



RONALD W. RUFF

185 IBLA 320

Decided May 5, 2015



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

RONALD W. RUFF

IBLA 2014-280 and 281

Decided May 5, 2015

Appeal from two decisions of the California State Office, Bureau of Land Management (BLM), declaring 12 mining claims (CAMC292977 *et al.*) abandoned, null and void.

Decision affirmed; Petition for Stay Denied as Moot.

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

A claimant who files a small miner waiver certification must perform assessment work for the same assessment year for which that waiver was filed, and then file evidence of assessment work on or before December 30 following the end of that 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.

2. Evidence: Presumptions--Evidence: Burden of Proof--Mining Claims: Rental or Claim Maintenance Fees

There is a legal presumption that government officials have properly discharged their duties and have not lost or misplaced legally significant documents filed with them and, hence, the absence of timely date-stamped documents from the record will support a finding that the documents were not timely filed. Mere assertions or uncorroborated statements that a document was mailed to BLM are insufficient to overcome the presumption of regularity.

APPEARANCES: Ronald W. Ruff, Murray, Utah, *pro se*.

OPINION BY CHIEF ADMINISTRATIVE JUDGE JONES

Ronald W. Ruff (Appellant) has appealed from and requested a stay of two decisions of the California State Office, Bureau of Land Management (BLM) declaring 12 mining claims abandoned, null and void. In the first decision, issued August 5, 2014, BLM declared the Pumpkin Seed (CAMC292977), Virginia (CAMC292978), Lucky Spot (CAMC292979), and Hawkeye/Monumental (CAMC292980) unpatented placer mining claims forfeited. In the second decision, issued September 4, 2014, BLM declared the Winkeye (CAMC292969), Anna's Eyes (CAMC292970), Blacksand (CAMC292971), Pittsburg (CAMC292972), Potosi (CAMC292973), Empire (CAMC292974), Monumental (CAMC292975), and Bonanza (CAMC292976) unpatented placer mining claims forfeited. BLM stated in both decisions that the claims were forfeited because Mr. Ruff failed to file an affidavit of assessment work on or before December 30, 2013, for the 2013 assessment year. We have consolidated Mr. Ruff's appeals of these decisions because they share the same facts. Based on the following analysis, we affirm BLM's decisions and deny the petition for stay as moot.

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).

[1] 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). 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 of the assessment work (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 John J. Trautner*, 165 IBLA 265, 267 (2005); *Earl Riggs*, 165 IBLA 36, 39 (2005). The assessment work must be completed *during* the assessment year in question and cannot be performed prior to the beginning of that assessment year. *Audrey Bradbury*, 160 IBLA 269, 274 (2003).

The failure to timely file an affidavit of assessment work performed when required under the mining laws "shall be 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.

On August 26, 2013, Mr. Ruff filed three Waiver Certifications that together included all 12 mining claims at issue in the present appeals. Having filed those Waiver Certifications, Mr. Ruff 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. There is no evidence that Mr. Ruff timely filed the requisite Affidavit. Therefore, the claims became automatically forfeited when the deadline for filing passed. 43 U.S.C. § 1744(c) (2012); 43 C.F.R. § 3835.91.

We have carefully read the entire file, including Mr. Ruff's undated letter entitled "Notice of Appeal and Petition for Stay," received by BLM on August 28, 2014, and his September 20, 2014, letter, received by the Board on September 25, 2014, also entitled "Notice of Appeal and Petition for Stay." We will consider Mr. Ruff's September 20, 2014, letter as his Statement of Reasons (SOR) in support of both appeals. See 43 C.F.R. § 4.412. In the SOR, Mr. Ruff states he "filed the Affidavit timely to the BLM California State Office in December, 2013" and that BLM deposited a check that was contained "in the same envelope delivering the Affidavit . . . thus proving the BLM received the document envelope." SOR at 1, 2. Mr. Ruff asserts that the Affidavit "was apparently misplaced by the BLM." *Id.* at 2.

BLM's records contain no evidence that Mr. Ruff submitted the required Affidavit. The record shows that BLM did indeed deposit a check in the amount of \$120.00 for the twelve claims at issue from Winkeye Consolidated Mines, LLC, on December 24, 2013, but it also shows that BLM issued a refund for that amount. The record also contains duplicate copies of Mr. Ruff's Waiver Certifications that are date stamped December 24, 2013. Their presence supports BLM's statement that Mr. Ruff submitted copies of those documents with the check in his December 2013 mailing. See August 5, 2014 BLM Decision at 1; September 4, 2014 BLM Decision at 1. However, Mr. Ruff provides no countervailing evidence, other than his statements in the SOR, to support his assertion that his mailing contained anything other than those Waiver Certifications and a check in the amount of \$120.00.

[2] With respect to Mr. Ruff's assertion that BLM lost or misplaced his paperwork, we note there is a presumption that government officials have properly discharged their duties and not lost or misplaced legally significant files. *Christopher L. Mullikin*, 180 IBLA 60, 68-69 (2010), and cases cited. Mr. Ruff has provided no evidence, other than his statements in the SOR, that would rebut this presumption

and we find none in the record. Accordingly, we find no basis to reverse BLM's decisions.

We have also carefully considered Mr. Ruff's other arguments. To summarize, Mr. Ruff states that he has a long history of filing paperwork with BLM in a timely manner, his mining activities are beneficial to the United States, BLM should have called him to advise him of the missing Affidavit, and BLM looks dishonest. Unfortunately for Mr. Ruff, his arguments do not show that he filed the Affidavit by December 30, 2013, as required by law to maintain his mining claims.

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, and the petition for stay is denied as moot.

_____/s/_____
Eileen Jones
Chief Administrative Judge

I concur:

_____/s/_____
James F. Roberts
Administrative Judge