

NOTE: This disposition is nonprecedential.



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IBLA 2015-191)	IMC200356 <i>et al.</i>
)	
SHADOW CREEK LLC)	Mining Claim Maintenance Fees
)	
)	Decision Affirmed; Petition for Stay
)	Denied as Moot

ORDER

Shadow Creek LLC (Appellant) appeals from and petitions for a stay of a May 11, 2015, decision of the Idaho State Office, Bureau of Land Management (BLM), declaring seven unpatented mining claims¹ forfeited by operation of law because Appellant did not pay maintenance fees or file a small miner waiver certification (Waiver Certification) on or before September 2, 2014, for the 2015 assessment year. Based on the analysis below, we affirm BLM's decision and deny the petition for stay as moot.

The issue in this appeal is whether Appellant paid yearly maintenance fees or filed a Waiver Certification for the claims 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).² Payment of the claim

¹ The claims at issue in this appeal are Beartrack Placer (IMC200356), Beartrack Placer #2 (IMC200357), Candelaria #4 (IMC200388), Bear Track #3 (IMC201832), Bear Track #4 (IMC201833), Bear Track #5 (IMC201834), and Bear Track #6 (IMC201835).

² 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.

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 section 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (2012). 30 U.S.C. § 28f(a) and (b) (2012); *see* 43 C.F.R. § 3834.11(a).

A mining claimant who holds no more than 10 mining claims may obtain a waiver of the maintenance fee requirement by certifying 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 a 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).

A claimant who files a Waiver Certification is also required to (1) perform assessment work during the assessment year for which the waiver is granted, and (2) file an affidavit of the assessment work (Affidavit) on or before December 30 of the calendar year in which the assessment year ends. 43 C.F.R. §§ 3835.12, 3835.15, 3835.31(a); *see* *John J. Trautner*, 165 IBLA 265, 267 (2005); *Earl Riggs*, 165 IBLA 36, 39 (2005). The failure to timely file an Affidavit when required under the mining laws is “deemed conclusively to constitute an abandonment of the mining claim . . . by the owner,” thereby rendering the claim void. 43 U.S.C. § 1744(c) (2012); *United States v. Locke*, 471 U.S. 84, 97-100 (1985). Neither BLM nor the Board has discretion to waive the requirement to either pay the annual maintenance fee or file a Waiver Certification or provide relief from the consequences of noncompliance. *See* *Carl A. Parker, Sr.*, 165 IBLA 300, 303-04 (2005), and cases cited.

In this case, BLM declared the claims at issue void by operation of law because Appellant did not pay yearly maintenance fees or file a Waiver Certification for the claims on or before September 2, 2014. Appellant does not dispute that it failed to file a Waiver Certification. Rather, it states that it believed it had filed the Waiver Certification “over the telephone” during a telephone conversation with a BLM representative on July 22, 2014. Notice of Appeal, Statement of Reasons, and Request for Stay (SOR) at 3. According to Appellant, it is “clear that [it] had every intent to file” the Waiver Certification on that date. *Id.* Appellant further states that had BLM “requested that Claimant follow up by submitting a formal copy” of the Waiver Certification, “it would have been emailed immediately.” *Id.* Appellant also states that it has in the past filed Waiver Certifications in a timely manner, and “made every attempt to comply with the filing requirements as he understood them in the telephone conversation of July 22, 2014.” *Id.*

The record shows that Appellant spoke with a BLM representative on July 22, 2014, and submitted an electronic payment of \$70.00 on that date. A BLM representative contacted Appellant the next day, July 23, 2014, to “follow up . . . to see what exactly [Appellant] was trying to do.” E-mail to Tracy A. Hadley, Land Law Examiner, Idaho State Office, BLM, from Nancy Pippin, Supervisory Contact Representative, Idaho State Office Payment Center, BLM, dated July 23, 2014. Appellant stated that it would “be mailing [the] waiver and [Affidavit] today.” *Id.* BLM noted that “[t]he \$70.00 processing fee payment for 7 claims was erroneously received on 7/22/2014 for the [Affidavit] over the phone.” *Id.* The receipt documenting the \$70.00 payment from Appellant bears the notation: “Payment was erroneously received for payment of [Affidavit]. Spoke with Tom Foster of Shadow Creek LLC on 7/23 and he is mailing his waiver and [Affidavit].” BLM’s error was in accepting the processing fee of \$10.00 per claim without the related Affidavit. Under 43 C.F.R. § 3000.12, the processing fee “must be included with documents you file under [43 C.F.R. Chapter II].” BLM noted that it would correct the error upon receipt of the Affidavit.

Unfortunately for Appellant, because it neither paid the maintenance fees nor filed a Waiver Certification for the claims by the deadline, its claims were 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). Appellant’s argument that it filed its Waiver Certification by telephone is inconsistent with the applicable regulation, which requires a Waiver Certification to be submitted to BLM on “BLM’s waiver certification form.” 43 C.F.R. § 3835.10(a). Moreover, Appellant is incorrect in believing that payment of the \$70.00 could meet the requirement to file a Waiver Certification (or meet the maintenance fee requirement), since there is no processing fee for filing a Waiver Certification. 43 C.F.R. §§ 3830.21, 3000.12; *Debra Smith*, 179 IBLA 220, 223 (2010).

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). Since Appellant did not timely file a Waiver Certification or pay maintenance fees by the deadline, BLM properly declared the subject mining claims forfeited. *Alamo Ranch Co.*, 135 IBLA 61, 76 (1996).

