



NOTE: This disposition is nonprecedential.

United States Department of the Interior
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Interior Board of Land Appeals
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February 24, 2016

IBLA 2015-262)	CAMC291560
)	
WALTER A. AHRENS and)	Mining Claim
MICHAEL R. THOMAS)	Affidavit of Assessment Work
)	
)	Affirmed

ORDER

Walter A. Ahrens and Michael R. Thomas (Appellants) appeal from an August 18, 2015, Decision, by the California State Office, Bureau of Land Management (BLM). In that Decision, BLM declared the Brubaker Bros I placer mining claim (CAMC291560) abandoned and null and void, because Appellants did not file an affidavit of annual assessment work on or before December 30, 2013.

Legal Background

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. *See* 30 U.S.C. § 28(f)(2012); 43 C.F.R. § 3834.11(a)(2). The payment of an annual maintenance fee on or before September 1 of each year is required in order to maintain a claim for the “upcoming assessment year,” i.e., a period of 12 consecutive months, beginning at noon on September 1 each year and ending at noon of the following year September 1 (e.g., September 1, 2012, to September 1, 2013). 43 C.F.R. § 3830.5 (definition); 43 C.F.R. § 3834.11(a); *see also* 30 U.S.C. § 28f(d)(1) (2012); 43 C.F.R. § 3835.31(a). 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). 30 U.S.C. § 28f(a)-(b) (2012); *see* 43 C.F.R. § 3834.11(a).

The requirement to pay a claim maintenance fee may be waived if certain conditions are present. 30 U.S.C. § 28f (2012). Namely, under the small miner exemption, a claimant may certify in writing that on the date the payment was due, the claimant and all related parties held not more than 10 mining claims, mill sites,

tunnel sites, or any combination thereof, on public lands (Waiver Certification). See 30 U.S.C. § 28f(d)(1)(A) (2012).

A claimant who files a Waiver Certification must meet two additional requirements. First, the claimant must perform assessment work during the assessment year for which the waiver is granted. See 30 U.S.C. § 28f(d)(1)(B) (2012). Second, the claimant must file an affidavit of annual assessment work on or before December 30 of the calendar year in which the assessment year ends. 43 U.S.C. § 1744(a)(1) (2012); 43 C.F.R. §§ 3835.12, 3835.15, 3835.31(a); see, e.g., *Paul Dickison*, 186 IBLA 69, 70-71 (2015); *David McCarty*, 181 IBLA 224, 226-27 (2011).

If a claimant does not timely file an affidavit of annual assessment work when required to do so, then the mining claim is deemed abandoned, and BLM may declare the claim forfeited, or meaning the same, “null and void.” 43 U.S.C. § 1744(c) (2012); 43 C.F.R. § 3830.5 (definition of forfeit or forfeiture); 43 C.F.R. § 3836.15; *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. *Dickison*, 186 IBLA at 71 (citing *Carl A. Parker, Sr.*, 165 IBLA 300, 303-04 (2005)); *McCarty*, 181 IBLA at 228; see also *Beverly D. Glass*, 167 IBLA 388, 394 (2006) (“Absent submission of a proper maintenance fee payment or waiver request, BLM properly declared the claim forfeited and void by operation of law.”); *Audrey Bradbury*, 160 IBLA 269, 275 (2003) (filing an affidavit of assessment work “is an absolute requirement that cannot be waived” and failure to make the filing automatically results in forfeiture of a claim).

Facts

On September 4, 2012, Appellants filed a Waiver Certification for their placer mining claim identified as Brubaker Bros I, for the 2013 assessment year beginning on September 1, 2012, and ending on September 1, 2013. On August 14, 2013, Appellants paid maintenance fees for the same mining claim. Appellants admit they did not file an annual affidavit of assessment work on or before December 30, 2013. See Statement of Reasons (SOR).

Analysis

The issue before the Board is: Once Appellants filed a Waiver Certification for the 2013 assessment year, were they required to file an affidavit of annual assessment work on or before December 30, 2013, to retain their placer mining claim? We find that they were, as discussed further below.

Appellants filed a Waiver Certification on September 4, 2012. That Waiver Certification was for the 2013 assessment year beginning on September 1, 2012, and

ending on September 1, 2013. Once that Waiver Certification was filed for the 2013 assessment year, Appellants were required to timely file the affidavit of annual assessment work by December 30, 2013. *See* 43 C.F.R. § 3835.31(a), (d)(3). Since Appellants did not file an affidavit by December 30, 2013, by law their claim became null and void. *See* 43 U.S.C. § 1744(c) (2012); 43 C.F.R. § 3830.5 (definition of forfeit or forfeiture); 43 C.F.R. § 3836.15; *Locke*, 471 U.S. at 97-100.

On appeal, Appellants contend they did not have to file an affidavit of assessment work by December 30, 2013, because they paid maintenance fees on August 14, 2013. *See* SOR. Appellants' argument is not supported by applicable law and therefore not a basis to overturn BLM's Decision. Maintenance fees must be paid by September 1 for the "upcoming assessment year." 43 C.F.R. § 3834.11(a) (emphasis added). Thus, the August 14, 2013, maintenance fees paid by Appellants were applied to the 2014 assessment year beginning at noon on September 1, 2013, and ending at noon on September 1, 2014. In contrast, the affidavit of assessment work which was not filed by Appellants, due on December 30, 2013, was for the assessment year ending on September 1, 2013. *See* 43 U.S.C. § 1744(a)(1)(2012); 43 C.F.R. §§ 3835.12, 3835.15, 3835.31(a); *see, e.g., Dickison*, 186 IBLA 70-71; *McCarty*, 181 IBLA at 226-27. The payment of a maintenance fee is not a substitute for the timely filing of a required affidavit of assessment work. It is the absence of the timely filed affidavit that renders Appellants' claim void, as found by BLM. Although we empathize with Appellants' misunderstanding about the legal requirements, neither BLM nor the Board has discretion to waive such requirements or to provide relief from the consequences of noncompliance. *Dickison*, 186 IBLA at 71; *McCarty*, 181 IBLA at 228.

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.

/s/
Eileen G. Jones
Chief Administrative Judge

I concur:

/s/
James F. Roberts
Deputy Chief Administrative Judge