



NOTE: This disposition is nonprecedential.

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
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January 5, 2016

IBLA 2015-192)	CAMC 299485
)	
PETER H. SUST)	Affidavit of Assessment Work
)	
)	Decision Affirmed; Petition for
)	Stay Denied as Moot

ORDER

Peter H. Sust (Appellant) has appealed from and petitioned for stay of a June 12, 2015, decision of the California State Office, Bureau of Land Management (BLM). In that decision, BLM declared the Red Hawk lode mining claim (CAMC 299485) forfeited and void because Appellant failed to file an affidavit of assessment work (Affidavit) on or before December 30, 2013, for the 2013 assessment year. Based on the following analysis, we affirm BLM's decision and also deny Appellant's petition for stay as moot.

The holder of an unpatented mining claim is required to pay a maintenance fee for each claim or site on or before September 1 of each year. 30 U.S.C. § 28f(a) (2012); *see* 43 C.F.R. § 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 (2012), and the related filing requirements of section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 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). The statute, however, grants the Secretary of the Interior the discretion to waive the fee for a claimant who certifies 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 (Waiver Certification). 30 U.S.C. § 28f(d) (2012). A claimant who files a Waiver Certification is 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 Paul Dickison*, 186 IBLA 69, 70 (2015); *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 maintenance requirements or provide relief from the consequences of noncompliance. See *Paul Dickison*, 186 IBLA at 71; *Carl A. Parker, Sr.*, 165 IBLA 300, 303-04 (2005), and cases cited.

We have carefully examined the record in this appeal, including Appellant’s notice of appeal received on June 25, 2015. Appellant explains that he purchased his mining claim in 2013 and was never made aware that he was required to file an Affidavit for the 2013 assessment year. Appellant states that he has submitted, and BLM has accepted, his maintenance fees for the 2014 and the 2015 assessment years, and that he has received the paperwork for 2016. He respectfully requests that BLM’s decision be reversed due to its unfairness.¹

On August 28, 2012, Gurney filed a Waiver Certification for the Red Hawk claim for the upcoming 2013 assessment year. On November 26, 2012, he filed an Affidavit for the 2012 assessment year. However, neither Gurney nor Appellant filed the required Affidavit by December 30, 2013, for assessment work performed during the 2013 assessment year. Once Gurney transferred the Red Hawk claim to Appellant, filing the Affidavit became Appellant’s responsibility. See 43 C.F.R. § 3835.20(a). Although the Board empathizes with Appellant’s situation, his unawareness of the requirement does not change the outcome of this case. Unfortunately, Appellant’s claim was automatically forfeited when the deadline for filing passed. 43 U.S.C. § 1744(c) (2012); 43 C.F.R. § 3835.91.

The regulation at 43 C.F.R. § 3835.20(a), captioned “Transferring, selling, inheriting, or otherwise conveying mining claims or sites already subject to a waiver,” governs this appeal. That regulation provides in relevant part that “[i]f you purchase, inherit, or otherwise obtain mining claims or sites that are subject to a waiver, you must also qualify for the waiver in order for BLM to continue to apply the waiver to

¹ The record includes the Quitclaim Deed by which John Gurney and John Bonilla, locators of the claim, transferred their interest in the claim to Appellant. The record also includes a document dated Feb. 11, 2012, stating that the Red Hawk claim had been transferred to Appellant, and that the name of the claim was being changed to Not Yours Mine. However, the Quitclaim Deed identifies the claim as the Red Hawk claim. Appellant’s Maintenance Fee Payment Forms identify the claim as the Not Yours Mine claim. BLM’s decision identifies the claim as the Red Hawk claim. Regardless, both Appellant and BLM agree that the BLM claim serial number is CAMC 299485.

the mining claims you have received in the transfer. . . .” Appellant herein qualified for the waiver.

In *Frank E. Sieglitz*, 170 IBLA 286, 291 (2006), the Board held, regarding a mining claimant in Appellant’s situation: “[T]he assessment work for the assessment year for which the waiver was sought and obtained must be performed, as required by the Mining Law of 1872, and thereafter, as required by section 314(a) of FLPMA, the affidavit of having performed that work must be filed with BLM on or before December 30 following the end of that assessment year.” See also *Dan Adelman*, 169 IBLA 13, 16-17 (2006). Under the terms of 43 C.F.R. § 3835.20(a), Appellant was obligated to complete the assessment work requirements and file an Affidavit by December 30, 2013, for the 2013 assessment year. As the Board emphasized in *Sieglitz*, “the requirement to file an affidavit of assessment work is taken from the assessment work requirement of section 314(a) of FLPMA, not the maintenance fee waiver requirement of 30 U.S.C. § 28f(d),” and “[f]ailure to file an affidavit of assessment work is a violation of the FLPMA requirement, and not the 30 U.S.C. § 28(d) (2000) waiver requirement, and results in abandonment of the claim under section 314(c) of FLPMA.” 170 IBLA at 292. See also *Dan Adelman*, 169 IBLA at 16-17.

Under the law, the mining claim was automatically forfeited upon failure to file the Affidavit on or before December 30, 2013. 43 U.S.C. § 1744(c) (2012); 43 C.F.R. § 3835.91. Since the statute is self-operative, the Red Hawk claim was properly declared abandoned and void as of December 30, 2013. *Frank E. Sieglitz*, 170 IBLA at 293-94.²

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 is affirmed, and the petition for stay is denied as moot.

/s/
James F. Roberts
Deputy Chief Administrative Judge

I concur:

/s/
Eileen G. Jones
Chief Administrative Judge

² In his Notice of Appeal, Appellant states that he has taken “the steps to refile my claim so as not to have it jumped.”