NOTE: This disposition is nonprecedential.

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
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March 10, 2016

IBLA 2016-30	)	NMC 1048825
	)	
HARVEY GABRIEL GLASGOW	)	Maintenance Fees
	)	
	)	Decision Affirmed;
	)	Stay Denied as Moot

ORDER

Harvey Gabriel Glasgow (Appellant) has appealed an October 16, 2015, decision made by the Nevada State Office, Bureau of Land Management (BLM). In that decision, BLM declared the lode mining claim Green Fire (NMC 1048825) abandoned and void because Appellant failed to file an affidavit of assessment work for the 2014 assessment year.

Issue

The issue before us in this case is whether, after timely filing a request for a waiver of the maintenance fee (Waiver Certification) for the 2014 assessment year, Appellant was required to file an affidavit of annual assessment work for the 2014 assessment year, and whether Appellant in fact did so. For the reasons that follow, we conclude that Appellant was required to file an affidavit of assessment work for the 2014 assessment year and did not do so, and we therefore affirm BLM's decision and deny Appellant's request for a stay as moot.

Facts

On August 23, 2013, Appellant timely filed a Waiver Certification for his lode mining claim for the 2014 assessment year, which began September 1, 2013, and ended September 1, 2014. *See* Maintenance Fee Waiver Certification, received Aug. 23, 2013. Also on August 23, 2013, Appellant filed an affidavit of assessment work describing work performed between September 1, 2012, and August 15, 2013. *See* Affidavit of Annual Assessment Work, dated and received Aug. 23, 2013. Appellant never filed an affidavit describing work performed during the 2014 assessment year. In August 2014 and August 2015, Appellant timely submitted maintenance fee

payments to BLM for the 2015 and 2016 assessment years, respectively. *See* Receipt #3093165 for Maintenance Fees Paid through the BLM Pay Portal, paid on Aug. 4, 2014; Receipt #3371568 for Maintenance Fees Paid through the BLM Pay Portal, paid on Aug. 19, 2015.

On October 16, 2015, BLM issued a decision declaring Appellant's lode mining claim abandoned and void by operation of law because Appellant did not file an affidavit of annual assessment work for the 2014 assessment year on or before December 30, 2014. Appellant timely appealed and requested a stay of the effectiveness of BLM's decision. *See* Notice of Appeal (NOA).[1]

Legal Standards

Pursuant to the statute codified at 30 U.S.C. § 28f(a)(1) (2012) and BLM's regulations at 43 C.F.R. §§ 3830.21(d)(1) and 3834.11(a)(2), the holder of an unpatented lode mining claim is required to pay a maintenance fee for each claim 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 (FLPMA), 43 U.S.C. § 1744 (2012).

The Secretary of the Interior may waive the claim maintenance fee if certain conditions are met. 30 U.S.C. § 28f(d); 43 C.F.R. part 3835. Under 30 U.S.C. § 28f(d)(1)(A) and (B), the Secretary may waive the claim maintenance fee requirement for a claimant who certifies in writing that on the date the maintenance fee payment was due, the claimant and all related parties (1) held not more than 10 mining claims, mill sites, tunnel sites, or any combination thereof, on public lands; and (2) performed assessment work during the assessment year ending at noon of September 1 of the calendar year in which payment of the maintenance fee was due (that is, the assessment year preceding the assessment year for which the waiver is sought). *See John J. Trautner*, 165 IBLA 265, 267 (2005) (the certification relates to assessment work performed during the preceding assessment year ending at noon on September 1 of the calendar year in which the maintenance fee is due, but the waiver is for the upcoming assessment year commencing at noon on the same day); *Audrey Bradbury*, 160 IBLA 269, 273-74 (2003) ("[A] small miner seeking waiver from

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[1] In his NOA, Appellant informed BLM that he was including a "partial Statement of Reasons to support this appeal" and "it is [his] intention to file a more complete statement of reasons for the appeal within 30 days from the filing of this appeal." NOA at 1. The record does not indicate that Appellant filed another statement of reasons, so our review is based on the reasons Appellant provided in his NOA.

payment of the [maintenance] fee must certify that he or she has performed that assessment work which was required for the assessment year just *ending*") (emphasis in original)). "Assessment year" means the 12 consecutive months beginning at 12 noon on September 1 each year, ending at 12 noon of September 1 the following year. *See* 43 C.F.R. § 3830.5.

Once a waiver is granted, a mining claimant is then required to perform annual assessment work and file annual FLPMA documents. 43 C.F.R. § 3835.12. Specifically, section 314(a)(1) of FLPMA requires claimants to file an affidavit of the assessment work performed on the claim before December 31 each year. 43 U.S.C. § 1744(a)(1). Similarly, BLM regulations provide that, if "[y]ou have a small miner waiver that covers mining claims," then you must file an affidavit of assessment work "by December 30 for each assessment year you obtained a small miner waiver." 43 C.F.R. § 3835.31(d)(3). The regulations explain, "For example, if the assessment year ends on September 1, 2003, you must file your annual FLPMA document no later than December 30, 2003." 43 C.F.R. § 3835.31(a). *See also Michael Warholic,* 186 IBLA 358, 361 (2015) ("[O]nce Appellant timely filed a Waiver Certification for the 2014 assessment year, he was required to file an Affidavit for the 2014 assessment year by December 30, 2014"). The assessment work must be performed during the assessment year for which the waiver was granted. 43 C.F.R. § 3835.15(b) and (c) ("you must ... perform your assessment work in the assessment year for which BLM waived the maintenance fee" and file "an affidavit of assessment work ... on or before the December 30th immediately following the close of the assessment year in which you performed assessment work"); *John J. Trautner,* 165 IBLA at 267 ("The claimant is then required by the Mining Law of 1872 to perform assessment work during that assessment year and, by section 314(a) of FLPMA, to file an affidavit of having performed such work on or before December 30 of the calendar year in which the assessment year ends.").

If a claimant does not timely file an affidavit of assessment work performed during the assessment year, then the mining claim is deemed abandoned, and BLM will declare the claim forfeited or "null and void." 43 U.S.C. § 1744(c) ("The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner"); 43 C.F.R. § 3835.91 ("If you fail to file an annual FLPMA document by December 30, as required in §3835.31(d), you forfeit the affected mining claims or sites."); *United States v. Locke,* 471 U.S. 84, 100 (1985) ("we find that Congress intended in § 314(c) [of FLPMA] to extinguish those claims for which timely filings were not made"). *See also* 43 C.F.R. § 3830.05 (definition of "forfeit" or "forfeiture," explaining that the words have the same effect as "abandoned and void" and "null and void"). Neither BLM nor the Board has discretion to waive the maintenance requirements or provide relief from the consequences of noncompliance. *Ronald W. Ruff,* 185 IBLA 320, 322 (2015), *citing Carl A. Parker, Sr.,* 165 IBLA 300, 303-04

(2005). *See also Audrey Bradbury*, 160 IBLA at 275 (filing an affidavit of annual assessment work "is an absolute requirement that cannot be waived and the consequence for failure to file is self-executing").

Analysis

Because BLM granted Appellant a waiver of the maintenance fee requirement for the 2014 assessment year, Appellant was required to file an affidavit of assessment work for that assessment year on or before December 30, 2014, to maintain his lode mining claim. *See* 43 C.F.R. §§ 3835.12, 3835.31(a) and (d). The record shows that Appellant did not file an affidavit of assessment work for the 2014 assessment year. Consequently, Appellant's claim was automatically forfeited and became null and void when the deadline for filing passed. 43 U.S.C. § 1744(c); 43 C.F.R. § 3835.91. BLM's decision therefore properly declared Appellant's claim abandoned and void by operation of law.

We have carefully considered the arguments Appellant made on appeal, and it appears that Appellant might be confused about which assessment years were covered by the affidavits he filed. According to the record, on August 29, 2012, Appellant submitted an affidavit of assessment work that cited work performed between June 15 and August 23, 2012. On that same day, Appellant filed his Waiver Certification for the 2013 assessment year. On August 23, 2013, Appellant submitted an affidavit of assessment work that cited work performed between September 1, 2012, and August 15, 2013. On that same day, Appellant filed his Waiver Certification for the 2014 assessment year.

In his NOA, Appellant states as follows:

> In 2013, [i]n accordance with 30 USC 28f(a), I filed a Maintenance Fee Waiver Certification *along with* the required affidavit of assessment of work. Based on your October 16 letter I think we are in agreement that the Maintenance Fee Waiver was submitted but that there is some disagreement whether the affidavit of assessment of work was submitted and/or required.

NOA at 1 (emphasis added).

The affidavit of annual assessment work that Appellant filed "along with"--or on the same date that he filed--his Waiver Certification in August 2013 did not identify the assessment year for which it was submitted. At the top of each affidavit of assessment work, there is a blank space in the certification in which the claimant may insert the appropriate assessment year: "The undersigned, _____, certifies that

at least ONE HUNDRED AND 00/100 DOLLARS ($100.00) per claim was expended for development, labor and improvement, or equivalent value added, as the annual assessment work for the assessment year ending September 1, ___ for the following unpatented mining claim(s)...." *See* Affidavit of Annual Assessment Work, dated and received Aug. 23, 2013; Affidavit of Annual Assessment Work, dated and received Aug. 29, 2012. Appellant did not insert the assessment year on either the August 2013 affidavit or the August 2012 affidavit. Consequently, the affidavits do not plainly identify the assessment year they are intended to cover.

Nevertheless, the affidavits contain other information that indicate which assessment year they cover. The affidavit Appellant filed in August 2013 cited work performed between September 1, 2012, and August 15, 2013. These dates fall within the 2013 assessment year, for which Appellant also filed a Waiver Certification. *See* Maintenance Fee Waiver Certification, received Aug. 29, 2012. This affidavit therefore supports the assessment year 2013 Waiver Certification. Similarly, the affidavit submitted by Appellant in August 2012 cited work performed between June 15 and August 23, 2012, dates which fall within the 2012 assessment year, for which Appellant also filed a Waiver Certification. *See* Maintenance Fee Waiver Certification, received Sept. 2, 2011. This affidavit therefore supports the assessment year 2012 Waiver Certification.

For the 2014 assessment year, Appellant again filed a Waiver Certification. Consequently, Appellant was required to file an affidavit citing assessment work performed during the 2014 assessment year. 43 C.F.R. § 3835.15(b) and (c); *John J. Trautner*, 165 IBLA at 267. The affidavit Appellant filed on August 23, 2013, however, described work performed before the 2014 assessment year began (before September 1, 2013), and therefore did not satisfy the requirement to file an affidavit covering work performed during the 2014 assessment year. "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 at 321 (emphasis in original). *See also Audrey Bradbury*, 160 IBLA at 274 ("The fact that maintenance fees are paid, or the small miner waiver certification filed, *prior* to a particular assessment year, while any required assessment work must be performed *during* that assessment year and documented no later than December 30 *after* that assessment year, makes the process somewhat complex, but does not alter the rule.") (emphasis in original). The record does not contain any affidavit citing assessment work performed during the 2014 assessment year to support the assessment year 2014 Waiver Certification. As a result, Appellant's claim was automatically forfeited when the deadline for filing that affidavit passed. 43 U.S.C. § 1744(c); 43 C.F.R. § 3835.91.

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. We also deny Appellant's request for a stay as moot.

/s/
Silvia M. Riechel
Administrative Judge

I concur:

/s/
Eileen G. Jones
Chief Administrative Judge