



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

# **BUREAU OF LAND MANAGEMENT MAINTENANCE FEE WAIVERS FOR SMALL MINERS**



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Memorandum

To: Brian Steed  
Deputy Director, Policy and Programs, Bureau of Land Management

From: Mary L. Kendall *Mary L. Kendall*  
Deputy Inspector General

Subject: Final Inspection Report – Bureau of Land Management Maintenance Fee Waivers  
for Small Miners  
Report No. 2018-CR-010

We completed our inspection of the Bureau of Land Management's (BLM's) practice of reviewing small miner claims subject to maintenance fee waivers. Our work centered on the Colorado and California state offices and focused on whether the BLM monitors small miner claims to ensure that they are legitimate, that maintenance fees are paid, and, if they are waived, that the required assessment work is conducted and complies with all applicable laws and regulations. We concluded that the BLM does ensure that small miner claims are legitimate and that maintenance fees are paid. We found, however, that the BLM does not physically validate the assessment work reported by small miner claimants seeking waivers to the maintenance fee, which may risk claimants using their claim sites for prohibited activities.

### Background

We initiated this inspection after we received a complaint from a former BLM employee alleging that the previous Secretary of the Interior mismanaged implementation of the 1872 Mining Law, resulting in wasteful Federal spending and annual, unrealized Federal revenues in the millions of dollars. The complaint also alleged that approximately 75 percent of small miner claims do not follow the regulations waiving annual maintenance fees.

The 1872 General Mining Law<sup>1</sup> allows individuals and corporations to prospect for mineral deposits on public lands and locate a claim once deposits are discovered. United States citizens, as well as corporations, can explore for, discover, develop, and purchase mineral deposits on public lands that are open for mining. The Omnibus Reconciliation Act of 1993 further gave the Secretary of the Interior discretion to waive the mining maintenance fee collected by the BLM to manage mining claims and sites. The waiver applies to individuals or organizations having 10 or fewer claims. These individuals or organizations are classified as small miners<sup>2</sup> and can have their annual per-claim maintenance fees of \$155 waived as long as

<sup>1</sup> General Mining Law means the Act of May 10, 1872, as amended, (codified as 30 U.S.C. § 22).

<sup>2</sup> Under 43 C.F.R. part 3835, a small miner is identified as a claimant who, along with all related parties, holds no more than 10 mining claims or sites on Federal lands nationwide on the date annual maintenance fees are due. Small miner claimants are

they certify in writing that they have completed or will complete all assessment work required by the General Mining Law to maintain their claims by the end of the applicable assessment year.

During fiscal years 2012 through 2016, the program collected an estimated \$308 million in total annual maintenance fee receipts nationwide, averaging about \$61.5 million<sup>3</sup> each year. At least \$33.4 million<sup>4</sup> in annual maintenance fees were waived for 215,813 qualifying small miners during the same period. Our inspection focused on waivers approved by the States of Colorado and California from 2012 to 2016. These two BLM State offices accounted for almost 14 percent of the BLM's total small miner waived fees during that 5-year period (almost \$4.8 million in unrealized revenues). The BLM Colorado State Office collected about \$7.3 million between fiscal years 2012 and 2016, and waived about \$1.02 million during the same period. The BLM California State Office collected about \$17.8 million in maintenance fees and waived roughly \$3.8 million.<sup>5</sup>

In fiscal years 2012 through 2016, the BLM sent Congress budget requests that contained a legislative proposal to increase annual maintenance fees for mining claims. It also requested elimination of the small miners' fee exemption. Although this proposal did not pass during the years it was submitted, the Secretary of the Interior has the authority to eliminate the small miner maintenance fee waiver without congressional approval if desired.<sup>6</sup>

## Findings

We found that the BLM monitors small miner claims to ensure they are legitimate and that the maintenance fees, when not waived, are paid. We also found, however, that when maintenance fees are waived, the BLM does not validate that the required assessment work is conducted and complies with all applicable laws and regulations.

### *BLM Monitors Small Miner Claims As Required*

During our inspection we found that the staff in the Colorado and California BLM state offices monitored small miner maintenance fee waiver claims to ensure applicants qualify for the waiver. Staff told us they ensure claimants meet the maintenance fee waiver application and small miner requirements through a computer query.

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<sup>3</sup> This total includes revenues from the BLM's Alaska State office.

<sup>4</sup> This total does not include fees from the BLM Alaska State office.

<sup>5</sup> Revenue has been estimated using the maintenance fees that would have been paid and multiplying this number by the annual maintenance fee for a lode claim, mill or tunnel site, or a 20-acre placer claim. The amount does not include the extra amounts that would have been paid for associated placer claims over 20 acres.

<sup>6</sup> Pursuant to Title 43 USC § 1734, the Secretary [of the Interior] may establish reasonable filing and service fees and reasonable charges, and commissions with respect to applications and other documents relating to the public lands and may change and abolish such fees, charges, and commissions.

We also found that the two state offices monitored maintenance fees for small miners' claims to ensure that they were paid. The law requires a claimant to pay an annual maintenance fee of \$155 per claim by September 1, unless a waiver has been granted. If a claimant submits a request for a waiver, but issues exist with meeting regulatory requirements (e.g., no original signatures on certification-of-waiver forms), we found that the BLM sends out notices requiring claimants to correct the problem within 60 days. If the issue goes uncorrected or the maintenance fee unpaid, the BLM automatically forfeits the claim or site.

### *BLM Does Not Validate Assessment Work*

The law requires claimants who are granted a maintenance fee waiver to conduct certain activities regarding their mining claims (assessment work) and submit an affidavit that certifies completion of work activities for each claim. Specifically, this affidavit of labor assessment certifies that at least \$100 of equivalent labor expenses or improvements have been spent for each of the small miner claims.<sup>7</sup> The BLM verifies the assessment year, names of claim(s) owners, and signatures. We did not find any missing affidavits of assessments in the case files we reviewed. We did find, however, that the BLM does not review or validate claimants' reported assessments of work to ensure the reported activities have been conducted and comply with all applicable laws and regulations.

According to regulations, assessment work is defined as work or labor that develops the mining claim for production. Activities such as drilling, excavating, driving shafts, and other similar tasks are cited as assessment work. The BLM does not provide clearer guidance, however. In reviewing affidavits of labor assessments, we found that some reported activities are either not allowed or appear to be outside the definition of assessment work. Some reported examples include:

- Put up a no-trespassing sign on the claim
- Build a fishing ledge along Boulder Creek, CO
- Fix door and windows
- Install new stepping stone pathway on dam
- Repair temporary bunkhouse
- Repair dam wall, repair bridge, repair storage shed
- File yearly documents and services; conduct various trips to walk property lines, and improve property
- Conduct road work, clean portal, and clear trail

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<sup>7</sup> The affidavit of assessments due are for the assessment year preceding the date on which the claimant files for a small miner waiver.

BLM staff informed us that they are not required to visit claim sites to ensure the assessment work identified in the affidavits has been completed. Field staff may visit claim sites if they receive a tip from the public or from another claimant concerning suspicious activities or undue degradation of public lands. If a claimant fails to submit the affidavit certifying performance of the required assessment work, the BLM can, by law, declare the claim forfeited.

Since the BLM does not review what work is reported or require staff to conduct in-person verifications of a claimant's reported assessment work, it appears that the requirement of performing labor and improvements is essentially an honor system based on voluntary compliance. Conducting in-person onsite verifications is likely beyond what BLM staff can accomplish, considering the remoteness of many claim sites. Absent a verification process, BLM cannot be assured that assessment work is, in fact, being done.

We understand that the U.S. Department of the Interior has not assessed the full costs and benefits of the small miner maintenance fee waiver program since its inception. The fact that past budget requests to Congress (fiscal years 2012 through 2016) contained a legislative proposal to increase the annual maintenance fees and eliminate the fee exemption for small miners suggests that the Department has long considered programmatic changes necessary. A cost-benefit analysis of this program would provide the Department the information needed to make an informed decision regarding the program's future, since the Secretary has the authority to review and discontinue the small miner maintenance fee waiver without congressional authority, if desired.

## **Recommendations**

We recommend that the BLM:

1. Perform a cost-benefit analysis of the administrative cost and the burden of managing the maintenance fee waiver for small miners

Once an analysis of the maintenance fee waiver for small miners has been completed,

We recommend that the Secretary of the Interior:

2. Use discretionary authority to continue or eliminate the maintenance fee waiver for small miners based on the results of the analysis performed by BLM.

Please provide us with your written response to this report by January 31, 2019. The response should provide information on the actions you have taken or planned to address the recommendations, as well as target dates and titles of the officials responsible for implementing these actions. Please send your response to [aie\\_reports@doioig.gov](mailto:aie_reports@doioig.gov).

The legislation creating the Office of Inspector General requires that we report to Congress semiannually on all audit, inspection, and evaluation reports issued; actions taken to implement our recommendations; and recommendations that have not been implemented.

We appreciate the cooperation and assistance extended by the BLM during our review. If you have questions concerning this report, please do not hesitate to contact me at 202-208-5745.

## Scope and Methodology

### Scope

We inspected the Bureau of Land Management's (BLM's) practice of reviewing and approving small miner claims subject to maintenance fee waivers to determine whether the BLM monitors the claims to ensure that they are legitimate, that maintenance fees are paid, and that, if the fees are waived, the required assessment work is conducted and complies with all applicable laws and regulations.

The scope of our inspection covered two BLM State offices in Colorado and California from fiscal years 2012 to 2016. We relied on the data provided to us by the BLM, including the universe of small miners and the revenues collected from small miner maintenance fees.

We conducted our inspection in accordance with the Quality Standards for Inspection and Evaluation as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe the work performed provides a reasonable basis for our conclusions and recommendations.

### Methodology

To accomplish the inspection, we:

- Reviewed laws and regulations
- Reviewed policies and procedures
- Reviewed the BLM's budget requests to Congress for fiscal years 2012 through 2016, focusing on the legislative proposal to increase the annual maintenance fees and eliminate the fee exemption for miners holding 10 or fewer claims
- Interviewed BLM staff in the Colorado and California State and field offices
- Provided a questionnaire to the land law examiners in Colorado and California
- Reviewed sample case files of small miners in Colorado and California to identify whether the files contained support and evidence of BLM review and qualification
- Visited several mining claim sites in Colorado and California

