

NOTE: This disposition is nonprecedential.



United States Department of the Interior

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January 29, 2016

IBLA 2015-205)	CAMC 127505; CAMC 189966
)	
ROBERT RIECK)	Mining Claim Maintenance Fees
)	
)	Decision Affirmed

ORDER

Robert Rieck (Appellant) has appealed a June 15, 2015, of the California State Office, Bureau of Land Management (BLM), declaring the Back Achers and Crystal Lee #3 placer mining claims (CAMC 127505 and CAMC 189966, respectively) abandoned, null and void. BLM stated in its decision that the claims were forfeited 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.

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). 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 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 *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 by BLM on June 22, 2015. In his notice of appeal, Appellant explains that BLM’s decision was made in error because he paid the maintenance fees for the 2013 assessment year and therefore was not required to submit an affidavit for that year. Appellant submitted receipts for the payments he made to BLM as proof that he has complied with regulations.

On September 4, 2012,¹ Appellant filed a Waiver Certification for the mining claims at issue. This Waiver Certification was for the 2013 assessment year. As a result, having filed that Waiver Certification, Appellant was obligated to perform assessment work during the 2013 assessment year and file an Affidavit on or before December 30, 2013, to retain his claims. Although the Appellant asserts that he paid the maintenance fee for the 2013 assessment year, the documents he submitted only establish that he paid the maintenance fees for the 2014 and 2015 assessment years.² Appellant did not submit any documentation, nor is there any documentation in the record, that indicates Appellant filed an Affidavit with BLM for the 2013 assessment year. As a result, since Appellant failed to file the Affidavit by December 30th, his claims were automatically forfeited when the deadline for filing passed. 43 U.S.C. § 1744(c) (2012); 43 C.F.R. § 3835.91.

Under the law, the mining claims were 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, BLM properly declared the claims abandoned and void as of December 30, 2013.

¹ Because the September 1 deadline fell on a Saturday and September 3 was a Federal holiday, the deadline was Sept. 4, 2012. 43 C.F.R. § 1822.14.

² The receipts submitted by Appellant show that on Aug. 29, 2013, he paid \$420 in maintenance fees for the 2014 assessment year and on Sept. 3, 2014, he paid \$465 in maintenance fees for the 2015 assessment year.

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.

_____/s/_____
James F. Roberts
Deputy Chief Administrative Judge

I concur:

_____/s/_____
Eileen G. Jones
Chief Administrative Judge