

NOTE: This disposition is nonprecedential.

EMAILED

CEP/MLD

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Interior Board of Land Appeals  
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February 23, 2016

IBLA 2015-189	)	CAMC300026
	)	
DAVID A. NATTRESS <i>ET AL.</i>	)	Mining Claim Maintenance Fees
	)	
	)	Decision Affirmed as Modified;
	)	Petition for Stay Denied as Moot

ORDER

David A. Nattress and Robert D. Price (Appellants) have appealed from and petitioned for a stay of a May 27, 2015, decision of the California State Office, Bureau of Land Management (BLM), declaring the Jars of Gold 1 placer mining claim (CAMC300026) forfeited by operation of law because Appellants did not submit a maintenance fee payment on or before September 2, 2014, for the 2015 assessment year.<sup>1</sup> Based on the following analysis, we affirm BLM's decision as modified and deny the petition for stay as moot.

The issue in this appeal is whether Appellants timely paid yearly maintenance fees or filed a Waiver Certification for the claim at issue on or before September 2, 2014. Under applicable law, the holder of an unpatented mining claim is required to pay a maintenance fee for the claim on or before September 1 of each year, or the next business day thereafter if September 1 is a non-business day. 30 U.S.C. § 28f(a) (2012); *see* 43 C.F.R. §§ 1822.14, 3835.10(a), 3834.11(a)(2).<sup>2</sup> 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

<sup>1</sup> BLM's decision should have indicated that Appellants could have filed a small miner waiver certification (Waiver Certification) rather than pay the annual maintenance fee, as they claim to have done in this case. *See* 43 C.F.R. §§ 3735.1; 3835.10(a). BLM's decision is modified accordingly.

<sup>2</sup> September 1 fell on a Federal holiday in 2014, and the due date for the maintenance fees or waiver certification therefore fell on the next business day, September 2.

section 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (2012), for the upcoming assessment year. 30 U.S.C. § 28f(a) and (b) (2012); see 43 C.F.R. § 3834.11(a). A mining claimant may obtain a waiver of the maintenance fee requirement by certifying 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. The Waiver Certification must be filed with BLM on or before September 1 of each assessment year, or the next business day thereafter if September 1 is a non-business day. 43 C.F.R. §§ 3835.1, 3835.10(a), 3835.11(a). In the absence of a timely-filed maintenance fee payment or Waiver Certification, BLM must declare the claim automatically forfeited by operation of law. See 30 U.S.C. § 28i (2012); 43 C.F.R. § 3835.92(a); see also *Jon Roalf*, 169 IBLA 58, 62 (2006); *Joe Bob Hall*, 135 IBLA 284, 286 (1996).

In this case, BLM declared the claim void by operation of law because Appellants did not pay the annual maintenance fee for the claim on or before September 2, 2014, for the 2015 assessment year. Appellants state that BLM's decision is "incorrect." Notice of Appeal (NOA) at unpaginated (unp.) 1. They state that they mailed their "small miner's fee waiver and check" to BLM on August 28, 2014, and attach a copy of a cancelled check for \$10.00 as evidence to support their statement that they paid maintenance fees in a timely manner. Statement of Reasons (SOR) at unp. 1. The check was numbered 1936, was in the amount of \$10.00, and included a handwritten notation of "small miners fee" at the bottom of the front side and the claim number on the reverse side. *Id.* Appellants also state that this "check for the small min[e]r's fee was deposited by the BLM" and that "receipts from Plumas show 9-2-2014 at 10:36 am, the time that they were recorded." NOA at unp. 1.

BLM's records contain a receipt documenting BLM's deposit of a check from Appellants numbered 1936, postmarked August 29, 2014, and received by BLM on September 2, 2014. However, this receipt is attached to a form entitled Affidavit of Annual Assessment Work (Affidavit) signed and dated by Appellants on August 28, 2014, and received by BLM on September 2, 2014. The Affidavit identifies the claim at issue in this appeal, and identifies the total amount due BLM as \$10.00. BLM's records show that BLM deemed the \$10.00 payment to constitute the service charge for filing the Affidavit. The record does not contain any evidence that Appellants paid maintenance fees or filed a Waiver Certification in a timely manner for the 2015 assessment year.

The appeal documents submitted by Appellants suggest that they may be confused about the annual filing requirements for mining claims. They state that their \$10.00 check is for the "small miner's fee," Notice of Appeal at unp. 1, and the cancelled check bears this notation. They state that they mailed their "small miner waiver and check" to BLM. SOR at unp. 1. It appears that Appellants intended for the check to serve as payment of a processing fee or charge for filing a Waiver

Certification. In this they were mistaken, because there is no processing fee required for filing a Waiver Certification. See 43 C.F.R. §§ 3830.21, 3000.12; *Debra Smith*, 179 IBLA 220, 223 (2010). The absence of a Waiver Certification in the case file gives rise to a presumption that it was not filed with BLM, as asserted by Appellant. The record includes Appellant's Affidavit dated August 28, 2014, the date they indicate was the date of their Waiver Certification. Given that no processing fee is required for a Waiver Certification, and the apparent failure of Appellants to submit such a Waiver, BLM deemed the \$10.00 check to constitute the processing fee for the Affidavit.

There is a legal presumption that administrative officials have properly discharged their duties and have not lost or misplaced legally significant documents filed with the and, hence, the absence of timely date-stamped documents from the record will support a finding that the documents were not timely filed. *Christopher L. Mullikin*, 180 IBLA 60, 68 (2010) (citing *Wilson v. Hodel*, 758 F.2d 1369, 1372 (10th Cir. 1985); *John J. Trautner*, 165 IBLA 265, 270 (2005)); *Burnetta M. Long*, 139 IBLA 159, 161 (1997). The Board accords great weight to this presumption of regularity, which may be rebutted by probative evidence to the contrary. *Christopher L. Mullikin*, 180 IBLA at 68 (citing *Legille V. Dann*, 544 F.2d 1, 8-9 (D.C. Cir. 1997)). In this case, Appellants have offered no evidence to support their contention that the Waiver Certification was filed.

Unfortunately for Appellants, because they neither paid the maintenance fees nor filed a Waiver Certification for the claim by the deadline, their claim was automatically forfeited. 30 U.S.C. § 28i (2012); 43 C.F.R. § 3835.92(a); *Carl A. Parker, Sr.*, 165 IBLA 300, 303-04 (2005); *Howard J. Hunt*, 147 IBLA 381, 384 (1999). Neither BLM nor this Board has the authority to excuse lack of compliance with the maintenance fee and waiver certification requirements, 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 subject mining claim forfeited. *Alamo Ranch Co.*, 135 IBLA 61, 76 (1996).

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 affirmed and the petition for stay is denied as moot.

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/s/  
James F. Roberts  
Deputy Chief Administrative Judge

I concur:

\_\_\_\_\_/s/  
Eileen G. Jones  
Chief Administrative Judge

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