

EARL RIGGS, ET AL.

IBLA 2002-368

Decided February 17, 2005

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, declaring mining claims forfeited and void. NMMC-167928 to 167931.

Affirmed as modified.

1. Mining Claims: Abandonment--Mining Claims:  
Recordation of Affidavit of Assessment Work or Notice of  
Intention to Hold--Mining Claims: Rental or Claim  
Maintenance Fees: Generally--Mining Claims: Rental or  
Claim Maintenance Fees: Small Miner Exemption

The obligation to file evidence of required assessment work by December 30 following the filing of a waiver certification stems from the assessment work requirements of the Mining Law of 1872 and the filing requirements of sec. 314 of the Federal Land Policy and Management Act of 1976 and not from the fact a waiver certification was filed by the previous September 1.

2. Mining Claims: Abandonment--Mining Claims:  
Recordation of Affidavit of Assessment Work or Notice of  
Intention to Hold--Mining Claims: Rental or Claim  
Maintenance Fees: Generally--Mining Claims: Rental or  
Claim Maintenance Fees: Small Miner Exemption

The general rule is that for every assessment year either the maintenance fee must be paid in advance, or a small miner waiver certification filed in advance and assessment work performed during that assessment year, with evidence of assessment work filed with BLM under the filing requirements of sec. 314 of the Federal Land Policy and Management Act of 1976 by December 30 following the end of the assessment year.

APPEARANCES: Earl Riggs, Margaret Riggs, and Ernest L. Aguayo, pro sese.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This appeal has been brought by Earl Riggs, Margaret Riggs, and Ernest L. Aguayo from a May 13, 2002, decision <sup>1/</sup> of the New Mexico State Office, Bureau of Land Management (BLM), declaring appellants' mining claims forfeited and void. <sup>2/</sup> In the decision, BLM noted that the "2002 Maintenance Fee Waiver Certification" for the claims was filed on August 20, 2001. The BLM decision was based upon claimants' failure to file with BLM an affidavit of assessment work by December 30 <sup>3/</sup> with respect to the claims for which claimants filed a maintenance fee waiver certification. 43 CFR 3833.2-2 (2003); 43 CFR 3833.4 (2003).

In their statement of reasons for appeal, appellants contend the assessment work was performed and that they filed a proof of labor for the claims with the Sierra County recorder's office on October 16, 2001. A copy of the proof of labor recorded with the county has been provided. Appellants do not assert that the proof of labor was timely filed with BLM.

Congress has mandated generally that the holder of each unpatented mining claim, mill site, or tunnel site shall pay a claim maintenance fee of \$100 to the Secretary of the Interior on or before September 1 of each year. 30 U.S.C. § 28f (2000). Payment of this maintenance fee is in lieu of the assessment work requirements of the Mining Law of 1872, 30 U.S.C. §§ 28-28e (2000), and the related filing requirements of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (2000). 30 U.S.C. § 28f(a) (2000). Failure to pay the fee "shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law." 30 U.S.C. § 28i (2000).

The Secretary has been accorded discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof, on public lands. 30 U.S.C. § 28f(d)(1) (2000). Under the Mining Law and Departmental regulations, a claimant obtaining a maintenance fee waiver must perform \$100 worth of labor annually during the assessment year on each claim located after 1872. 30 U.S.C. § 28 (2000); 43 CFR 3851.1(b) (2003); 43 CFR

---

<sup>1/</sup> The decision is actually dated May 13, 2001, but it is clear this was a typographical error as the decision was received by appellants on May 21, 2002.

<sup>2/</sup> The four claims are identified as the Lost Nugget #1 through the Lost Nugget #4, bearing BLM serial numbers NMMC 167928 through NMMC 167931.

<sup>3/</sup> The decision did not specify the year, but presumably referred to Dec. 30, 2001.

3851.3(c) (2003).<sup>4/</sup> Under the annual filing provisions of section 314 of FLPMA and Departmental regulations, the owner of an unpatented mining claim located on public land obtaining a small miner waiver must file evidence of assessment work performed or a notice of intention to hold the claim with the proper BLM office on or before December 30 of each year “following the calendar year in which the \* \* \* claim was located.” 43 U.S.C. § 1744(a) (2000); 43 CFR 3833.2-2(c) (2003); 43 CFR 3835.31(d)(3). Failure to timely record evidence of assessment work with BLM creates a conclusive presumption of abandonment of the mining claim and the claim is deemed forfeited. 43 U.S.C. § 1744(c) (2000); 43 CFR 3833.4(a)(1) (2003); 43 CFR 3835.91.

Review of the record discloses the subject claims were located on September 1, 1998, and recorded with BLM on September 22, 1998. A maintenance fee payment waiver certification for the claims was filed with BLM on August 25, 1999, for the 2000 assessment year commencing on September 1, 1999.<sup>5/</sup> Fees for recording a notice of intention to hold the claims were also received by BLM on August 25, 1999. Subsequently, a maintenance fee waiver certification for the claims was filed with BLM on August 25, 2000, for the 2001 assessment year ending September 1, 2001. Fees for recording a notice of intention to hold the claims were also received by BLM on August 25, 2000. No evidence of assessment work performed was filed with BLM by December 30 of either year 2000 or 2001.

[1] The obligation to file evidence of assessment work by December 30 following the filing of a waiver certification stems from the assessment work requirements of the Mining Law of 1872 and the filing requirements of section 314 of FLPMA and not from the fact that a waiver certification was filed. Audrey Bradbury, 160 IBLA 269, 274 n.7 (2003). The responsibility of performing assessment work commences with the assessment year beginning on September 1 following the date of location of the claim. 30 U.S.C. § 28 (2000). In the present case the claims were located in September 1998. Thus, claimants were able to satisfy their FLPMA section 314 filing requirements for 1999 by filing a notice of intention to hold in 1999 since no assessment work was required for the 1999 assessment year. 43 CFR

---

<sup>4/</sup> Regulations in 43 CFR Subpart 3851 have been dropped in the most recent (2004) codification of the CFR. The annual FLPMA filing requirements are now addressed in the regulation at 43 CFR 3835.31. This regulation confirms that a small miner filing a waiver certification for mining claims must file evidence of assessment work by Dec. 30 for each assessment year for which a waiver was obtained. 43 CFR 3835.31(d)(3).

<sup>5/</sup> An assessment year begins on Sept. 1 and ends on the following Sept. 1. 43 CFR 3833.0-5(n) (2003); 43 CFR 3830.5. Thus, the 2000 assessment year began on Sept. 1, 1999, and ended on Sept. 1, 2000.

3833.2-4(c) (1993); 43 CFR 3835.31(c); see James J. Holberg, III, 160 IBLA 372, 374-75 (2004). The fact that claimants elected not to pay the maintenance fee by September 1, 1999, but rather to file a waiver certification on August 25, 1999, for the 2000 assessment year commencing September 1, 1999, did not alter this fact. Claimants filing a waiver certification represent, among other things, that they have performed assessment work required under the Mining Law for the assessment year ending on the September 1 the maintenance fee was due. 30 U.S.C. § 28f(d)(1)(B) (2000). When no assessment work was required for that assessment year, the claims are not forfeited for failure to file evidence of assessment work by December 30 following the filing of the waiver certification. See James J. Holberg, III, 160 IBLA at 374-75.

[2] The fact that claimants filed a waiver certification in August 1999 (rather than pay the maintenance fee) meant they were required to perform assessment work for the 2000 assessment year. The general rule is that for every assessment year either the maintenance fee must be paid in advance of the assessment year or a small miner waiver certification filed and assessment work performed during the assessment year and evidence of assessment work filed with BLM pursuant to the filing requirements of section 314 of FLPMA by December 30 following the end of the assessment year. Audrey Bradbury, 160 IBLA at 274. Thus, evidence of assessment work for the 2000 assessment year (ending September 1, 2000) should have been filed with BLM by December 30, 2000. 43 U.S.C. § 1744(a) (2000); 43 CFR 3833.1-7(b) (2003); 43 CFR 3835.31(d)(3). The case file contains no evidence of assessment work for the 2000 assessment year recorded with BLM by December 30, 2000. When assessment work is required, an affidavit of assessment work must be filed. 43 CFR 3833.4(a)(3) (2003); 43 CFR 3835.31(b). The maintenance fee waiver certification for which BLM acknowledged receipt of filing fees in August 2000 is not sufficient. Mineral Hill Venture, 155 IBLA 323, 327-28 (2001); Dale J. LaCrone, 135 IBLA 203, 207-08 (1996). Similarly, the filing of the waiver certification in August 2000 for the 2001 assessment year obligated claimants to file an affidavit of assessment work for that assessment year with BLM by December 30, 2001. This was not done. Accordingly, we find that the BLM decision must be affirmed as modified to reflect that the claims are conclusively deemed abandoned and void pursuant to section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (2000). United States v. Locke, 471 U.S. 84, 100 (1985); Audrey Bradbury, 160 IBLA at 275; Lynn Keith, 53 IBLA 192, 196, 88 I.D. 369, 372 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

---

C. Randall Grant, Jr.  
Administrative Judge

I concur:

---

Lisa Hemmer  
Administrative Judge