annual FLPMA document [e.g., Affidavit] required by the December 30 immediately following the payment of the maintenance fee; and
- (b) You must pay the maintenance fee by the proper deadline for the following assessment year.

Facts

On August 19, 2013, Appellant timely filed a Waiver Certification for his unpatented placer mining claim for the 2014 assessment year. On August 7, 2014, Appellant paid the maintenance fees for his mining claim for the 2015 assessment year. Appellant also filed a Notice of Intent to Hold¹ with BLM. However, Appellant did not file an Affidavit for the 2014 assessment year.

¹ Under 43 C.F.R. § 3835.31(d), for a claim covered by a small miner waiver, an affidavit must be filed. Under 43 C.F.R. § 3835.31(c), Appellant would have been required to file a Notice of Intent to Hold if the claim was located during the assessment year or if BLM deferred assessment work. 43 C.F.R. §§ 3833.31(c) and 3836.20-3836.27.

On June 12, 2015, BLM issued its decision declaring Appellant's placer mining claim null and void because Appellant failed to file his Affidavit on or before December 30, 2014. In the decision, BLM acknowledged Appellant had filed a Notice of Intent to Hold but indicated the filing did not fulfill Appellant's obligation to perform assessment work and, under FLPMA, to file an Affidavit on or before December 30, 2014. This appeal followed.

Analysis

As noted, the issue before us is: In order to retain his placer mining claim, was Appellant required to file an Affidavit for the 2014 assessment year before December 30, 2014, since he had timely filed a Waiver Certification for the 2014 assessment year? Appellant was required to file an Affidavit by December 30, 2014, having received a Waiver Certification for assessment year 2014. See 43 C.F.R. §§ 3835.12, 3835.15, 3835.16, 3835.31(a); see *John J. Trautner*, 165 IBLA 265, 267 (2005); *Earl Riggs*, 165 IBLA 36, 39 (2005). The evidence shows Appellant did not file an Affidavit by December 31, 2014. Appellant's claim was automatically forfeited and became null and void when the deadline for filing passed. 43 U.S.C. § 1744(c) (2012); 43 C.F.R. § 3835.91. Therefore, BLM's decision notifying Appellant of the forfeiture of his claim was consistent with applicable regulations.

In his Notice of Appeal, Appellant does not deny he did not file an Affidavit for the 2014 assessment year. Instead, Appellant contends BLM informed him that in order to switch from filing a Waiver Certification and Affidavit to paying maintenance fees he needed to file a Notice of Intent to Hold and pay the maintenance fee. Appellant argues his failure to file an Affidavit for the 2014 assessment year was the direct result of BLM not properly advising him. Appellant also states mining laws are confusing and cause a lot of problems.

Although we may empathize with Appellant's situation, once Appellant timely filed a Wavier Certification for the 2014 assessment year, he was required to file an Affidavit for the 2014 assessment year by December 30, 2014. With regard to Appellant's assertion BLM never informed him he still had to complete his Affidavit for the 2014 assessment year, because the claim was automatically forfeited under the statute when no affidavit was filed, we have no discretion to reverse BLM's decision. BLM is not required to provide a reminder of the due date for annual filings. Further, the U.S. Supreme Court has stated that persons dealing with the Government are presumed to have knowledge of relevant statutes and regulations "regardless of actual knowledge of what is in the Regulations or of the hardship resulting from innocent ignorance." *Fed. Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 385 (1947); see *David McCarthy*, 181 IBLA 224, 228 (2011).

As for Appellant's statement that the law applicable to retaining mining claims is confusing and causes a lot of problems, we do not disagree. However, as we have noted previously: "The fact that obligations with respect to two different assessment years are imposed upon the small miner has proven confusing to some . . . does not excuse the failure to meet these legal obligations." *Audrey Bradbury*, 160 IBLA 269, 274 (2003).

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. We also deny Appellant's petition for stay as moot.

_____/s/_____
Eileen Jones
Chief Administrative Judge

I concur:

_____/s/_____
James F. Roberts
Administrative Judge