

September 8, 2018

Commissioner Andy Mack  
Alaska Department of Natural Resources  
550 W. 7<sup>th</sup> Avenue, Suite 1400  
Anchorage, Alaska 99501

Subject: 1) Appeal of Mining Section Decision with Regard to Void Affidavits of Labor and Abandonment of Claims and 2) Appeal of Denial of Application for Certificate of Substantial Compliance (CSC)

Dear Commissioner Mack:

On January 22, 2018, we submitted an application for a Certificate of Substantial Compliance (CSC) for two annual affidavits of labor (BK 11, PG 93 recorded 9-22-80, BK 17 PG 566, recorded 11-5-92) filed for the following mining claims, which have been active in the Manley Hot Spring Recording District for approximately 40 years.

<u>Name of Claim</u>	<u>ADL No.</u>	<u>Meridian</u>	<u>Township, Range and Section</u>		
Boston Glenn Hilltop	320407	Fairbanks	4 N	13 W	8
Moosemary Discovery	310054	Fairbanks	4 N	13 W	5
Eureka Discovery	310061	Fairbanks	4 N	13 W	8 & 9
1 Above Discovery Eureka	310059	Fairbanks	4 N	13 W	8 & 9
2 Above Discovery Eureka	310060	Fairbanks	4 N	13 W	4, 5, 8 & 9
Colleen Discovery Glenn	310063	Fairbanks	4 N	13 W	17
1 Below Fraction Glenn	310062	Fairbanks	4 N	13 W	17
1 Above Discovery Glenn	310064	Fairbanks	4 N	13 W	8
2 Above Discovery Glenn	310065	Fairbanks	4 N	13 W	8
3 Above Discovery Glenn	320406	Fairbanks	4 N	13 W	8

Location notices for these claims were filed in the Manley Hot Springs Recording District in 1978 and 1980 by co-locators Charles Stowell and William Fitzgerald. The claims are presently owned by the undersigned Rosalyn Stowell, widow of Charles Stowell and the Mary E. Fitzgerald Family Trust, comprised of heirs of William and Mary Fitzgerald. All required affidavits of labor for these claims were filed in a timely manner, all fees were paid as required and we assert that no “conflicting rights” exist against these claims that prevent the issuance of a CSC for its specific and limited purpose.

On August 28, 2018, we received a certified letter from Steve Buckley, Mining Section Chief, dated August 21, 2018. Mr. Buckley’s letter actually comprises two decisions: first, that the two affidavits of labor are void and constitute abandonment of the claims, and second, that the CSC cannot be issued because “intervening conflicting rights” exist. We disagree with both decisions as well as other statements made by Mr. Buckley in the denial letter and hereby appeal the decision to your office.

First, we would like to provide some background behind the reason that the application was submitted at all, and then we will review our points of disagreement with the denial letter.

### **Background**

As DNR's own records show, we have mined these claims for nearly 40 years, well beyond the deaths of the original claimants, Charles Stowell and William Fitzgerald. In April of 2017, we contracted to sell these claims and signed a DNR mining permit to allow the contract purchaser (MB Mining, Inc.) to operate on our claims. We provided MB Mining, Inc. with our entire history of location notices and affidavits of labor that showed continuous use and occupation since the 1978 and 1980 locations. In September of 2017, Randy DeCamillo of MB Mining, Inc. was told by DNR staff at the counter in the Fairbanks office that the 1992 affidavit of labor listing dates beyond September 1, 1992 was void and therefore our claims were abandoned. This is the first time we had ever heard such a contention and could find no one in the Mining Section who could actually provide us with anything other than an opinion. As a result of DNR staff's comments to our contract purchaser, MB Mining, Inc. overfiled the very claims that they contracted to purchase in order to defend the investment they had already made in the claims. Ironically, MB Mining, Inc. is listed in the denial letter as an "intervening conflicting right" - the reason given for denial of a CSC.

Based on unsubstantiated, largely verbal opinion by DNR staff, the validity of the mining claims we have worked for nearly four decades has been called into question. For that reason, we turned to the CSC process to remedy what we considered an *alleged* noncompliance, as no official ruling on the matter had yet been delivered to us. Mr. Buckley's letter now makes it clear in writing that the Mining Section has determined that the affidavits of labor for 1980 and 1992 are void and that the claims have been abandoned. Mr. Buckley has also determined that overfilings initiated in 2009 and later in time constitute "conflicting rights" that prevent the Department from issuing a CSC that is strictly limited to the issues related to the 1980 and 1992 affidavits of labor.

We appeal the two decisions that Mr. Buckley made in his letter for the following reasons:

#### **1) Appeal of Mining Section Decision Regarding Void Affidavits of Labor and Abandonment of Claims**

Mr. Buckley has determined that the affidavits of labor in question are void and states as such in the decision. While we recognize that Mr. Buckley is Mining Section Chief and therefore DNR's expert, his determination cites no DNR policy memorandum or internal DNR legal opinion to support this determination. We therefore have to assume that his conclusion is his opinion based on his experience and knowledge. Mr. Buckley fails to explain in his decision how the affidavits of labor in question are so insufficient that a gap in ownership is created. We expect and deserve a better explanation for a decision with such drastic consequences.

In his letter, Mr. Buckley carefully lists the requirements of 11 AAC 86.220(c) and then describes the 1980 and 1992 affidavits in such a way that gives us no clear understanding of the

deficiency. For example, the 1980 affidavit (filed by Charles Stowell, not Rosalyn as stated in Mr. Buckley's timeline) includes the essential fact that work was performed before the end of the mining year in question, beginning on May 30, 1980. Granted, the work performed after September 1 rightfully applies to the following year's labor. In fact, the 1981 affidavit (BK 12, PG 252) correctly includes the dates of September 1 to September 20, 1980 as it should be. That detail is certainly relevant to this appeal.

The 1992 affidavit states the dates of work from May 20, 1992 to August 1, 1992 and August 5, 1992 to September 12, 1992. Again, we understand that the work performed after the end of the mining year at noon on September 1, 1992 applies to the following year's labor. However, that in no way negates the essential fact that the dates of work prior to the end of the mining year are included.

These affidavits of annual labor are sworn statements by the mining claimant attesting to the work performed on the claims before the end of the mining year. They are one of the underpinnings of the management system for both federal and state mining claims. For nearly 37 years, these affidavits were accepted by the DNR Mining Section as the truthful representations that they are. What happened to change that status?

We believe it is not the essential facts that are plainly included on these affidavits that have led the Mining Section to determine them void, but their interpretation of these facts, which they have been unable to put in writing to our satisfaction. The Mining Section must believe, without any substantiating proof and in spite of the sworn testimony in the affidavit, that we did not in fact perform the labor required by law in the mining year in question. We find that conclusion unacceptable for a number of reasons, not the least of which is that one of the undersigned appellants (Rosalyn Stowell) is the very person who signed both the 1980 and 1992 affidavits and personally performed some of the assessment work described. Rosalyn was onsite for the mining operations of 1980 and 1992, as she has been for nearly every year since the claims were established.

In defense of the 1992 affidavit and in contradiction of the Mining Section's decision, we do not offer our own evidence but that of the DNR Mining Section itself. Our case files and permit files at DNR's Fairbanks office contain 2 mining permits (APMA F925969 and APMA F927409) issued in 1992. APMA F925969 was issued to allow our lessee, Thurman Oil & Mining, to work some of our claims, while we applied for APMA F927409 to work others. The application for APMA F927409 states that the intended startup date was August 3, 1992 with a shutdown date of September 10, 1992, which aligns fairly closely to the dates reported in the affidavit of annual labor for 1992.

Placer Mine Field Reports are in the files for each 1992 permit. On August 26, 1992, a Division of Mining representative inspected the Thurman operation on Glenn Creek, which had already been shut down. The report discloses the extent of the operations on two claims, estimated to have an active mining footprint of 10 acres. The next day, August 27, 1992, the same DNR representative visited our own mining operation and found 3 people working one

claim with heavy equipment and a sluice box based from an onsite camp. The active mining footprint was reportedly 1 acre in size.

The evidence of the Mining Section's own files supports our contention that the required minimum labor per claim was performed before September 1, 1992. Given the size of the excavation and activities described by the DNR representative, the value placed on the labor for the mining year is reasonable. In other words, Rosalyn Stowell's sworn statement on the affidavit at BK 17, PG 566 is supported by the Mining Section's own records. There is no reason whatsoever for us to be penalized for including dates beyond the end of the mining year on this affidavit.

This example demonstrates the very reason why the Mining Section's decision on the affidavits and abandonment of the claims is faulty. DNR does not field check every affidavit of labor recorded; the sworn statement is accepted as truthful unless proven otherwise. Until now, DNR's system of managing mining claims depended upon the premise that the affidavit of labor describes truthfully the labor performed by the miner. If you can't depend on that premise, there is no system. If you don't believe our 1992 affidavit, which we have amply defended by the Mining Section's own records, why believe anyone's affidavit?

As to the 1980 affidavit of labor, we have very little written documentation relating to our operations during 1980 mining season and DNR in Fairbanks seems to have even less from the early 1980s. We contend that the 1981 affidavit that claims the labor reported after September 1, 1980 is confirmation that the labor was properly allotted to the appropriate mining years.

At least 20 mining permits have been issued to ourselves and to our lessees in the last 40 years. DNR staff has told us that permits may not actually have been required until 1984. Since 2011, 3 multi-year permits have been issued. We have copies of 18 of those permits – the 1985 permit is mentioned in the affidavit of labor for that year but it wasn't found in our files or the Mining Section files. DNR has inspected our operations multiple times and the record shows that we have complied with reclamation requirements. Not once since 1980 has DNR questioned our right to mine these claims to the exclusion of anyone else and the case files prove it. There is simply no reason for the Mining Section to look back in time and second guess the DNR staff that worked with us over the years in the office and in the field. To unsettle our chain of title 38 years later on the mere suspicion that we didn't comply is reckless and has already caused damage by clouding our title.

As remedy, we request that you either reverse Mr. Buckley's decision that these affidavits are void and the claims abandoned or withdraw his decision entirely on this issue. Needless to say, the issuance of a Certificate of Substantial Compliance would also mitigate some of the damage already done by the Mining Section's decision on the validity of the 1980 and 1992 affidavits.

## **2) Appeal of Denial of Application for Certificate of Substantial Compliance (CSC)**

The CSC process seems to have been instituted primarily to assist miners in cases where some failure to comply occurs. As you can see from our lengthy discussion on Appeal #1, we didn't

fail to timely record the 1980 or 1992 affidavits. We didn't fail to perform the required labor either, which we can easily prove with DNR's own documentation in 1992. Although we do not have the same compelling evidence for 1980, we believe the 1980 and 1981 affidavits of labor, taken together, confirm that the labor performed after September 1, 1980 was properly assigned to the 1981 mining year. Affidavits of labor have been continuously and properly filed with fees and royalties paid as required. If that is not substantial compliance, then what is?

Yet here we are, asking for relief because of a decision by the Mining Section that has damaged our chain of title and prompted yet another layer of overfiling that is now used against us in our plea for remedy.

We recognize that issuance of a CSC is entirely at the Commissioner's discretion and that you are not obligated in any way to agree to our request. However, the Policy Memorandum 02 acknowledges that your authority to issue a CSC is broad and not limited to the examples given. It is within your power to provide relief in cases where inequity, extreme hardship or force majeure are involved. We think this situation creates inequity and hardship by unsettling our chain of title without any justification to do so, particularly when the Mining Section's own case files disclose evidence that contradicts their decision.

Mr. Buckley's primary reason for denying a CSC for the 1980 and 1992 affidavits of labor is that "intervening conflicting rights" exist because of overfiling of our claims beginning in 2009.

It defies logic to give a 2009 overfiling the standing and legitimacy to reach back in time to prevent the Commissioner from rendering an opinion on affidavits of labor filed decades before. Given the extent of overfiling in just about any area of mining significance in this state, CSCs must be very rare documents indeed. Nevertheless, we believe that our appeal deserves consideration.

The history of overfiling included in Mr. Buckley's decision is not entirely correct or complete. First, the September 22, 2011 overfiling by Mary Stowell is incorrect – ADL 616522 was located by the undersigned Rosalyn Stowell. Second, our research has confirmed that no permit has been issued to mine any of the claims that have overfiled ours. Permits have been issued to ourselves or our lessees/operating in 2008, 2009, 2010, 2011-2013 and 2013-2015. MB Mining, Inc. (the 2017 overfiling) is mining on our claims under a contract of sale and a mining permit that has been issued jointly to us for the period 2017-2021.

We've been told that DNR does not adjudicate the validity of mining claims on state land. That does not seem to be strictly correct. The Mining Section has adjudicated the validity of the 1980 and 1992 affidavits and decided they are void and our claims are abandoned. The Mining Section has also adjudicated overfiled claims in some respects. Whether they are valid is irrelevant - their very existence prevents the Commissioner from acting. If this is true, then the CSC process seems to have been structured in advance to provide a vain hope of assistance to miners.

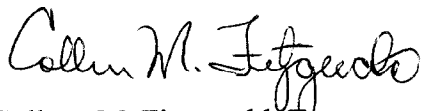
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We deserve the relief offered by a Certificate of Substantial Compliance, which will serve to restore the marketability of our claims, and sincerely anticipate that you will see the justice of this request.

Sincerely,

A handwritten signature in black ink that reads "Rosalyn Stowell". The script is cursive and fluid.

Rosalyn Stowell

A handwritten signature in black ink that reads "Colleen M. Fitzgerald". The script is cursive and fluid.

Colleen M. Fitzgerald, Trustee  
Mary E. Fitzgerald Family Trust

Enclosures:

8/21/18 Letter from Steve Buckley, DNR Mining Section Chief  
1980, 1981 and 1992 affidavits of labor  
1992 mining permits & inspection reports  
2008-2017 mining permits