



DOUG WALKER

188 IBLA 174

Decided August 25, 2016



United States Department of the Interior  
Office of Hearings and Appeals

Interior Board of Land Appeals  
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DOUG WALKER

IBLA 2016-112

Decided August 25, 2016

Appeal from a decision of the Oregon State Office, Bureau of Land Management (BLM) in which BLM declared unpatented mining claim ORMC 166326 abandoned and void.

Affirmed.

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: Small Miner Exemption

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;  
Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

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

APPEARANCES: Doug Walker, Hermiston, Oregon, *pro se*.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE JONES

## Summary

Appellant Doug Walker appeals a decision of the Oregon State Office, BLM, issued on February 19, 2016. In its decision, BLM declared Appellant's unpatented mining claim Lucky Linda ORMC 166326 abandoned and void because Appellant did not timely file an affidavit of annual assessment work. Because federal law requires the filing of an affidavit of annual assessment work, and we do not possess the discretion to provide relief from the consequences of noncompliance with that requirement, we hold that BLM was correct and affirm its decision.

*Appellant's Mining Claim is Abandoned and Void Because  
He Did Not Timely File an Affidavit of Annual Assessment Work*

[1] Mining claimants must pay yearly maintenance fees on or before September 1 for the upcoming assessment year.<sup>1</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>2</sup> Upon receiving that waiver, a mining claimant is required to perform annual assessment work on a claim and file an affidavit of the assessment work performed on the claim before December 31.<sup>3</sup> If the claimant does not timely file an affidavit of assessment work performed during the assessment year for which he or she has received the waiver, the mining claim is abandoned and BLM will declare the claim forfeited or void.<sup>4</sup> Neither BLM nor the Board has discretion to waive the maintenance requirements or provide relief from the consequences of noncompliance.<sup>5</sup>

Here, the record contains a small miner waiver certification filed by Appellant for the assessment year ending September 1, 2015. Having filed that waiver certification, Appellant was required to file an affidavit of annual assessment work by December 30, 2015. The record, however, does not contain evidence that Appellant

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<sup>1</sup> See 30 U.S.C. § 28f(a) (2012); 43 C.F.R. § 3834.11(a)(2).

<sup>2</sup> 43 C.F.R. §§ 3835.1, 3835.10, 3835.11(a).

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

<sup>4</sup> 43 U.S.C. § 1744(c); *United States v. Locke*, 471 U.S. 84, 100 (1985); 43 C.F.R. § 3835.91; 43 C.F.R. § 3830.05.

<sup>5</sup> *Ronald W. Ruff*, 185 IBLA 320, 322 (2015); *see also Audrey Bradbury*, 160 IBLA 269, 275 (2003).

filed an affidavit of annual assessment work by the deadline for the assessment year. Therefore, BLM in its decision correctly applied applicable law to declare Appellant's claim abandoned and void.

Appellant does not dispute that he did not file an affidavit of annual assessment work with BLM by the deadline.<sup>6</sup> Appellant states he did not realize he needed to file the affidavit with BLM, and that he filed the affidavit with the county on August 17, 2015.<sup>7</sup> He has attached a copy of the affidavit to his appeal that shows he filed it with a county clerk August 21, 2015. The fact remains, however, that Appellant did not timely file the affidavit with BLM as required by law. Under applicable law, we may not excuse Appellant's lack of compliance with the affidavit filing requirements, extend the time for compliance, or afford relief from the statutory consequences of forfeiture.<sup>8</sup>

*Conclusion*

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,<sup>9</sup> the Board affirms BLM's decision.

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/s/  
Eileen Jones  
Chief Administrative Judge

I concur:

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/s/  
James F. Roberts  
Deputy Chief Administrative Judge

<sup>6</sup> Notice of Appeal at unpaginated 1.

<sup>7</sup> *Id.*

<sup>8</sup> See *Ronald W. Ruff*, 185 IBLA at 322.

<sup>9</sup> 43 C.F.R. § 4.1.