

NOTE: This disposition is nonprecedential.



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March 4, 2016

IBLA 2016-23)	CMC 287423
)	
ELECTROSTATIC ESTATE, LTD)	Maintenance Fees
)	
)	Decision Affirmed
)	

ORDER

Electrostatic Estate, LTD (Appellant) has appealed an October 5, 2015, decision made by the Colorado State Office, Bureau of Land Management (BLM). In the decision, BLM declared the placer mining claim Wedge (CMC 287423) forfeited by operation of law for failure to pay the mining claim maintenance fee on or before September 1, 2015, for the 2016 assessment year.

The issue before us in this case is whether Appellant's failure to pay the mining claim maintenance fee on or before September 1, 2015, renders its mining claim forfeited. For the reasons that follow, we agree with BLM that Appellant forfeited its mining claim, and therefore we affirm BLM's decision.

Appellant submitted a maintenance fee payment for the Wedge placer mining claim in an envelope postmarked September 14, 2015, and BLM received it on September 16, 2015. Appellant explains that the maintenance fee payment was late because, despite multiple attempts, the online payment service did not allow it to identify the precise location of the claim. Appellant's representative states, "Once I realized that the date had passed I immediately sent a check in the mail with hopes of your understanding with the issue." Notice of Appeal (NOA).

Pursuant to the statute codified at 30 U.S.C. § 28f(a) (2012) and BLM's regulations at 43 C.F.R. §§ 3830.21(d)(2) and 3834.11(a)(2), the holder of an unpatented placer mining claim is required to pay a maintenance fee for each 20 acres of the claim or portion thereof on or before September 1 of each year. Those who pay the maintenance fee are excused from performing the assessment work required under the Mining Law of 1872, 30 U.S.C. §§ 28-28e (2012), and meeting

the related filing requirements of section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (2012). The BLM regulations provide for a waiver from the annual maintenance fee requirement under certain conditions, none of which Appellant has asserted applies. *See* 43 C.F.R. Part 3835.

BLM's regulations state that annual maintenance fee payments made using a *bona fide* mail delivery service must be postmarked on or before the due date, and BLM's State Office must receive the payment no later than 15 calendar days after the due date. 43 C.F.R. § 3830.24(c). Failure to pay the required maintenance fee on or before September 1 conclusively constitutes forfeiture of the mining claim, and the mining claim is deemed null and void by operation of law. 30 U.S.C. § 28i (2012); 43 C.F.R. § 3830.91(a)(3).

BLM and this Board do not have authority to excuse lack of compliance with the maintenance fee requirement, to extend the time for compliance, or to afford any relief from the statute's automatic claim forfeiture provisions. *Jon Roalf*, 169 IBLA 58, 62 (2006); *Carl A. Parker, Sr.*, 165 IBLA 300, 303-04 (2005). The provisions of the statute are self-executing, meaning that once the statutory deadline for submitting the maintenance fee is missed, the mining claim is forfeited. *Jon Roalf*, 169 IBLA at 62; *Carl A. Parker, Sr.*, 165 IBLA at 303-04.

In this case, Appellant admits that it did not submit the annual maintenance fee on or before September 1, 2015, and the record shows that the payment was postmarked September 14, 2015. BLM did not receive Appellant's payment until September 16, 2015. We have carefully considered Appellant's explanation for the late payment and the difficulty its representative had using BLM's Mining Claims Payment Portal. We note, however, that BLM's regulations provide several options for submitting payments, one of which—a *bona fide* mail delivery service—Appellant eventually used (although it was past September 1 by that time). *See* 43 C.F.R. § 3830.24. In the absence of a timely-filed maintenance fee payment, BLM had no choice but to declare the mining claim forfeited by operation of law. 30 U.S.C. § 28i; 43 C.F.R. § 3830.91(a)(3).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, we affirm BLM's decision.

_____/s/_____
Silvia M. Riechel
Administrative Judge

I concur:

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