

INTERIOR BOARD OF LAND APPEALS

Thomas L. Carufel and Dorothea L. Johnson

155 IBLA 340 (September 21, 2001)

Title page added by:
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THOMAS L. CARUFEL
DOROTHEA L. JOHNSON

IBLA 98-299, 2000-193

Decided September 21, 2001

Appeal from a decision of the California State Office, Bureau of Land Management, declaring mining claims abandoned, null and void. CAMC 214805, CAMC 214806, CAMC 233126, CAMC 233127.

Affirmed as modified.

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

A mining claimant seeking a waiver of the requirement to pay the annual mining claim maintenance fee must file an annual certification of his qualifications for a waiver on the date payment is due. The refiling of a photocopy of a certification of qualifications previously executed by claimants and filed for a different assessment year does not constitute a timely-filed certification of qualifications for a waiver and the claim is properly held to be forfeited and void.

APPEARANCES: Thomas L. Carufel, Chairman of the Board of Charter Mining Association, Hemet, California, for the Charter Mining Association and Dorothea L. Johnson, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

An appeal has been filed on behalf of Charter Mining Association by Thomas L. Carufel from an April 13, 1998, decision of the California State Office, Bureau of Land Management (BLM), declaring Charter Mining Assoc. Nos. 1 and 2 unpatented placer mining claims (CAMC 214805, CAMC 214806) abandoned, null and void. ^{1/} The basis for the BLM decision was the failure to file documents in response to a February 6, 1998, notice requesting clarification of ownership of the claims within 30 days.

^{1/} The nature of the legal entity referred to as the Charter Mining Association is not clear from the record. Although Thomas L. Carufel refers to himself as Chairman of the Board, a term normally indicative of a corporation, it would appear that the Association is a partnership.

Although appellant had requested a 30-day extension of time to respond to the notice in a letter dated March 6, 1998, due to his hospitalization in February and therapy in March after suffering two strokes, BLM responded by letter dated March 24, 1998, that "we do not have authority to grant you an extension of time." Subsequently, BLM issued the decision from which this appeal is taken invalidating the claims because the maintenance fee waivers filed for the claims did not contain the names and signatures of all of the claim owners.

The BLM February 6 notice referred both to certifications of exemption from the rental fees required by the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (the Rental Fee Act), Pub. L. No. 102-381, 106 Stat. 1378-79 (1992), filed on August 23, 1993, for assessment years beginning September 1 of 1992 and 1993, respectively, and also to maintenance fee waiver certifications that were filed for the subject claims for assessment years commencing September 1 of 1995, 2/ 1996, 1997, and 1998, respectively. The maintenance fee waiver certifications were filed to satisfy the requirements of section 10101 of the Omnibus Budget Reconciliation Act of August 10, 1993 (the Maintenance Fee Act), 30 U.S.C. § 28f(a) (1994), and 43 CFR 3833.1-5, 3833.1-6, and 3833.1-7. Both the Rental Fee Act and the Maintenance Fee Act required a claimant to pay an annual fee of \$100 per claim, but authorized a waiver of or exemption from the fee for small miners. Failure to pay rental fees or file an exemption certificate by August 31, 1993, for the assessment years beginning September 1 of 1992 and 1993 resulted in a conclusive presumption of abandonment of the claim. Lee H. and Goldie E. Rice, 128 IBLA 137, 141 (1994). Similarly, if a claimant failed to file the maintenance fees or waiver certificates by August 31 preceding subsequent assessment years, the claims are forfeited by operation of law. Harlow Corp., 135 IBLA 382, 385 (1996), aff'd., Harlow Corp. v. Norton, Civ. No. 97-0320(RWR) (D.D.C. July 24, 2001); Alamo Ranch Co., 135 IBLA 61 (1996).

Review of the record discloses that when the initial filings (certifications of exemption) for the four claims were made pursuant to the Rental Fee Act on July 23, 1993, for the two assessment years beginning September of 1992 and September of 1993, they consisted of two separate certification forms. One certification form for the year commencing September of 1992 was signed and acknowledged before a notary public by three of the claim owners in August of 1993 and the other certification

fn. 1 (continued)

These placer claims were located by eight locators and encompass a total of 160 acres each. Placer mining claims are limited to 20 acres for each individual claimant, although an association of eight persons may locate a claim of up to 160 acres. 30 U.S.C. §§ 35, 36 (1994); 43 CFR 3842.1-2; see James F. Burke, 148 IBLA 95 (1999); Melvin Helit, 144 IBLA 230 (1998).

2/ Under the regulations, if no change in status had occurred, a small miner exemption certificate previously filed for the assessment year ending September 1, 1994, under the Rental Fee Act is considered a proper certification under the Maintenance Fee Act for waiver of the maintenance fee due on August 31, 1994. 43 CFR 3833.1-7(a).

form for the year beginning September of 1993 was signed by five additional claim owners in August of 1993. These certification of exemption forms were initially returned to the claimants by BLM notice dated June 9, 1994, advising claimants that the certificates were required to contain the notarized signature of all claim owners. Claimants were given 30 days to supply the notarized signature of two omitted claim owners. Responding in a letter filed with BLM on August 25, 1994, Thomas L. Carufel, on behalf of Charter Mining Association, asserted that the notarized signatures of eight associates were all that was required. Enclosed with this letter to BLM were photocopies of the same two certification forms previously filed, bearing the signatures of the same eight individuals, five signatures on one form and three on the other, bearing the same acknowledgments before a notary public made in August of 1993. Unlike the forms originally filed in 1993 which were filled out on both sides of a single piece of paper, the copies filed in 1994 consisted of two pages each set forth on one side of the paper. The only other difference in the forms was that the copies submitted in August of 1994 both stated that they were filed for the assessment year beginning September 1, 1995, and ending September 1, 1996.

Subsequently, these claims were declared abandoned, null and void by BLM decision dated March 7, 1996, on the ground that neither maintenance fees nor a waiver certification was filed on or before August 31, 1995, for the 1996 assessment year (commencing September 1, 1995). This 1996 BLM decision was appealed to the Board. No decision was issued on the merits of this appeal as the BLM decision was vacated and the case remanded (Thomas L. Carufel, IBLA 96-274 (Jan. 15, 1998)) pursuant to a motion filed by BLM asserting that in the unique context of this case ^{3/} a waiver certification filed in August 1994 which is identified as applying to the assessment year commencing September 1, 1995, and ending September 1, 1996, could be considered as timely filed for that assessment year.

Small miner certifications of exemption from the rental fee or maintenance fee waiver certifications were filed for the subject claims on or before August 31 for each of the required years. However, BLM determined that the certifications did not contain the names and signatures of all owners of the claims as required by the pertinent regulations. See 43 CFR 3833.1-7(d)(4), (5); 43 CFR 3833.1-7(d) (1993). The February BLM notice stated that BLM records showed that Thomas S. Carufel and Don Gereis were also owners of the claims. Further, BLM stated that if they were

^{3/} Claimants in this case used the form which BLM provided for certifications under the prior Rental Fee Act. This form had an expiration date of May 31, 1996, and thus was still valid in 1994 when it was filed and on August 31, 1995, when it was due. Further, this form had a blank to fill in the applicable assessment year which was marked for the assessment year beginning September 1, 1995, and ending September 1, 1996. This rental fee waiver form which expired on May 31, 1996, may no longer be used for filings under the Maintenance Fee Act. The proper form developed by BLM under the Maintenance Fee Act provides, by contrast, that it is filed for the assessment year commencing on the first September 1 following the official filing of the form with BLM.

still owners, their names, addresses, and signatures were required for the forms filed for the assessment years commencing in 1992, 1993, 1994, 1995, 1996, 1997, and 1998. In addition, the notice stated that BLM's records also showed Larry Smith and Jerry Mikulski to be owners of the claims, and that their names, addresses, and signatures were required for the assessment years commencing in 1997 and 1998.

Further, BLM advised that if there has been a change in ownership, a copy of the document transferring ownership must be submitted. In the case of a death, the notice advised that a copy of the death certificate must be submitted, along with a copy of the will or decree of distribution from a court showing who received the decedent's interest in the claims. The notice further advised that if co-owners had failed to contribute their portion of required expenditures, a contributing co-owner may serve the delinquent co-owner with written notice or notice by publication once a week for 90 days. If the delinquent co-owner fails to contribute his portion within 90 days after written notice or 180 days after first notice by publication, the notice stated that the interest of the delinquent owner would pass to the co-owner. The notice expressly suggested that appellant contact BLM "for further instructions on what documents must be submitted in order to remove a delinquent co-owner's name."

Claimants were allowed 30 days from the receipt of the notice to respond. When appellant requested an extension due to his medical condition, he specifically requested instructions on what documents must be submitted in order to remove a delinquent co-owner's name. Notwithstanding the fact that BLM's notice specifically invited appellant's inquiry about a process that would take more than 90 days to complete, BLM's March 24, 1998, letter denied appellant's request for an extension, stating: "we do not have authority to grant you an extension of time," and referred to Instruction Memorandum (IM) No. 98-64 (February 26, 1998), and Departmental regulation 43 CFR 3833.4(b). Further, the BLM decision noted that the regulations require that a maintenance fee waiver certification contain the name, address, and signature of all claimants holding an interest in the claim. 43 CFR 3833.1-7(d). Accordingly, the BLM decision held the claims to be abandoned, null and void for failure to provide the complete information required by 43 CFR 3833.1-7(d) within 30 days of notice to do so, citing the regulation at 43 CFR 3833.4(b). ^{4/}

On appeal, appellant argues that the claimants never intended to abandon their claims. Further, appellant contends that BLM erred in invalidating the claims without granting an extension of time to allow clarification of ownership of the claims.

^{4/} Under the statute and regulations, failure to pay the maintenance fee timely causes a claim to be forfeited and the claim is deemed null and void. 30 U.S.C. § 28i (1994); 43 CFR 3833.4(a)(2). When a fee waiver certification is timely filed but is incomplete, failure to submit the information requested by BLM within the time allowed shall result in a mining claim being deemed abandoned. 43 CFR 3833.4(b).

A similar appeal (docketed as IBLA 2000-193) has been filed by claimant Dorothea L. Johnson from a March 3, 2000, BLM decision declaring the Charter Mining Association No. 3 (CAMC 233126) and the Charter Mining Association No. 4 (CAMC 233127) placer mining claims abandoned, null and void. These were also association placer mining claims embracing 160 acres located by eight locators. Small miner exemption or waiver certificates were also filed for these claims on or before August 31 for each of the required years. The decision in this case was similarly based on a failure of claimants to respond to a February 1998 BLM notice giving claimants 30 days to clarify the ownership of the claims, noting that some of the owners of the claim shown on the BLM records were omitted from the certificate of exemption from payment of rental fee or the maintenance fee waiver certification filed for each of the assessment years commencing in 1992 through 1998. ^{5/} We have consolidated these cases for review because they involve a related factual context and the same issues.

Apart from the failure of claimants in both cases to provide a waiver certification which contains the names of all of the claim owners appearing on the records of BLM, the facts of record disclose a more fundamental flaw in the waiver certification filed for the assessment year beginning September 1, 1995. The certification, which was filed with BLM in August of 1994, actually consists of a photocopy of the two separate certifications filed for the same four claims for the assessment years commencing September 1 of 1992 and 1993. The only change has been the alteration of the date of the assessment year for which the filing was made (September 1, 1995, to September 1, 1996, in lieu of September 1, 1992, to September 1, 1993, and September 1, 1993, to September 1, 1994, respectively), a change which would not have been possible if the proper form had been used. See note 3, supra. Accordingly, the certification filed for the September 1, 1995, to September 1, 1996, assessment year contained no signatures executed contemporaneously with the filing of the document. The certification executed in August 1993 could not and did not certify that any of the owners of the claims are qualified to apply for a waiver at the time that the maintenance fee would otherwise have to be paid, August 31, 1995.

[1] The waiver provisions of the Maintenance Fee Act provide in pertinent part that:

The claim maintenance fee required under this section may be waived for a claimant who certifies in writing to the Secretary that on the date the payment was due, the claimant and all related parties—

^{5/} The February 1998 notice requesting clarification of ownership for these claims contained similar advice to the claimants regarding the names of the additional claimants whose addresses and signatures must be added to the forms, documentation required in the event of the death of a claimant or the assignment of a claimant's interest, and procedures for acquisition of the interest of a co-owner that has failed to contribute his share of expenditures.

(A) held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands; and

(B) have performed assessment work required under the Mining Law of 1872 (30 U.S.C. 28-28e) to maintain the mining claims held by the claimant and such related parties for the assessment year ending on noon of September 1 of the calendar year in which payment of the claim maintenance fee was due.

30 U.S.C. § 28f(d)(1) (Supp. IV 1998). Similarly, the implementing regulations provide that "[e]ach small miner shall file a waiver certification on or before September 1 each year to hold the claims each assessment year beginning at 12 o'clock noon on September 1 of the calendar year the certification is due." 43 CFR 3833.1-7(d). (Emphasis added.) ^{6/} Further, this regulation requires that "[t]he small miner shall document, as provided in this paragraph (d), the claimed waiver for each assessment year a small miner's waiver is claimed, certified, and attested to under penalty of 18 U.S.C. 1001." ^{7/} Id. Thus, the statute and regulations require a claimant seeking a waiver to file an annual contemporaneous certification of his qualifications which is attested to under penalty for misrepresentation as provided by 18 U.S.C. § 1001 (1994).

Failure to file the documents required by 43 CFR 3833.1-7(b) through (d) "within the time periods prescribed therein" shall be deemed conclusively to constitute a forfeiture of the mining claim when the claimants also fail to pay the maintenance fee. 43 CFR 3833.4(a)(2). While unintentional omissions causing a failure to provide complete information may be subject to cure when such information is later provided in response to a request from BLM, 43 CFR 3833.4(b), omissions which affect "the heart of the certification process," such as the failure to identify a claim are not such omissions. Kathryn Firestone, 148 IBLA 126, 130 (1999). The failure to file a contemporaneously signed certification of claimant's qualifications executed in support of the specific application for waiver for an assessment year goes to the heart of the waiver certification process. In this case, no certification of qualifications signed and acknowledged by any claimant was filed in 1995 on or before August 31 for the assessment year commencing on September 1, 1995. The certification which was filed in August of 1994 and which purported to certify the claimant's

^{6/} The initial regulation promulgated to implement the Maintenance Fee Act, prior to the 1998 amendment which changed the due date from August 31 to September 1 and extended the Act through 2002, provided that a certification filing was due on or before August 31, 1994, subject to the exception described at note 2 above. Similarly, that regulation further stated that "[e]ach small miner shall file a waiver certification on or before August 31 each year thereafter to hold the claims each assessment year beginning at 12 o'clock noon on September 1 of the calendar year the certification is due." 43 CFR 3833.1-7(d)(1994). (Emphasis added).

^{7/} The statute referred to is a criminal statute making it a crime to make a material misrepresentation of fact in providing information to the Government.

qualifications for a waiver for the assessment year beginning September 1, 1995, was not a certification executed in 1994, but in fact a photocopy of certification documents executed and filed in August 1993 in which claimants had certified their qualifications for an exemption for the assessment years beginning September 1, 1992, and September 1, 1993. We find that a contemporaneous certification of the claimant's waiver qualifications is required by the regulations implementing the statute and the refiling of a certification filed in a previous year does not constitute a timely-filed waiver certification. Accordingly, we find it unnecessary to consider whether BLM erred in denying claimants an extension of time to file the complete information required by the regulations.

Therefore, 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 as modified.

C. Randall Grant, Jr.
Administrative Judge

I concur

Bruce R. Harris
Deputy Chief Administrative Judge