

NOTE: This disposition is nonprecedential.

CERTIFIED

EMAILED

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February 23, 2016

IBLA 2015-201)	CAMC295869-70
)	
FRANKLIN & PAULINE A. AZEVEDO)	Mining Claim Maintenance Fees
)	
)	Decision Affirmed;
)	Petition for Stay Denied as Moot

ORDER

Franklin and Pauline A. Azevedo (Appellants) appeal from and request a stay of a June 16, 2015, decision of the California State Office, Bureau of Land Management (BLM), declaring the Eureka Placer #164 and #165 mining claims (CAMC295869 and CAMC295870) abandoned, null and void. BLM stated that the claims were abandoned because an affidavit of assessment work (Affidavit) had not been filed for the claims on or before December 30, 2014, for the 2014 assessment year. Based on the following analysis, we affirm BLM's decision and deny Appellants' request for a 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, 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). 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 assessment work must be completed during the assessment year in question and cannot be performed prior to the beginning of that assessment year. *Ronald W. Ruff*, 185 IBLA 320, 321 (2015); *Audrey Bradbury*, 160 IBLA 269, 274 (2003).

The failure to timely file an affidavit of assessment work performed when required under the mining laws “shall be 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 timely file an affidavit of assessment work performed. See *Frank E. Sieglitz*, 170 IBLA 286, 288 (2006); *Dan Adelman*, 169 IBLA 13, 15 (2006).

On August 12, 2013, Donald, Michelle, and James Prindle, former owners of the two mining claims at issue in this appeal, filed a Waiver Certification for the claims for the assessment year beginning September 1, 2013, and ending September 1, 2014. The Prindles also filed an Affidavit on August 12, 2013, for the two claims, stating that they had performed work valued at \$250.00 on the claims on August 2, 2013. The Affidavit purported to be for the assessment year running from September 1, 2013, to September 1, 2014. No Affidavit was filed by the Prindles or Appellants documenting assessment work occurring during the assessment year running from September 1, 2013, to September 1, 2014.

BLM’s records show that the Prindles then transferred their interests in the two claims to Appellants via a quit claim deed that was received and processed by BLM on May 23, 2014. Appellants paid maintenance fees to BLM for the two claims in the amount of \$2,480.00 and filed a Notice of Intent to Hold the claims on September 29, 2014. BLM subsequently issued its Decision declaring the claims abandoned, null and void on June 16, 2015.

Appellants then filed an undated Notice of Appeal (NoA) received by BLM on June 29, 2015. We will consider Appellants’ NoA to include their Statement of Reasons in support of their appeal. See 43 C.F.R. § 4.412. In the NoA, Appellants state they were “not told about a waiver” and that they “filled out all papers sent to [him] by BLM and returned [them] shortly after receiving them.” NoA at 1. They request that the Board reconsider BLM’s decision and grant a stay because they have paid “so much money already.” *Id.* at 2.

Unfortunately for Appellants, it is evident from BLM’s records that an Affidavit necessary to maintain the claims was not filed with BLM. With a Waiver Certification having been filed for the assessment year running September 1, 2013, to September 1, 2014, claimants were obligated to perform assessment work during that assessment year and file an Affidavit documenting that work on or before

December 30, 2014, to retain the claims. The record shows that the Prindles filed an Affidavit purporting to be for the assessment year ending September 1, 2014, but that Affidavit did not document any assessment work performed during the assessment year for which the Waiver Certification was filed. On the contrary, the Affidavit documents work completed on August 2, 2013, which occurred before the assessment year began on September 1, 2013. As we have previously held, required assessment work must be completed during the assessment year in question and cannot be performed prior to the beginning of that assessment year. *Ronald W. Ruff*, 185 IBLA 320, 321 (2015); *Audrey Bradbury*, 160 IBLA 269, 274 (2003). Thus, the assessment work done and recorded in the Affidavit filed by the Prindles did not meet the requirement that a claimant perform assessment work during the assessment year for which the waiver is granted.

As stated above, section 314(c) of FLPMA provides that the failure to timely file an Affidavit when required under the mining laws for the two claims at issue “shall be deemed conclusively to constitute an abandonment of the mining claim . . . by the owner,” thereby rendering the claims void. 43 U.S.C. § 1744(c) (2012); *United States v. Locke*, 471 U.S. 84, 97-100 (1985). BLM thus correctly declared the claims at issue abandoned and void. See *Frank E. Sieglitz*, 170 IBLA at 288; *Dan Adelman*, 169 IBLA at 15.

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