



JANET AND SARAH FULLER

188 IBLA 168

Decided August 25, 2016



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
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JANET AND SARAH FULLER

IBLA 2016-86, *et al.*

Decided August 25, 2016

Appeals from three decisions of the Oregon State Office, Bureau of Land Management, declaring six placer mining claims abandoned and void by operation of law for failure to file affidavits of assessment work. ORMC 143325 - 29 and ORMC 147128.

Affirmed; petitions for stay denied as moot.

1. Mining Claims: Abandonment;  
Mining Claims: Recordation of Affidavit of Assessment  
Work or Notice of Intention to Hold

A claimant who files a small miner waiver certification must perform assessment work for the 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.

2. Mining Claims: Abandonment;  
Mining Claims: Recordation of Affidavit of Assessment  
Work or Notice of Intention to Hold

If a claimant does not timely file an affidavit of assessment work performed during the assessment year for which he or she has received a small miner waiver certification, the mining claim is abandoned and BLM will declare the claim forfeited or void.

3. Mining Claims: Abandonment;  
Mining Claims: Recordation of Affidavit of Assessment  
Work or Notice of Intention to Hold

Neither BLM nor the Board has discretion to waive the maintenance requirements or provide relief from the consequences of noncompliance.

APPEARANCES: Janet Fuller, Port Angeles, Washington, *pro se*; Sarah Fuller, Port Angeles, Washington, *pro se*.

OPINION BY CHIEF ADMINISTRATIVE JUDGE JONES

*Summary*

When a mining claimant files a maintenance fee waiver certification (Waiver Certification) for an assessment year, the claimant must file an affidavit of assessment work (Affidavit) on or before December 30 immediately following the end of that assessment year.<sup>1</sup> The failure of a mining claimant to timely file an Affidavit conclusively establishes the abandonment of the mining claim, rendering the claim void.<sup>2</sup>

Here, BLM issued three decisions in which the agency declared the subject claims abandoned and void because Appellants did not timely file the required Affidavits. Appellants appealed BLM's decisions. We have consolidated the three appeals because they have substantially similar legal issues.

*Appellants Did Not Timely File Affidavits of Annual Assessment Work  
and Therefore Their Claims are Void*

[1] Mining claimants must pay yearly maintenance fees on or before September 1 for the upcoming assessment year.<sup>3</sup> But BLM may waive the claim maintenance fee requirement for a qualifying small mining claimant who files a Waiver Certification on or before September 1 for the assessment year.<sup>4</sup> Upon receiving that waiver, a mining claimant is required to perform annual assessment work on a claim and file an Affidavit on or before December 30.<sup>5</sup>

[2] If the claimant does not timely file an Affidavit during the assessment year for which he or she has filed the Waiver Certification, the mining claim is abandoned and BLM will declare the claim forfeited or void.<sup>6</sup> Neither BLM nor the

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<sup>1</sup> 43 U.S.C. § 1744(a)(1) (2012); 43 C.F.R. §§ 3835.12, 3835.15, 3835.31(a); *see also Paul Dickison*, 186 IBLA 69, 70-71 (2015).

<sup>2</sup> 43 U.S.C. § 1744(c) (2012); 43 C.F.R. § 3835.91; *see also Paul Dickison*, 186 IBLA at 71 (citing *United States v. Locke*, 471 U.S. 84, 97-100 (1985)).

<sup>3</sup> *See* 30 U.S.C. § 28f(a) (2012); 43 C.F.R. § 3834.11(a)(2).

<sup>4</sup> 43 C.F.R. §§ 3835.1, 3835.10, 3835.11(a).

<sup>5</sup> 43 U.S.C. § 1744(a)(1)(2012); 43 C.F.R. §§ 3835.12, 3835.31(d)(3); *see also Michael Warholic*, 186 IBLA 358, 361 (2015).

<sup>6</sup> 43 U.S.C. § 1744(c)(2012); 43 C.F.R. § 3835.91; 43 C.F.R. § 3830.5 (definition of forfeit or forfeiture).

Board has discretion to waive the maintenance requirements or provide relief from the consequences of noncompliance.<sup>7</sup>

Here, the record contains the Waiver Certifications filed by Appellants for the assessment year ending September 1, 2015. Having filed those Waiver Certifications, Appellants were required to file Affidavits by December 30, 2015. They did not. Appellants admit and the record establishes that Appellants did not file their Affidavits until January 5, 2016, six days after the deadline. As such, since Appellants did not meet the December 30, 2015, deadline, BLM's decision correctly applied applicable law to declare Appellants' placer mining claims abandoned and void.

[3] Appellants do not dispute that they did not file their Affidavits with BLM by the deadline.<sup>8</sup> Appellants state they intended to hold the claims and have historically been good stewards of the land on which the claims are located. Appellants also state that they missed the deadline for the filing because they were caring for their dying mother and forgot to turn them in.<sup>9</sup> While we have carefully considered Appellants' Statement of Reasons, under applicable law, we cannot reverse BLM's decision finding Appellants' claims void because Appellants did not timely file Affidavits.<sup>10</sup>

#### *Conclusion*

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,<sup>11</sup> we affirm the decisions and deny the petitions for stay as moot.

/s/

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Eileen Jones  
Chief Administrative Judge

I concur:

/s/

\_\_\_\_\_  
James F. Roberts  
Deputy Chief Administrative Judge

<sup>7</sup> *Ronald W. Ruff*, 185 IBLA 320, 322 (2015).

<sup>8</sup> Statement of Reasons at unpaginated 1.

<sup>9</sup> *Id.*

<sup>10</sup> *See Ronald W. Ruff*, 185 IBLA at 322.

<sup>11</sup> 43 C.F.R. § 4.1.