

INTERIOR BOARD OF LAND APPEALS

Jackie and Richard Balch

137 IBLA 72 (November 27, 1996)

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**Editor's note: Reconsideration denied by order dated March 12, 1997; Reconsideration of March 12 order denied by order dated May 29, 1997**

JACKIE AND RICHARD BALCH

IBLA 95-612

Decided November 27, 1996

Appeal from a decision of the California State Office, Bureau of Land Management, declaring unpatented mining claims CA MC 260056-CA MC 260058 null and void for failure to file affidavits of assessment work or notice of intent to hold on or before December 30, 1994.

Affirmed as modified.

1. Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims:  
Rental or Claim Maintenance Fees: Small Miner Exemption

A mining claimant seeking a small miner exemption can satisfy the requirement that the claimant certify in writing that the assessment work required under 30 U.S.C. § 28-28e (1994) had been performed for the assessment year in which the claims were located by stating that, under 30 U.S.C. § 28 (1994), no assessment work is required until the assessment year following the assessment year in which the claims were located.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment

Section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1994), requires the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office "prior to December 31 of each year following the calendar year in which the said claim was located." [Emphasis added.]

APPEARANCES: Jackie and Richard Balch, Pioneertown, California, pro se.

## OPINION BY ADMINISTRATIVE JUDGE IRWIN

Jackie and Richard Balch have appealed the July 10, 1995, decision of the California State Office, Bureau of Land Management (BLM), declaring the Red Rock Mill Site and the Red Rock #2 and #3 placer mining claims null and void because they did not file an affidavit of assessment work or notice of intent to hold on or before December 30, 1994, as required by 43 U.S.C. § 1744 (1994). Appellants filed a petition for a stay of BLM's decision along with their notice of appeal and statement of reasons. See 43 CFR 4.21.

Appellants located their claims on September 1, 1993. On September 3, 1993, they filed their notices of location with BLM along with the \$10 service charge for each claim required by 43 CFR 3833.1-4(a) (1993) and the \$100 annual rental fee for each claim required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1374, 1378-79, enacted on October 5, 1992. See 43 CFR 3833.1-5(a) (1993). On August 25, 1994, they filed a maintenance fee payment waiver certification for the assessment year beginning on September 1, 1994, pursuant to the Omnibus Budget Reconciliation Act of August 10, 1993, P.L. 103-66, 107 Stat. 312, 405-7 (Omnibus Budget Reconciliation Act of 1993).

BLM's decision states:

In order to qualify for the 1995 waiver, the mining claimants must have performed their assessment work for the 1994 assessment year by August 31, 1994, and the 1994 assessment work notice must have been filed in this office on or before December 30, 1994. \* \* \* The records indicate that an assessment work notice was not received in this office between the dates of January 1 and December 30, for the year 1994. Therefore, the above named mining claims and mill site have been found to be abandoned and are hereby declared null and void.

Appellants state:

On \* \* \* August 17, 1994, Claimant \* \* \* walked into the Bureau of Land Management in San Bernardino [and] \* \* \* approached an employee of the Bureau who was very polite and helpful in answering any questions Claimant had regarding Claimants' mining claims.

Claimant was originally going to file the \$100.00 Maintenance Fee because Claimant knew federal policies on claims were constantly changing, but the employee explained to Claimant \* \* \* an easier route and suggested that Claimant file the Small Miner Exemption form. Claimant asked the employee what was involved after filing this exemption form. The employee explained to Claimant he would have to perform assessment work on the claims

by August 31, 1995, and record the Assessment Work form with the County, and then mail it to the Bureau of Land Management in Sacramento, with \$5.00 per site, by December 31, 1995.

Claimant was in the Federal office for over an hour going over filing information with the employee, and finally came to a conclusion that what the employee was saying, made sense.

(Statement of Reasons (SOR) at 1-2). Appellants add that they realize the burden of proof is on them. "Claimants enjoy the recreational use of these claims and did not purposely allow them to become invalid. Claimants would very much like to keep these claims for continued recreation mining \* \* \*" (SOR at 2-3). Appellants state they cannot relocate the claims because the claims are in the edge of a wilderness area, although they are not in a pristine area. Appellants enclose copies of two letters of commendation from BLM for their volunteer work cleaning up public lands as evidence of the fact that they "take pride in these public lands" and "are very conservation minded" (SOR at 3).

We must deny appellants' stay and affirm BLM's decision, as modified by this decision. We cannot grant a stay because appellants cannot show a likelihood of prevailing on the merits of their appeal. See 43 CFR 4.21(b)(1)(ii).

To satisfy the requirements for the small miner's exemption the claimants were required to hold not more than 10 mining claims, do the assessment work required by the Mining Law of 1872 (30 U.S.C. §§ 28-28e (1994)), and meet the filing requirements of section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) and (c) (1994). See Lee Jesse Peterson, 133 IBLA 381 (1995).

[1] We recognize that no assessment work is required in the assessment year the claim was located. "The period within which the work required to be done annually on all unpatented mineral claims located since May 10, 1872, \* \* \* shall commence at 12 o'clock meridian on the first day of September succeeding the date of location of such claim." 30 U.S.C. § 28 (1994) (emphasis added).

The claims in this case were located in the assessment year commencing at 12 o'clock meridian on the first day of September 1993, and ending at 12 o'clock meridian on the first day of September 1994. Section 10101(d) of the Omnibus Budget Reconciliation Act of 1993 provides that the claim maintenance fee required by section 10101(a) of that Act "may be waived for a claimant who certifies in writing to the Secretary that on the date the payment was due" the claimant had performed the assessment work required under 30 U.S.C. § 28-28e (1994) to maintain the mining claims held by the claimant for the assessment year ending at noon of September 1 of the calendar year in which payment of the claim maintenance fee was due. A small miner seeking the exemption for the assessment year in which the claims were located can meet this requirement by stating that the requirements of 30 U.S.C. § 28-28e (1994) had been met because no assessment work was required under the provision of 30 U.S.C. § 28 (1994) quoted above.

To the extent that the decision below states that assessment work was required for the assessment work year ending September 1, 1994, it is incorrect. The end result of that decision remains unchanged, however, because of the claimants' failure to meet the requirements of 43 U.S.C. § 1744(a) (1994).

[2] Section 314(a) of FLPMA, and Departmental regulation 43 CFR 3833.2-2 require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office "prior to December 31 of each year following the calendar year in which the said claim was located." (Emphasis added.) Thus, a FLPMA filing must be made every calendar year, *i.e.*, on or after January 1 and on or before December 30. Ronald Willden, 97 IBLA 40 (1987); Robert C. LeFavre, 95 IBLA 26 (1986). Failure to file with BLM within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1994); 43 CFR 3833.4.

Congress mandated that failure to file the proper documents in the proper offices within the time periods prescribed in section 314 of FLPMA will, in and of itself, cause the claim to be lost. A claim for which timely filings are not made is extinguished by operation of law regardless of the claimant's intent to hold the claim. See United States v. Locke, 471 U.S. 84 (1985). As Congress did not provide for waiver of this requirement, the Department is without authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from the statutory consequences. See Lynn Keith, 53 IBLA at 196, 88 I.D. at 372.

No notice of intent to hold or affidavit was filed in this case between January 1 and December 31, 1994, and for this reason the claims are properly considered abandoned and void.

Therefore, in accordance with the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, appellants' petition for stay is denied and BLM's July 10, 1995, decision is affirmed as modified by this decision.

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Will A. Irwin  
Administrative Judge

I concur:

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R. W. Mullen  
Administrative Judge