

INTERIOR BOARD OF LAND APPEALS

James M. Colantino

143 IBLA 234 (March 31, 1998)

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JAMES M. COLANTINO

IBLA 98-156

Decided March 31, 1998

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring a mining claim forfeited by operation of law for failure to file the maintenance fee or waiver certification. IMC 175441.

Reversed; petition for stay denied as moot.

1. Mining Claims: Abandonment—Mining Claims: Rental or Claim Maintenance Fees: Generally—Regulations: Applicability—Regulations: Interpretation

A mining claimant attempting to comply with the filing requirements of 43 C.F.R. Subpart 3833 is required to make timely filings in the "proper BLM office." That office is defined in 43 C.F.R. § 3833.0-5(g) as "the Bureau of Land Management State Office listed in § 1821.2-1(d)." When a BLM State Office changes its address, yet fails to amend 43 C.F.R. § 1821.2-1(d) to reflect that change, evidence that a mining claimant mailed a maintenance fee waiver certification to that State Office's address listed in that regulation on or before the required date of filing will constitute timely filing of that certification.

APPEARANCES: James M. Colantino, Troutdale, Oregon, pro se.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

James M. Colantino has appealed from a January 8, 1998, Decision of the Idaho State Office, Bureau of Land Management (BLM), declaring the Black Hawk unpatented lode mining claim (IMC 175441) forfeited by operation of law because no \$100 per claim maintenance fee or waiver certification was filed for the claim on or before August 31, 1997, as required by section 10101 of the Omnibus Budget Reconciliation Act of August 10, 1993, 30 U.S.C. § 28f(a) (1994), and 43 C.F.R. §§ 3833.1-5, 3833.1-6, and

3833.1-7. ^{1/} A waiver certification with Appellant's affidavit of assessment work was received by BLM on December 19, 1997. Appellant has petitioned for a stay of BLM's Decision.

Appellant has enclosed a copy of a Certificate of Mailing issued by the United States Postal Service showing that he mailed an item, identified on that certificate as "Bureau of Land Management IMC — Mining Maintenance," to BLM at 3380 Americana Terrace in Boise, Idaho, on August 21, 1997. Appellant states that the envelope was returned to him by the U.S. Postal Service and that he then remailed the letter by certified mail, return receipt requested, to the same address. He asserts that, upon return of that letter, he called the BLM Idaho State Office and learned, for the first time, that BLM had moved to a new address at 1387 South Vinnell Way in Boise. He states that the claim in question has been maintained by his family and friends for over 30 years and that great harm will occur if the claim is not reinstated.

[1] The dispositive issue in this case is whether the waiver certification should be deemed to be timely filed. Departmental regulation 43 C.F.R. § 3833.0-5(m) provides that a waiver certification

is timely [filed] if received within the time period prescribed by law, or, if mailed to the proper BLM office, is contained within an envelope clearly postmarked by a bona fide mail delivery service within the period prescribed by law and received by the proper BLM State Office by 15 calendar days subsequent to such period, except as provided in § 1821.2-2(e) of this title if the last day falls on a day the office is closed.

(Emphasis added.) The regulations define "[p]roper BLM office" as "the Bureau of Land Management office listed in § 1821.2-1(d) of this title as having jurisdiction over the area in which the claims or sites are located." 43 C.F.R. § 3833.0-5(g). At the time Appellant's filing was due, the address listed in 43 C.F.R. § 1821.2-1(d) for the Idaho State Office was "3380 Americana Terrace, Boise, ID 83706-2500," the address to which Appellant originally mailed his waiver certification on August 21, 1997.

Although BLM published a notice in the Federal Register on September 24, 1996 (61 Fed. Reg. 50050), stating that effective October 15, 1996, the address of the Idaho State Office would be "1387 South Vinnell Way, Boise, Idaho 83709," BLM has not yet amended 43 C.F.R. § 1821.2-1(d) to implement this change. Publication of a notice in the Federal Register does not operate as an amendment of a regulation so as to give it the force

^{1/} In its Decision, BLM stated that Aug. 31, 1997, fell on a Sunday, and that Sept. 1, 1997, was Labor Day, a Federal holiday, and that, therefore, the filings were due on the next business day, Sept. 2, 1997. See 43 C.F.R. § 1812.2-2(e), 43 C.F.R. § 3833.0-5(m).

and effect of law. Black Butte Coal Co., 109 IBLA 254, 261 (1989); see Brock v. Cathedral Bluffs Shale Oil Co., 796 F.2d 533, 538-39 (D.C. Cir. 1986); Jack J. Swain, Jr., 142 IBLA 122, 129 (1998). ^{2/}

We have held that when a document is mailed to the address stated in 43 C.F.R. § 1821.2-1(d) in time for it to be timely filed, but BLM fails to timely collect mail sent to that address, the document will nevertheless be deemed to be timely filed, even though it was not received and date-stamped until after the period in which the filing was due. John and Marlene Chrissinger, 139 IBLA 32, 35-37 (1997); Washington Chromium Co., 60 IBLA 378, 380 (1981); see also Leitmotif Mining Co., 124 IBLA 344, 346-48 (1992) (BLM estopped from considering a filing untimely when it failed to inform a mining claimant who attempted to file a document in an improper office). In this case, we hold that when a BLM State Office changes its address, yet fails to amend 43 C.F.R. § 1821.2-1(d) to reflect that change, evidence that a mining claimant mailed a maintenance fee waiver certification to that State Office's address listed in that regulation on or before the required date of filing will constitute timely filing of that certification. Thus, we find that Appellant made a timely filing in this case and that BLM improperly declared Appellant's claim forfeited and void.

Accordingly, 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 appealed from is reversed, and the petition for stay is denied as moot.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur.

James P. Terry
Administrative Judge

^{2/} We note that in a Notice of Proposed Rulemaking published on Oct. 1, 1997, the Americana Terrace address was still identified as the address for the Idaho State Office. 62 Fed. Reg. 51404 (Oct. 1, 1997).