



BARTON COFFMAN
SARAH KUHL

187 IBLA 338

Decided May 5, 2016



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

703-235-3750

703-235-8349 (fax)

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SARAH KUHL

IBLA 2015-221

Decided May 5, 2016

Appeal from a decision of the California State Office, Bureau of Land Management, declaring a placer mining claim null and void for failure to file a notice of intent to hold. CAMC296745.

Reversed and remanded; petition for stay denied as moot.

1. Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption--Mining Claims: Recordation of Affidavit of Assessment Work or Notice of Intent to Hold

Under 43 C.F.R. § 3835.15(a), a claimant who applies for a small miner waiver if he paid the maintenance fee in the last assessment year must file a notice of intent to hold the claim on or before December 30 immediately following the submission of a waiver request. The obligation imposed by 43 C.F.R. § 3835.15(a) is regulatory rather than statutory. If the claimant does not timely file a notice of intent to hold, BLM must provide the claimant notice and an opportunity to make the filing.

APPEARANCES: Barton Coffman, North San Juan, California, *pro se*, and for Sarah Kuhl, Auburn, California.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE ROBERTS

Barton Coffman and Sarah Kuhl (Appellants) appeal from and petition for a stay of the effect of a July 7, 2015, Decision of the California State Office, Bureau of Land Management (BLM). In its Decision, BLM declared the Golden Lotus placer mining claim (CAMC296745) null and void for failure to file a notice of intent to hold the claim on or before December 30, 2014, for the 2014 assessment year.

Because the requirement for Appellants to file a notice of intent to hold on or before December 30, 2014, was regulatory, not statutory, we reverse and remand the

case to BLM to provide Appellants with an opportunity to submit the notice of intent to hold.

BACKGROUND

Under 30 U.S.C. § 28f(a) (2012), 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* 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 that begins at noon on September 1 of the year payment is due. *See* 30 U.S.C. § 28f(a) (2012); *see* 43 C.F.R. § 3834.11(a).

The Mining Law, however, grants the Secretary of the Interior the discretion to waive the maintenance 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, tunnel sites, or any combination thereof, on public lands (Waiver Certification). 30 U.S.C. § 28f(d) (2012); 43 C.F.R. § 3835.1. A claimant who files 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 the assessment work (Affidavit) 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 Paul Dickison*, 186 IBLA 69, 70-71 (2015); *John J. Trautner*, 165 IBLA 265, 267 (2005); *Earl Riggs*, 165 IBLA 36, 39 (2005). A failure to file either the required Waiver Certification or Affidavit by the applicable deadline results in the subject claim being forfeited and void. *See Beverly D. Glass*, 167 IBLA 388, 394 (2006); *Audrey Bradbury*, 160 IBLA 269, 275; *see also Dickison*, 186 IBLA at 70-71.

In this case, because Appellants paid claim maintenance fees for the 2014 assessment year, they were not required to file an Affidavit on or before December 30, 2014. Appellants decided to apply for a small miner waiver for the 2015 assessment year, and so they timely filed their Waiver Certification on September 3, 2014. In such a situation, 43 C.F.R. § 3835.15(a) required Appellants to file a notice of intent to hold their claim on or before December 30, 2014, *i.e.*, the December 30 immediately following the submission of their Waiver Certification. *See* Decision at unpaginated (unp.) 1. Appellants do not dispute that they did not file a notice of intent to hold their claim on or before December 30, 2014. *See* Notice of Appeal.

On July 7, 2015, BLM issued the Decision. BLM acknowledged that the Waiver Certification for the 2015 assessment year was timely filed, but stated that a notice of intent to hold was not received on or before the December 30, 2014, due date.

Decision at unp. 1. BLM declared the claim null and void. *Id.* Appellants timely filed a notice of appeal and petition for stay of BLM's Decision.

ANALYSIS

The issue before the Board is whether BLM properly declared Appellants' claim null and void for failure to file a notice of intent to hold the claim on or before December 30, 2014. Resolution of this question turns upon whether the requirement to file a notice of intent to hold in this case is statutory or regulatory. If the requirement is regulatory, BLM erred in declaring the claim null and void without affording Appellants an opportunity to submit the required notice.

The governing regulation, 43 C.F.R. § 3830.93, provides:

(a) If there is a defect in your compliance with a statutory requirement, the defect is incurable if the statute does not give the Secretary authority to permit exceptions (*see* §§ 3830.91 and 3833.91 of [43 C.F.R.]). If your payment, recording, or filing has incurable defects, the affected mining claims or sites are statutorily forfeited.

(b) If there is a defect in your compliance with a regulatory, but not statutory, requirement, the defect is curable. You may correct curable defects when BLM gives you notice. If you fail to cure the defect within the time BLM allows, you will forfeit your mining claims or sites.

In applying this regulation, the Board has held that the failure to file a notice of intent to hold a mining claim in the same year in which the claim is located is a regulatory rather than a statutory defect, and is therefore curable. *Larry G. Andrus, Jr. (On Reconsideration)*, 169 IBLA 353, 358 (2006).

[1] Directly applicable to the case on appeal is our decision in *Hector Santa Anna*, 171 IBLA 104, 106 (2007), in which the Board held that where the claimant had paid maintenance fees for previous assessment years (2003 and 2004) but then filed a Waiver Certification for the following assessment year (2005), the failure to file a notice of intent to hold mining claims by December 30, 2004, was a curable defect. The Board followed 43 C.F.R. § 3835.15, which asks: "If I qualify as a small miner, how do I apply for a waiver if I paid the maintenance fee in the last assessment year?" Under 43 C.F.R. § 3835.15(a), a small miner must "[m]ake a FLPMA filing, in the form of a notice of intent to hold under [43 C.F.R.] § 3835.31 and 3835.33 . . . on or before December 30th immediately following the submission of a waiver request." The Board stated that "while it is well settled that a statutory requirement may not be treated as a curable defect, a requirement imposed only by regulation is curable."

Hector Santa Anna, 171 IBLA at 106. The Board held that the requirement to file a notice of intent to hold a mining claim pursuant to 43 C.F.R. § 3835.15(a) is regulatory. *Id.*

Similar to *Hector Santa Anna*, Appellants herein paid maintenance fees for their mining claims in previous assessment years, including the 2014 assessment year, and then filed a Waiver Certification on September 3, 2014, for the 2015 assessment year. They were required to “[m]ake a FLPMA filing, in the form of a notice of intent to hold . . . on or before December 30th immediately following the submission of a waiver request.” 43 C.F.R. § 3835.15(a). However, the requirement that Appellants file a notice of intent to hold on or before December 30, 2014, is regulatory and the failure to comply is curable. *Hector Santa Anna*, 171 IBLA at 106.

We reverse BLM’s decision and remand the case to BLM to provide notice and an opportunity to cure under 43 C.F.R. §§ 3830.93(b).

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 case is remanded for further action; the petition for stay is denied as moot.

_____/s/_____
James F. Roberts
Deputy Chief Administrative Judge

I concur:

_____/s/_____
Eileen Jones
Chief Administrative Judge