

INTERIOR BOARD OF LAND APPEALS

Loco Mining Company

155 IBLA 153 (June 27, 2001)

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LOCO MINING COMPANY

IBLA 2000-202

Decided June 27, 2001

Appeal from a decision of the California State Office, Bureau of Land Management, declaring mining claims forfeited and null and void for failure to pay rental fees. CAMC 22675, etc.

Affirmed.

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

Where a mining claimant tenders payment of the fees via a check that is later dishonored by its bank, the effect is the same as if the maintenance fees are not paid. The claims are properly declared forfeited and null and void if the mining claimant did not apply for a small miner exemption from the maintenance fee requirement.

2. Administrative Authority: Estoppel--Estoppel--Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

Where a mining claimant submits a payment for maintenance fees that is dishonored by the bank on which it is drawn; where the claimant notifies BLM of the problem only after the statutory deadline for filing the fees; where BLM misadvises the claimant at that time that BLM may accept a replacement payment as long as the funds arrive before BLM receives notice that there was a problem with the payment; and where no replacement payment is filed until after the statutory deadline, there is no basis for estopping BLM from declaring the claims forfeited and null and void. BLM's misadvice was not in the form of a crucial misstatement in an official decision. Further, reliance on such misadvice was irrelevant, since it was not given until after the mandatory statutory deadline for making payment (when BLM was no longer

authorized to accept maintenance fees) and since reliance on any misadvice may not create rights not authorized by law.

APPEARANCES: Richard E. Lohr, General Manager, Loco Mining Company; Stacy Beck, Mining Law Adjudication, California State Office, Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE HUGHES

The Loco Mining Company (Appellant) appeals from the March 1, 2000, decision of the California State Office, Bureau of Land Management (BLM), declaring 10 placer mining claims null and void for failure to pay maintenance fees in the amount of \$100 per claim or submit a maintenance fee payment waiver certification for the assessment year beginning on September 1, 1999.

BLM's decision acknowledged that it had received a check from Appellant in the amount of \$1,000 (the amount of the maintenance fees required to be paid for the 10 claims) on August 19, 1999. (Decision at 1.) However, it noted that, on September 7, 1999, it had "received notification from the Bank of America (U.S. Treasury General Account) that the \$1,000.00 check was being returned for non sufficient funds." (Decision at 2.) BLM ruled that, under 43 CFR 3833.1-3(a) (1998), a check that does not clear has the effect of BLM not ever having received the fees.

BLM's decision also noted that, "on September 9, 1999, a duplicate payment was received in the form of a cashier's check \* \* \* in the amount of \$1,000.00 to be applied as the 2000 Maintenance Fees [1] for the above named placer mining claims." BLM ruled that such payment was not timely filed under 43 CFR 3833.0-5(m). (Decision at 2.)

As no payment was timely submitted for the 10 claims, they were declared forfeited and null and void. A timely notice of appeal was filed, along with a request for stay. By order dated July 11, 2000, the request for stay was granted.

[1] Under 30 U.S.C. § 28f(a) (1994), as amended, 2/ the "holder of each unpatented mining claim, mill, or tunnel site, located pursuant to the mining laws of the United States, whether located before or after October 21, 1998, shall pay the Secretary of the Interior, on or before September 1 of each year for years 1999 through 2001, a claim maintenance fee of \$100 per claim or site." Under 30 U.S.C. § 28i (1994), failure to pay the claim maintenance fee "shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and

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1/ The reference to the 2000 assessment year is to the assessment year beginning on Sept. 1, 1999, and ending on Sept. 1, 2000.

2/ The relevant provisions of 30 U.S.C. § 28f(a) (1994) were amended on Oct. 21, 1998, by Pub.L. 105-277, 112 Stat. 2681-235.

the claim shall be deemed null and void by operation of law." 43 CFR 3833.1-5(b), 3833.4(a)(2) (1998).

The record confirms that, on August 19, 1999, BLM received a check from appellant in the amount of \$1,000, the amount of the maintenance fees required to be paid for the ten claims for assessment year 2000. However, it also shows that the check was returned by the bank on which it was drawn due to "non sufficient funds" on September 7, 1999. <sup>3/</sup> Departmental regulations and longstanding Departmental precedent are clear that submission of a check that is not honored by the bank does not constitute payment of maintenance fees. 43 CFR 3833.1-3(a); Elinor O'Rourke, 130 IBLA 87, 88-89 (1994); N.T.M., Inc., 128 IBLA 77, 80 (1993); R. Keith Barrett, 123 IBLA 240, 242 (1992); Twin Arrow, Inc., 118 IBLA 55, 58 (1991); see James S. Guleke, 9 IBLA 73, 74 (1973); J. Martin Davis, A-26564 (Jan. 12, 1953). Accordingly, appellant's submission of a check, which upon presentment was dishonored by the bank on which it was drawn, did not constitute timely payment of the annual maintenance fees for its mining claims. <sup>4/</sup>

[2] Appellant's representative "admit[s] to an accounting error," but points out that it brought the error to BLM's attention by telephone on September 7, 1999. He asserts that a BLM representative told him that "the policy was to accept replacement checks as long as the replacement funds arrive 'before the BLM receives notice that there was a problem'" with the payment. (Notice of Appeal at 2). Appellant attempts to show that, despite BLM's assertions to the contrary, he filed replacement funds before BLM received notice that the original check had been dishonored. (Notice of Appeal at 3-4.)

We note that, if a BLM representative advised appellant's representative that BLM would accept a replacement payment for its maintenance fees as long as the payment arrived before BLM received notice that the original payment had been dishonored, that advice was not correct in the present situation, where a statutory deadline was operating. <sup>5/</sup> As noted above, under 30 U.S.C. § 28f(a) (1994), as amended, the "holder of each unpatented

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<sup>3/</sup> There is no dispute that the bank issued notice that it was dishonoring the check on Sept. 7, 1999, although appellant disputes that BLM could have received that notice on Sept. 7, 1999.

<sup>4/</sup> To hold otherwise would open the door to the routine payment of fees with checks unsupported by adequate funds and require BLM to pursue collection of such payments. We note that it is unnecessary in the present case to consider whether the dishonoring of the check due to bank error might be circumstances where a different result is appropriate, as no evidence of bank error has been submitted.

<sup>5/</sup> BLM acknowledges giving such advice: "[Appellant's representative] states that he was told that the policy of the BLM is to accept replacement checks as long as the replacement funds arrive before the BLM receives notice that there was a problem with the replacement check. While this is true, [he] leaves out one important fact[, t]hat fact being that [under the regulations] the \$100 per claim maintenance fee payment must have been filed on or before September 1, 1999, for the 2000 Assessment Year." (BLM Answer at 1-2.) BLM does not indicate whether it advised appellant's representative of that "important fact" on Sept. 7, 1999.

mining claim, mill, or tunnel site, located pursuant to the mining laws of the United States, whether located before or after October 21, 1998, shall pay the Secretary of the Interior, on or before September 1 of each year for years 1999 through 2001, a claim maintenance fee of \$100 per claim or site."

Appellant essentially asserts that BLM is estopped from voiding its claims because it complied with BLM's instructions (even if erroneous). Estoppel is an extraordinary remedy, especially as it relates to the public lands. Harold E. Woods, 61 IBLA 359, 361 (1982). Estoppel against the Government in matters concerning the public lands must be based on affirmative misconduct, such as misrepresentation or concealment of material facts. United States v. Ruby Co., 588 F.2d 697, 703 (9th Cir. 1978); D. F. Colson, 63 IBLA 221 (1982); Arpee Jones, 61 IBLA 149 (1982). Oral statements by Departmental employees are insufficient to support a claim of estoppel; the erroneous advice upon which reliance is predicated must be in the form of a crucial misstatement in an official decision. See Santa Fe Minerals, Inc., 145 IBLA 317, 324 (1998); Martin Faley, 116 IBLA 398, 402 (1990), and cases cited therein. BLM made no such crucial misstatement in an official decision here.

It is well established that reliance on incomplete or inaccurate information provided by Federal employees cannot create any rights not authorized by law. 43 CFR 1810.3(c); Linmar Petroleum Co., 153 IBLA 99, 107 (2000); Alfred G. Hoyl, 123 IBLA 194A, 194V, 100 I.D. 34, 44-45 (1993), aff'd, 129 F.3d 1377 (10th Cir. 1997). Appellant's representative concedes that he "spoke first with [BLM's Accounting Department] on September 7, 1999," after the statutory deadline for making a timely filing had irrevocably passed. Accordingly, any misadvice provided by BLM could not have contributed to the untimely filing or prevented appellant from curing it, since by the time that advice was given it was already too late for appellant to make a timely filing of the required maintenance fees. In other words, at the time of the misadvice, appellants were no longer authorized by law to hold the claims, owing to their failure to comply with the statute, and their reliance on any misadvice by BLM could not operate to grant them rights not authorized by law.

Although BLM could have accepted a timely-filed replacement payment, none was filed here. The replacement payment that appellant did file was not "filed" until September 8, 1999, when it was received in BLM's offices, well after the mandatory September 1, 1999, deadline. See 43 CFR 3833.0-5(m) (1998). The replacement payment was not transmitted to BLM until September 7, 1999, after the filing deadline, so that the grace period allowed in some circumstances under 43 CFR 3833.0-5(m) does not apply here.

Since no maintenance fee waiver certification had been filed (43 CFR 3833.1-6 (1998)), failure to timely present valid payment had the result that the claims were forfeited. 43 CFR 3833.4(a)(2) (1998).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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David L. Hughes  
Administrative Judge

I concur:

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C. Randall Grant, Jr.  
Administrative Judge