

JON ROALF, ET AL.

IBLA 2006-128

Decided May 12, 2006

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring the Poke association placer mining claim forfeited by operation of law. ORMC 158597.

Affirmed; petition for stay denied as moot.

1. Mining Claims: Rental or Claim Maintenance Fees:  
Generally

Under 43 CFR 3830.24(c), a mining claimant may send the annual claim maintenance fee to BLM using a *bona fide* mail delivery service, but such payment must be postmarked or clearly identified by the mail delivery service as being sent on or before the due date and received by the BLM state office on later than 15 calendar days after the due date. When BLM receives a maintenance fee payment in an envelope bearing both a Pitney-Bowes postage meter postmark before the September 1 due date and a United States Postal Service postmark after the due date, the payment is untimely. A Pitney-Bowes postage meter is not a *bona fide* mail delivery service.

APPEARANCES: Craig R.E. Roalf, Costa Mesa, California, for appellants.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Jon J. Roalf, Rachael A. Roalf, and Stephen C. Roalf, the owners of the Poke association placer mining claim (ORMC 158597), have appealed from and petitioned for a stay of the effect of a March 8, 2006, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring that claim forfeited by operation of law for failure timely to file the \$125 per claim maintenance fee on or before

September 1, 2005, for the 2006 assessment year.<sup>1/</sup> BLM stated that it received the maintenance fee for the 2006 assessment year on September 9, 2005, in an envelope postmarked on September 6, 2005.

Under 30 U.S.C. § 28f(a) (2000), as amended,<sup>2/</sup> the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a maintenance fee for each claim or site on or before September 1 of each year for the years 2004 through 2008. See 43 CFR 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 (2000), and the related filing requirements of section 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (2000), 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) and (b) (2000); 43 CFR 3834.11(a).

The 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 the claim shall be deemed null and void by operation of law.” 30 U.S.C. § 28i (2000); see 43 CFR 3830.91(a) and 3835.92(a).

Congress, however, provided the Secretary with discretion to waive the fee for a claimant who 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 any combination thereof, on public lands and had performed assessment work required under the Mining Law of 1872, for the preceding assessment year ending at noon on September 1 of the calendar year in which payment of the claim maintenance fee is due. 30 U.S.C. § 28f(d)(1) (2000); see Audrey Bradbury, 160 IBLA 269, 273-74 (2003). BLM implemented this statute with

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<sup>1/</sup> Craig R.E. Roalf filed the appeal on behalf of the claim owners. He does not disclose his relationship to the claim owners. For purposes of the appeal, we consider that they are members of his family and that he is, in accordance with 43 CFR 1.3(b)(3)(i), authorized to practice before the Department on their behalf.

<sup>2/</sup> 30 U.S.C. § 28f(a) (2000) has been amended twice by Congress, specifically by the Department of the Interior and Related Agencies Appropriations Act, 2002, Pub. L. No. 107-63, 115 Stat. 414, 418-19 (2001) (requiring the payment of the claim maintenance fee on or before September 1 of each year for the years 2002 and 2003), and the Department of the Interior and Related Agencies Appropriations Act, 2004, Pub. L. No. 108-108, 117 Stat. 1241, 1245 (2003) (requiring the payment of the claim maintenance fee on or before September 1 of each year for the years 2004 through 2008).

a regulation that requires a claimant to file “BLM’s waiver certification form on or before September 1 of each assessment year for which you are seeking a waiver.” 43 CFR 3835.10(a).

In this case, the claim in question is a 150-acre association placer claim located by eight co-locators on November 21, 2003. See 30 U.S.C. § 35 (2000). The co-locators timely filed a copy of the location notice with BLM and paid all applicable fees, receiving claim recordation number ORMC 158597. By quitclaim deed dated February 3, 2004, the co-locators transferred their interest in the claim to appellants. Thereafter, Craig Roalf filed a copy of the quitclaim deed with BLM and paid the \$5.00 transfer of interest service charge.<sup>3/</sup> On August 23, 2004, Craig Roalf paid the claim maintenance fee of \$125 for the claim for the 2005 assessment year.

On September 9, 2005, BLM received a \$125 check from Craig Roalf for payment of the claim maintenance fee for the claim for the 2006 assessment year. The check arrived in an envelope bearing a United States Postal Service postmark dated September 6, 2005.

[1] On appeal, appellants claim that the “original post mark” was “Aug. 4, 2005,” and that the “secondary post mark of Sept. 6, 2005” was affixed after the United States Postal Service “misplaced and forwarded” the payment. (Notice of Appeal at 1.) The original envelope contained in the administrative record shows a Pitney-Bowes postage meter postmark dated August 4, 2005, and a “Santa Ana, CA,” United States Postal Service postmark dated September 6, 2005.

We discussed Pitney-Bowes postage meters in Paul W. Tobeler, 131 IBLA 245, 248 (1994), in which the mining claimant asserted that he had made a timely filing of his mining claim maintenance fee based on a date affixed by such a meter:

In the August 30, 1994, rulemaking, BLM \* \* \* expanded the postmarking services it would recognize from only the United States

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<sup>3/</sup> BLM apparently raised no objection to the transfer. However, in accordance with 43 CFR 3833.33, regulating the transfer, sale, or conveyance of an association placer mining claim, the co-locators may transfer, sell, or convey the claim “to an individual or an association that is smaller in number than the association that located the claim,” only if the co-locators “have discovered a valuable mineral deposit before transfer,” or, upon notice from BLM, they “reduce the acreage of the claim” to meet the 20-acre per locator claim limit. Unless a discovery is made prior to the transfer of an association placer claim to a single claimant, the transferee is only entitled to perfect the claim as to 20 acres. United States v. Harenberg, 9 IBLA 77, 86 (1973).

Postal Service to any “bona fide mail delivery service.” 43 CFR 3833.0-5(m), 59 FR 44858 (Aug. 30, 1994).

The preamble to the August 30, 1994, rulemaking explained: “One comment asked whether paragraph (m) was restricted to mailings postmarked by the U.S. Postal Service. This paragraph has been amended to include other mail delivery systems that are independent of the claimant and for which the date of filing with the system can be verified.” 59 FR 44848 (Aug. 30, 1994) (emphasis added).

It appears that BLM’s expansion of the delivery services was intended to include overnight delivery services, such as Federal Express, which are independent of the claimant. The service utilized by appellant to apply a postmark to his envelope, a Pitney-Bowes postage meter, is not a bona fide mail delivery service which is “independent of the claimant.”

The regulation discussed in that case, 43 CFR 3833.0-5(m), defined “[f]ile or filed.” It stated that “a filing or fee” would be considered timely “if received within the time period prescribed by law, or, if mailed to the proper BLM office, is contained within an envelope clearly postmarked by a bona fide mail delivery service within the period prescribed by law and received by the proper BLM State Office by 15 calendar days subsequent to such period.” We construed that regulation as establishing a grace period and allowing treatment of a maintenance fee or waiver certification as timely filed, if included in an envelope postmarked on or before the due date and received within 15 days subsequent to the due date. Terri L. Duff, 156 IBLA 326, 328 (2002).

The revised regulations retained a definition for “[f]ile,” which is limited to documents, and provides that a document is filed if it is “[r]eceived by BLM on or before the due date,” or “[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 within 15 days after the due date or on the next business day, if the 15th day is not a business day. 43 CFR 3830.5. BLM also included a separate regulation identifying how payment of service charges, location fees, initial maintenance fees, annual maintenance fees, and oil shale fees could be made. See 43 CFR 3830.24 and 3830.20. 43 CFR 3830.24(c) provides that a claimant “may send payments using a *bona fide* delivery service,” but that “[t]he payment must be postmarked or clearly identified by the mail delivery service as being sent on or before the due date” (43 CFR 3830.24(c)(1)), and “[t]he BLM State Office must

receive the payment no later than 15 calendar days after the due date” (43 CFR 3830.24(c)(2)).

The revised regulations relating to the filing of documents and the submission of payments continue to allow a grace period for filing. However, in order to take advantage of that grace period, the document or payment must be postmarked or clearly identified by a *bona fide* mail delivery service as being sent on or before the due date.<sup>4/</sup> In this case, we adhere to our rationale in Tobeler: a date affixed by a Pitney-Bowes postage meter does not constitute evidence of a *bona fide* mail delivery service. Thus, for the purpose of 43 CFR 3830.24(c)(1), the postmark on the envelope bearing appellants’ payment is September 6, 2005, and their payment is untimely.

To the extent appellants blame the United States Postal Service for delaying the delivery of their maintenance fee payment, we have held on numerous occasions that the one who chooses the means of delivery of the document must accept the responsibility for, and bear the consequences of, delay or nondelivery. Petro-Hunt Corp., 124 IBLA 318, 320 (1992); Conoco, Inc. (On Reconsideration), 113 IBLA 243, 249 (1990) and cases cited therein.

The statute is self-operative. It explicitly states that failure to timely pay the required maintenance fee automatically results in forfeiture of the mining claim by operation of law. 30 U.S.C. § 28i (2000). BLM and this Board are without authority to excuse lack of compliance with the maintenance fee requirement of the Act, to extend the time for compliance, or to afford any relief from the statutory consequences. Richard W. Cahoon Family Limited Partnership, 139 IBLA 323, 326 (1997). In the absence of a timely-filed maintenance fee payment or waiver certification, BLM properly declared the claim forfeited by operation of law. 43 CFR 3835.92(a); see Harlow Corp., 135 IBLA 382, 385 (1996), aff’d, Harlow Corp. v. Norton, No. 97- 0320 (RWR), (D.D.C., July 24, 2001); Alamo Ranch Co., 135 IBLA 61, 76 (1996).

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<sup>4/</sup> Clearly, the postmark would be affixed to the envelope or other packaging containing the payment.

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. The petition for stay is denied as moot.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur:

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H. Barry Holt  
Chief Administrative Judge