

NOTE: This disposition is nonprecedential.

United States Department of the Interior  
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Interior Board of Land Appeals  
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January 21, 2016

|                      |   |                                      |
|----------------------|---|--------------------------------------|
| IBLA 2015-197        | ) | IMC188131-188132                     |
|                      | ) |                                      |
| JUDY M. KAMP CARRIER | ) | Mining Claim Maintenance Fees        |
|                      | ) |                                      |
|                      | ) | Decision Affirmed; Petition for Stay |
|                      | ) | Denied as Moot                       |

ORDER

Judy M. Kamp Carrier (Appellant) appeals from and petitions for a stay of a May 19, 2015 decision of the Idaho State Office, Bureau of Land Management (BLM) declaring the Shamrock #1 and Shamrock #2 unpatented mining claims (IMC188131-188132) forfeited as a matter of law because Appellant filed neither a maintenance fee payment nor a maintenance fee waiver certification (Waiver Certification) on or before September 2, 2014,<sup>1</sup> 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 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). A mining claimant who holds no more than 10 mining claims may obtain a waiver of the maintenance fee requirement by filing a Waiver Certification. 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). Under the regulations, "filed" means that a document is either received by BLM on or before the due date or postmarked or otherwise clearly

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<sup>1</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.

identified as sent on or before the due date by a bona fide mail delivery service and received by BLM within fifteen calendar days of the due date. 43 C.F.R. § 3830.5. 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's records do not show that Appellant paid maintenance fees or filed a Waiver Certification for her claim on or before the due date. The records show that Appellant mailed a Waiver Certification, but it is postmarked September 4, 2014, and was not received by BLM until September 8, 2014. Appellant states that her mother "mailed the appropriate paperwork at a 3rd party drop-off for the post office on Friday, August 29, 2014, believing that it would be postmarked that date upon its arrival to the post office." Notice of Appeal at 1.

Unfortunately for Appellant, because the Waiver Certification was not filed, as defined by the regulations, by the deadline, the 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). In ruling that Appellant's claims have been forfeited, we have considered her statements regarding the reason the Waiver Certification was not timely filed and the harm the loss of the claims will cause. However, 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. *Jon Roalf*, 169 IBLA at 62; *Carl A. Parker, Sr.*, 165 IBLA at 303-04; *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 mining claims 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.

\_\_\_\_\_/s/  
James F. Roberts  
Deputy Chief Administrative Judge

I concur:

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