



WILLIAM WIELGUS

198 IBLA 36

Decided February 14, 2022



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WILLIAM WIELGUS

IBLA 2022-30

Decided February 14, 2022

Appeal of a decision issued by the Bureau of Land Management declaring four unpatented mining claims forfeited because the maintenance fee waiver certification filed for the 2022 assessment year was invalid and the required maintenance fee payments were not made by September 1, 2021.

Decision Vacated and Remanded; *Thomas L. Carufel*, 155 IBLA 340 (2001), overruled.

APPEARANCES: William Wielgus, *pro se*.

OPINION BY ADMINISTRATIVE JUDGE SOSIN

William Wielgus appeals an October 13, 2021, decision issued by the Bureau of Land Management's Arizona State Office (BLM). In that decision, BLM declared four unpatented mining claims forfeited because the maintenance fee waiver certification filed for the 2022 assessment year, which was an edited photocopy of the prior year's waiver certification, was invalid and the required maintenance fee payments were not made by September 1, 2021.

SUMMARY

Under the law, a mining claimant who timely files a waiver certification that contains any defect must be afforded an opportunity to cure that defect. Here, BLM declared Wielgus's mining claims forfeited, without an opportunity to cure, because the waiver certification for the 2022 assessment year was an edited photocopy of the prior year's waiver certification. In its decision, BLM relied on *Thomas L. Carufel*, where the Board held that submission of a photocopy of a prior year's waiver certification resulted in the automatic forfeiture of the claims because the lack of the claimant's contemporaneous signature "goes to the heart of the waiver certification process." We hold, however, consistent with the Mining Law, BLM's regulations, and other Board

decisions, that the lack of an original signature on an otherwise timely filed waiver certification constitutes a curable defect, regardless of whether the waiver certification is a photocopy of a prior year's waiver certification. We therefore overturn the Board's decision in *Carufel* and vacate BLM's decision declaring Wielgus's mining claims forfeited without first providing him with an opportunity to cure the lack of an original signature.

## BACKGROUND

### *The Legal Requirements for Maintaining Mining Claims*

Under the Mining Law, a person holding an unpatented mining claim must pay a yearly maintenance fee on or before September 1 of each assessment year.<sup>1</sup> The "assessment year" is the 12-month period beginning on September 1 each year.<sup>2</sup> BLM may waive the annual maintenance fee for a mining claimant who holds no more than a total of 10 mining claims, mill sites, or tunnel sites and who timely files a waiver certification by September 1.<sup>3</sup> A claimant who files a waiver certification must perform assessment work on the claim during the assessment year for which the waiver is granted and file an affidavit on or before the December 30 immediately following the end of the assessment year, documenting the completion of the required assessment work.<sup>4</sup>

For claimants who qualify for a small miner waiver of the annual maintenance fee, "[t]he cardinal rule is that for each and every assessment year, either (1) maintenance fees must be paid, or (2) a small miner waiver certification must be filed and assessment work performed and documented."<sup>5</sup> A claimant who does not pay a maintenance fee or file a waiver certification by the September 1 deadline automatically

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<sup>1</sup> 30 U.S.C. § 28f(a) (2018); 43 C.F.R. § 3834.11(a)(2) (2020). Citations to the United States Code are to the current (2018) edition; citations to the Code of Federal Regulations are to the current (2020) edition unless otherwise noted.

<sup>2</sup> See 30 U.S.C. § 28. We refer to a given assessment year by reference to the calendar year in which it ends, so the "2022 assessment year" means the assessment year beginning on September 1, 2021, and ending in 12 months, on September 1, 2022.

<sup>3</sup> 30 U.S.C. § 28f(d); 43 C.F.R. §§ 3835.1, 3835.10, 3835.11(a).

<sup>4</sup> 30 U.S.C. § 28 (requiring work to be performed on each claim for which a waiver is granted); 43 U.S.C. § 1744(a) (requiring an affidavit of assessment work to be filed with BLM on or before December 30 of the calendar year in which the assessment year ends); see 43 C.F.R. §§ 3835.12 ("What are my obligations once I receive a waiver?"), 3835.31 ("When do I file an annual FLPMA document?"), 3836.11 ("What are the general requirements for performing assessment work?").

<sup>5</sup> *Audrey Bradbury*, 160 IBLA 269, 274 (2003).

forfeits the mining claim as a matter of law.<sup>6</sup> When the statutory fee payment has not been waived, and the claimant fails to pay the annual maintenance fee by the deadline, the claim is automatically forfeited by operation of the maintenance fee statute.<sup>7</sup> The law provides no discretion to the Department to prevent the forfeiture or reinstate the claim when a claimant fails to pay the annual maintenance fee and fails to submit a waiver certification by the deadline.<sup>8</sup> Neither this Board nor BLM is authorized to excuse a mining claimant's lack of compliance with the maintenance fee and waiver certification requirements, extend the time for compliance, or afford any relief from the automatic claim forfeiture provisions in the law.<sup>9</sup>

However, if a claimant timely files a waiver certification but BLM finds that the waiver certification is defective, BLM must notify the claimant about the defect and provide 60 days after receipt of the written notification either to cure the defect or pay the maintenance fee.<sup>10</sup> BLM can provide this opportunity to cure a defective waiver certification only when a claimant has timely filed that document as required by statute; the regulations specify that there is no opportunity to cure the failure to timely file a waiver certification at all.<sup>11</sup>

### *Factual and Procedural Background*

The record submitted by BLM shows that Wielgus has timely filed waiver certifications and affidavits of assessment work since 2006 for four unpatented placer mining claims located in Maricopa County, Arizona: the Open Bucket (AMC369712),

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<sup>6</sup> 30 U.S.C. § 28i (failure to pay maintenance fee “shall conclusively constitute a forfeiture of the unpatented mining claim . . . by the claimant and the claim shall be deemed null and void by operation of law”); 43 C.F.R. §§ 3830.91(a)(3), (4) (imposing forfeiture for failure to pay the annual maintenance fee or file a small miner waiver request on or before the due date), 3835.92(a) (imposing forfeiture if claimant fails to submit a waiver request and fails to pay the annual maintenance fee by September 1).

<sup>7</sup> *See Ryan Jabbour*, 195 IBLA 234, 236 (2020); *see also San Mateo-San George Mining Co.*, 181 IBLA 55, 60 (2011) (“The statute is self-operative. It explicitly states that failure to timely pay the required maintenance fee automatically results in forfeiture of the mining claim by operation of law.”).

<sup>8</sup> *See, e.g., Ryan Jabbour*, 195 IBLA at 236.

<sup>9</sup> *Id.*; *see also John J. Trautner*, 197 IBLA 250, 252 (2021).

<sup>10</sup> 30 U.S.C. § 28f(d)(3); 43 C.F.R. §§ 3830.94(c), 3835.93.

<sup>11</sup> 43 C.F.R. § 3830.93(a) (referencing § 3830.91, which provides for forfeiture for, e.g., failure to submit a small miner waiver and also failure to pay the maintenance fee); *see Kenneth Pedersen*, 187 IBLA 130, 134 (2016) (explaining that while defects in a waiver certification may be curable under 30 U.S.C. § 28f(d)(3) and 43 C.F.R. § 3830.93, when no waiver certification was filed at all, “there is nothing for Appellant to cure”).

Rock On (AMC369954), Ranger Run (AMC370046), and Gold Record (AMC370783) claims.<sup>12</sup>

At issue in this appeal is the waiver certification Wielgus filed for the 2022 assessment year.<sup>13</sup> Wielgus timely filed the waiver certification, but submitted what appears to be a photocopy of the prior year's certification edited to include updated dates for the assessment year for which the waiver was being requested. In the decision on appeal, BLM declared Wielgus's four mining claims forfeited because the waiver certification, although timely filed, "was not properly executed for the 2022 assessment year and is therefore not valid."<sup>14</sup> BLM stated that the document was "an exact copy of the maintenance fee waiver certification submitted for the 2021 assessment year,"<sup>15</sup> which violated the requirement that the waiver certification contain "a current signature that was executed for the specific assessment year for which the waiver is requested."<sup>16</sup>

BLM concluded that Wielgus's failure to file a contemporaneously signed certification of the claimant's qualifications was a defect that was not subject to cure because a contemporaneous signature "goes to the heart of the waiver certification process."<sup>17</sup> In reaching this conclusion, BLM relied on the Board's 2001 decision in *Thomas L. Carufel*, where the Board similarly found that the lack of a contemporaneous signature on a photocopy of a previously filed waiver certification was an incurable defect.<sup>18</sup> Because the waiver certification was invalid, and because Wielgus had not paid maintenance fees for the claims by the September 1, 2021, deadline, BLM declared the claims forfeited.<sup>19</sup>

Wielgus appealed BLM's decision.<sup>20</sup> He points out that his waiver certification was not "an exact copy" as claimed by BLM in its decision, and that he should have been afforded notice of any defect.<sup>21</sup> BLM submitted the administrative record but did not file an answer.<sup>22</sup>

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<sup>12</sup> Administrative Record (AR) Tab No. 5, Annual Filing Documents – Maintenance Fee Waiver and Affidavit of Labor; AR, Serial Register Page (run date Nov. 15, 2021).

<sup>13</sup> AR Tab No. 3, Original Maintenance Waiver Fee Certifications.

<sup>14</sup> AR Tab No. 2, BLM, Arizona State Office, Decision, Maintenance Fee Waiver Certifications Denied, Mining Claims Declared Forfeited at 1 (Oct. 13, 2021) (Decision).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 2.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* (citing *Thomas L. Carufel*, 155 IBLA 340 (2001)).

<sup>19</sup> *Id.* at 1.

<sup>20</sup> AR Tab No. 1, Notice of Appeal at 1 (filed Nov. 9, 2021) (Appeal).

<sup>21</sup> *Id.*

<sup>22</sup> See 43 C.F.R. § 4.414(c) ("Failure to file an answer . . . will not result in a default.").

## ANALYSIS

The resolution of this appeal turns on whether the waiver certification that Wielgus submitted for the 2022 assessment year constituted a timely filed waiver certification containing a defect that is curable or whether, as BLM stated in its decision, the flaw in the waiver certification was so fundamental that no cure was available. As we explain below, we conclude that BLM erred in declaring Wielgus's claim automatically forfeited without first providing notice and an opportunity to cure the waiver's defect—the lack of an original signature on the edited photocopied waiver certification. In reaching our decision, we conclude that the Board incorrectly decided *Thomas L. Carufel*,<sup>23</sup> relied on by BLM, and we therefore overturn that decision and vacate BLM's decision.

*The Law and Prior Board Decisions Addressing Waiver Certifications*

To resolve this appeal, we examine the governing law and prior Board decisions addressing waiver certifications. We begin with the statute governing waiver certifications for unpatented mining claims. As explained above, the Mining Law provides that BLM may waive the maintenance fee for a claimant who certifies they are qualified for a waiver.<sup>24</sup> The statute specifies that the maintenance fee “may be waived for a claimant who certifies in writing . . . that on the date the [maintenance fee] payment was due,” the claimant held 10 or fewer claims and has performed the assessment work required by law.<sup>25</sup> The statute further provides that if a waiver certification is “defective for any reason, the claimant shall have a period of 60 days after receipt of written notification of the defect or defects” by BLM to either cure such defect(s) or pay the maintenance fee.<sup>26</sup>

Next, we look at BLM's regulations implementing the Mining Laws. Those regulations specify that in order to request a waiver, the claimant must timely submit a waiver certification form to BLM that demonstrates they are qualified for a waiver.<sup>27</sup> The waiver certification form must include the following information: the names and addresses of the claimants; the original signatures of the claimants; the names of the mining claims for which the waiver is sought; the serial numbers of the mining claims, if available; and the date the maintenance fee was due.<sup>28</sup>

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<sup>23</sup> 155 IBLA 340 (2001).

<sup>24</sup> See *supra* note 3.

<sup>25</sup> 30 U.S.C. § 28f(d)(1).

<sup>26</sup> *Id.* § 28f(d)(3).

<sup>27</sup> 43 C.F.R. § 3835.10(a).

<sup>28</sup> *Id.* § 3835.10(b); see also *id.* § 3835.11(a) (requiring small miner waiver certification to include specified attestations).

The regulations provide two specific circumstances related to waiver certifications in which a mining claim is automatically forfeited: when a claimant fails to timely file a waiver certification and also fails to pay the maintenance fee by September 1,<sup>29</sup> and when a timely filed waiver certification does not identify the claim or claims subject to the waiver.<sup>30</sup> When a waiver certification is timely filed but contains other defects, however, the regulations reiterate the statutory direction that BLM must provide the claimant with 60 days to cure those defects or pay the maintenance fee.<sup>31</sup> If the claimant fails to cure the defects or pay the maintenance fee within the time allowed, the claim is then forfeited.<sup>32</sup>

In interpreting these statutory and regulatory provisions, the Board has consistently recognized that when a claimant timely submits a waiver certification, but that document lacks the original signature of a claimant, such defect is curable.<sup>33</sup> In doing so, the Board has explained that under the law, the “failure to sign [a waiver certification] is a curable defect when the document is otherwise timely filed, and . . . the claim should not be conclusively deemed forfeited in the absence of notice” and an opportunity to remedy the defect.<sup>34</sup> The Board has tied this conclusion to the Mining Law’s direction that if a waiver certification is defective “for any reason,” the claimant must be afforded an opportunity to cure that defect.<sup>35</sup>

In one of the Board’s cases dealing with waiver certifications, however, the Board reached a different conclusion where the waiver certification submitted to BLM—like the waiver certification here—was an edited photocopy. In *Thomas L. Carufel*, the mining claimant submitted for the 1996 assessment year photocopies of waiver certifications filed with BLM for assessment years 1993 and 1994, with the dates of the documents updated.<sup>36</sup> The Board stated that by statute and regulation, a waiver certification must certify, “on the date the [maintenance fee] payment was due,” that the claimant is

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<sup>29</sup> *Id.* §§ 3830.91(a)(4), 3835.92(a).

<sup>30</sup> *Id.* §§ 3830.91(a)(5), 3835.92(b); see *Kathryn Firestone*, 148 IBLA 126, 130-31 (1999).

<sup>31</sup> 43 C.F.R. § 3835.93(a), (c).

<sup>32</sup> *Id.* §§ 3830.91(a)(6), 3835.92(c).

<sup>33</sup> See, e.g., *Chris Onstad (On Remand)*, 189 IBLA 194, 201 (2017) (lack of claimant’s signature is curable defect); *Art Anderson (On Reconsideration)*, 182 IBLA 27, 33 (2012) (lack of co-claimant signature is curable defect); *Melvin Peterson*, 180 IBLA 152, 156 (2010) (same); *L. R. Church*, 155 IBLA 367, 372 (2001) (lack of claimant’s signature is curable defect).

<sup>34</sup> *Onstad (On Remand)*, 189 IBLA at 201 (citing *Church*, 155 IBLA at 372).

<sup>35</sup> See *Anderson (On Reconsideration)*, 182 IBLA at 33 (quoting 30 U.S.C. § 28f(d)(3)).

<sup>36</sup> *Carufel*, 155 IBLA at 344.

qualified for a waiver.<sup>37</sup> The Board determined that because the waiver certification was a photocopy, including the claimant's signature, there was no "contemporaneous certification" of the claimant's qualifications, as required by the statute and regulations.<sup>38</sup> The Board stated: "[A] contemporaneous certification of the claimant's waiver qualifications is required by the regulations implementing the statute and the refiling of a certification filed in a previous year does not constitute a timely-filed waiver certification."<sup>39</sup> The Board contrasted the failure to submit a "contemporaneously signed certification" with "unintentional omissions" on a waiver certification that are subject to cure and explained that because the failure to file a contemporaneously signed certification of the claimant's qualifications "goes to the heart of the waiver certification process," it was as if no waiver certification had been filed, and therefore constituted an incurable defect.<sup>40</sup>

*The Board's Decision in Thomas L. Carufel Was Wrongly Decided*

In *Carufel*, the Board relied on its 1999 decision in *Kathryn Firestone* to conclude that the lack of an original signature on a photocopy of a previously filed waiver certification was an incurable defect because a contemporaneously signed certification "goes to the heart of the waiver certification process."<sup>41</sup>

But *Firestone* did not involve the lack of a signature on a photocopy of a previously filed waiver certification. Instead, at issue in *Firestone* was a timely filed waiver certification that did not identify the claim subject to the waiver. There, the Board first noted that the regulations then in effect provided that the "unintentional failure to file the complete information" required in a waiver certification constituted a curable defect.<sup>42</sup> The Board then concluded that the failure to identify the claim subject to the waiver certification was not such an "unintentional failure," and instead amounted to a failure to file a certification for that claim because "the very identity of the claim or

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<sup>37</sup> *Id.* at 344-45 (citing 30 U.S.C. § 28f(d)(1) (Supp. IV 1998) and 43 C.F.R. § 3833.1-7(d) (1993)).

<sup>38</sup> *Id.* at 346; *see id.* (stating that the waiver certification "was not a certification executed in 1994, but in fact a photocopy of certification documents executed and filed in August 1993 in which claimants had certified their qualifications for an exemption for the assessment years beginning September 1, 1992, and September 1, 1993").

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 345 (citing *Firestone*, 148 IBLA at 130); *see Onstad (On Remand)*, 189 IBLA at 201 (explaining that in *Carufel*, the Board "equated appellant's filing of a photocopied Waiver Certification from a previous year with not filing a Waiver Certification at all").

<sup>41</sup> *Id.* at 345 (citing *Firestone*, 148 IBLA at 130).

<sup>42</sup> *Firestone*, 148 IBLA at 131 (citing 43 C.F.R. § 3833.4(b) (1993)).

claims for which exemption is sought” is “at the heart of the certification process,” and therefore is not a curable omission.<sup>43</sup>

We see no basis for the Board’s determination in *Carufel* that the omission of a contemporaneous signature on a photocopy of a waiver certification is the same as a failure to identify the claim subject to the waiver. In *Carufel*, the Board simply stated in a conclusory manner that the lack of a signature on a photocopy of a waiver certification, like the failure to identify claims, “goes to the heart of the certification process.”<sup>44</sup> The Board therefore determined that it was as if no waiver had been timely filed, but did not explain why this was the case, especially given the fact that the waiver certification contained all of the other required information, including updated dates. Nor did the Board acknowledge the Mining Law’s mandate that “any” defect in a waiver certification requires that the claimant be given an opportunity to cure that defect.

Furthermore, Board decisions issued after *Carufel* have consistently found that the lack of a claimant’s signature on a timely filed waiver certification is a curable defect.

Shortly after the Board issued its decision in *Carufel*, the Board issued *L. R. Church*, in which it determined that the lack of the claimant’s signature on a timely filed waiver certification was a curable defect. Quoting the regulations, the Board concluded that the omission of the signature amounted to “[t]he failure to provide all information required by the regulations,” which “is a curable defect when the document is otherwise filed timely.”<sup>45</sup> Consequently, “the claims are not properly deemed forfeited and void in the absence of notice and an opportunity to provide the signature omitted on Form 3830-2 [the waiver certification form].”<sup>46</sup>

Since *L. R. Church*, the Board has issued several decisions in which it similarly concluded that a timely filed waiver certification lacking a claimant’s signature constituted a curable defect. In *Art Anderson (On Reconsideration)*, for example, the Board rejected BLM’s argument that a missing signature of a co-claimant on a waiver certification was an incurable defect in accordance with *Carufel*.<sup>47</sup> In rejecting BLM’s argument, the Board quoted from the Mining Law’s requirement that a small miner waiver certification found defective “for any reason” requires notice and an opportunity to cure the defect, and the Board’s decision in *L. R. Church*, among other decisions.<sup>48</sup>

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<sup>43</sup> *Id.* at 130-31.

<sup>44</sup> 155 IBLA at 345.

<sup>45</sup> *L.R. Church*, 155 IBLA at 372 (quoting 43 C.F.R. § 3833.1-7(d)(5) (2001)).

<sup>46</sup> *Id.*

<sup>47</sup> 182 IBLA at 33.

<sup>48</sup> *Id.* (citing *Melvin Peterson*, 180 IBLA 152 (2010); *Donald Super*, 179 IBLA 34 (2010); *Samual B. Fretwell*, 154 IBLA 201 (2001)).

Most recently, the Board held in *Chris Onstad (On Remand)*, that the omission of a claimant's signature on a waiver certification was a curable defect.<sup>49</sup> Consistent with *L. R. Church*, the Board found that the lack of an original signature meant that the waiver certification did not meet the requirements for a complete waiver certification under the regulations, and therefore was a curable defect.<sup>50</sup>

The only outlier is the Board's decision in *Carufel*, where the waiver certification at issue was an edited photocopy. Although the Board distinguished *Carufel* in its other decisions addressing the lack of a signature on a waiver certification on the theory that the waiver certification in *Carufel* was akin to filing no certification at all,<sup>51</sup> we find no material difference between a timely filed waiver certification that lacks an original signature and a timely filed edited photocopy of a prior year's waiver certification that lacks an original signature. In both instances, the waiver certification has been timely submitted. And in both instances, the waiver certification lacks the original signature of the claimant, which certifies the qualifications of the claimant for a waiver of the maintenance fee for a particular assessment year. Because a claimant's signature is one of the required regulatory elements of a waiver certification,<sup>52</sup> we find that its omission constitutes a defect that, under the Mining Law and BLM's regulations, is curable. Neither the statute nor the regulations—neither those in effect when the Board issued *Carufel* nor those currently in effect—mandate the automatic forfeiture of mining claims when a timely filed waiver certification lacks a contemporaneous signature.

For these reasons, we conclude that under the law, the failure of a claimant to include a signature on a timely filed waiver certification—regardless of whether the waiver certification is an edited photocopy of a prior year's waiver certification—constitutes a curable defect. In so concluding, we necessarily overrule our decision in *Carufel*.

#### *We Vacate and Remand BLM's Decision*

Here, the record supports BLM's conclusion that the waiver certification Wielgus submitted for the 2022 assessment year is a photocopy of the prior year's waiver certification and lacks an original signature.<sup>53</sup> The record also shows that, as Wielgus notes, the dates on the waiver certification were updated.<sup>54</sup>

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<sup>49</sup> 189 IBLA at 201.

<sup>50</sup> *Id.* at 201-02 (citing 43 C.F.R. § 3835.10(b)).

<sup>51</sup> See *L. R. Church*, 155 IBLA at 372; *Chris Onstad (On Remand)*, 189 IBLA at 202.

<sup>52</sup> 43 C.F.R. § 3835.10(b)(2).

<sup>53</sup> AR Tab No. 3.

<sup>54</sup> *Id.*; Appeal at 1 (stating that the waiver certification for the 2022 assessment year was not an "exact copy" because the dates were different).

We recognize that in its decision, BLM relied on *Carufel* to conclude that because the waiver certification was a photocopy and lacked an original signature, the defect was not subject to cure. We do not fault the Bureau for relying on Board precedent. But because we now conclude that *Carufel* was wrongly decided, we vacate BLM's decision and remand the matter so that BLM may take appropriate action, including providing Wielgus an opportunity to cure any defect in his waiver certification. We note that the waiver certification at issue was incorrectly updated by Wielgus and identifies its dates of coverage as the 2021 assessment year, rather than the 2022 assessment year.<sup>55</sup> BLM may also require Wielgus to correct this error.

### CONCLUSION

Based on the above, we overturn the Board's decision in *Thomas L. Carufel* because we conclude that the lack of an original signature on a waiver certification submitted as an edited photocopy of a prior year's waiver certification is a curable defect under the law. Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,<sup>56</sup> we vacate BLM's October 13, 2021, decision declaring Wielgus's mining claims forfeited and remand this matter for appropriate action, including providing Wielgus an opportunity to cure any defects in his waiver certification.

**AMY SOSIN** Digitally signed by AMY SOSIN  
Date: 2022.02.14 11:45:07  
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Amy B. Sosin  
Administrative Judge

I concur: **SILVIA IDZIOREK** Digitally signed by SILVIA IDZIOREK  
Date: 2022.02.14 11:57:17 -05'00'

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Silvia Riechel Idziorek  
Acting Deputy Chief Administrative Judge

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<sup>55</sup> AR Tab No. 3 (identifying the waiver certification as covering the assessment year beginning on September 1, 2020, and ending on September 1, 2021).

<sup>56</sup> 43 C.F.R. § 4.1.