

HALE MINING COMPANY

IBLA 2004-162

Decided May 5, 2004

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring the Balex Nos. 1-9 lode mining claims forfeited for failure to file an affidavit of assessment work on or before December 30, 2003. AMC 349279 through AMC 349287.

Reversed; petition for stay denied as moot.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold--Mining Claims: Abandonment---Words and Phrases

Under the regulations governing the locating, recording, and maintaining of mining claims, mill sites, or tunnel sites, "filed" is defined at 43 CFR 3830.5 as meaning a document is received by BLM on or before the due date or is "[p]ostmarked or otherwise clearly identified as sent on or before the due date by a bona fide mail delivery service" and received by the appropriate BLM state office either within 15 calendar days after the due date or on the next business day after that date, if the 15th day is not a business day for BLM.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold--Mining Claims: Abandonment

An affidavit of assessment work required to be filed with BLM on or before Dec. 30, 2003, for certain mining claims is timely filed, in accordance with 43 CFR 3830.5, when it arrives at the proper BLM office on Jan. 5, 2004, in an envelope bearing a United States Postal Service postage validation stamp of December 30, 2003.

APPEARANCES: Joyce Badame, Trustee, Hale Mining Company, Richardson, Texas.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

On January 20, 2004, the Arizona State Office, Bureau of Land Management (BLM), issued a decision to Hale Mining Company (Hale) declaring the Balex Nos. 1-9 lode mining claims (AMC 349279 through AMC 349287) forfeited for failure to file an affidavit of assessment work on or before December 30, 2003, as required by 43 CFR 3835.31.^{1/} BLM stated that it received Hale's affidavit of assessment work on January 5, 2004, in an envelope postmarked December 31, 2003, after the due date. Hale filed a timely notice of appeal and petition for stay of BLM's decision.

On appeal, Hale states that its affidavit of assessment work "was mailed on the 30th day of December, 2003 as reflected by the postage validated imprint which was confirmed to be the postmark by the postal clerk at the time of mailing." (Notice of Appeal and Petition for Stay at 1.) Examination of the envelope in which BLM received the affidavit of assessment work shows that it bears a United States Postal Service, U.S. Postage Paid validation imprint, dated December 30, 2003, and a postmark cancellation from the North Texas Processing and Distribution Center ("North TX PDO"), dated December 31, 2003. BLM relied on the latter date in its decision, as the date of mailing. Hale contends it should be the former. We agree.

Hale located its claims in 1997. In accordance with section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (2000), the owner of an unpatented mining claim located after October 21, 1976, is required to file with BLM evidence of assessment work or notice of intention to hold the claim on or before December 30 of each year following the calendar year in which the claim was located. Under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (2000), failure to so file constitutes conclusive abandonment of the claim and renders it void.^{2/}

Under 30 U.S.C. § 28f(a) (2000), as amended by the Department of the Interior and Related Agencies Appropriations Act, 2002, Pub. L. 107-63, 115 Stat. 414, 418-19 (2001), the holder of an unpatented mining claim, mill site, or tunnel site was required to pay a claim maintenance fee of \$100 per claim or site on or before September 1 of each year for the years 2002 through 2003. Congress, however, provided the Secretary with discretion to waive the fee for a claimant who

^{1/} BLM revised and reorganized the regulations in 43 CFR Part 3800, effective Nov. 24, 2003 (68 FR 61046, 61064 (Oct. 24, 2003)), which was after the Oct. 1, 2003, date of the 43 CFR volume for 2003. Unless otherwise indicated, regulatory citations herein are to those revised regulations.

^{2/} You will forfeit your mining claims or sites if you fail to-----* * *(7) File an annual FLPMA filing on or before the due date, as applicable * * *." 43 CFR 3830.91(a).

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 combination thereof, on public lands and had performed assessment work required under the Mining Law of 1872. 30 U.S.C. § 28f(d)(1) (2000). BLM implemented this statute with a regulation that requires a claimant to 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, through September 1, 2004.” 43 CFR 3833.1-7(d)(2003).

[1] On August 29, 2003, Hale filed a Maintenance Fee Waiver Certification with BLM. Accordingly, Hale was required to file an affidavit of assessment work with BLM on or before December 30, 2003. 43 CFR 3835.31(d); 43 CFR 3833.2-2(c) (2003). Under the regulations governing the locating, recording, and maintaining of mining claims, mill sites, or tunnel sites, “filed” is defined as meaning a document is received by BLM on or before the due date or is “[p]ostmarked or otherwise clearly identified as sent on or before the due date by a bona fide mail delivery service” and received by the appropriate BLM state office either within 15 calendar days after the due date or on the next business day after that date, if the 15th day is not a business day for BLM. 43 CFR 3830.5; see 43 CFR 3800.5(m) (2003).

[2] The envelope in which BLM received the affidavit of assessment work in this case had on it both a postage validation imprint dated December 30, 2003, and a cancellation stamp or postmark of December 31, 2003. The postage validation imprint “clearly identified” the envelope “as sent on or before the due date by a bona fide mail delivery service.”^{3/} Thus, the affidavit of assessment work at issue was timely filed because it was mailed on December 30, 2003, and received by BLM on January 5, 2004, which was within 15 calendar days after the due date.

^{3/} In another appeal, IBLA 2004-181, Nigee Resources Ltd., presenting the same issue as this case, the appellant provided a Feb. 20, 2004, letter from the Manager, Consumer Affairs & Claims, United States Postal Service, Coppell, Texas, who stated: “You provided a copy of a letter mailed to the Bureau of Land Management, 222 North Central Avenue, Phoenix, AZ 85004. The letter was mailed from the Dallas Main Post Office on December 30, 2003 and had a postage validate stamp imprint. The letter also had a cancellation stamp of December 31, 2003 from Dallas Processing & Distribution Center (Texas PDC). The postage validated imprint represents the date of mailing. The cancellation (Texas PDC) verifies the date processed in the processing center.”

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 reversed and the petition for stay is denied as moot.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

H. Barry Holt
Chief Administrative Judge