

**UNITED STATES COURT OF FEDERAL CLAIMS**

SILVER BUCKLE MINES, INC.,

Plaintiff,

v.

THE UNITED STATES OF AMERICA, and its  
DEPARTMENT OF THE INTERIOR (DOI)  
ACTING BY AND THROUGH THE BUREAU  
OF LAND MANAGEMENT (BLM),

Defendant.

NO. 13-476 C

Judge Margaret M. Sweeney

**PLAINTIFF'S MOTION TO APPROVE CLASS NOTICE FORMS,  
OPT-IN CLAIM FORM, AND CLASS ACTION ADMINISTRATION**

Pursuant to the court's Order filed March 1, 2018 (Docket 61) and RCFC 23(c)(2), plaintiff Silver Buckle Mines, Inc. ("Silver Buckle") respectfully requests approval of its proposed Class Notice forms, Opt-In Claim form, Class Action Claims Administrator and proposed administration procedures.

**PROCEDURAL STATUS**

Silver Buckle and defendant The United States, submitted a Joint Status Report on February 28, 2018 (Docket 60). The parties have complied with the schedule and have conferred regarding proposed notice forms and the claims administration process. Discussions continue and at this date it is undetermined whether the Government will oppose this motion which is filed to timely comply with the court's Order.

## CLAIMS ADMINISTRATOR

Silver Buckle has selected KCC LLC as a proposed claims administrator. This firm has significant and substantial experience with class action claims and settlement administration. Detailed information regarding this firm and class action cases it is presently administering can be found at its website <http://www.kcellc.com>. The Government does not oppose selection of KCC LLC as claims administrator.

The proposed class administrator has experience with opt-in class actions. It also utilizes state of the art technology to direct to potential class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The Government has provided in discovery a data base consisting of approximately 3,000 class members totaling approximately 69,000 claims. The proposed claims administrator will assemble the data and provide identification numbers for class members and compile a list of all eligible claims held by those class members. The initial class notice will consist of a postcard notification to each class member with BLM identified claim information populated into the notice. Notice recipients will be assigned a PIN for authentication purposes and can submit the opt-in claim form verifying the information is accurate and/or amending the opt-in claim form. The objective is to make submission of the opt-in claim form clear, simple, and easily understood.

The proposed form of postcard notice is provided herewith as **Attachment 1**. Minor changes to the form may be submitted based upon further discussions with the Government and the claims administrator.

The claims administrator will maintain a website. The URL: [www.MiningFeeRefundClassAction.com](http://www.MiningFeeRefundClassAction.com) has been reserved. An email address will be

included in the notice. A toll free direct number will also be provided. Contact information for Silver Buckle counsel will also be listed.

The claims administrator will conduct address searches for any notices returned as undeliverable. Silver Buckle recommends a 90 day deadline for submission of opt-in claim forms.

The claims administrator will provide a Declaration of Notice Procedures to the parties indicating compliance with the noticing efforts. Compilation of an opt-in list will be made available to the parties. Upon entry of judgment the claims administrator will handle disbursement of checks to claim holders unless the Government suggests a more efficient and direct methodology of payment.

#### **LONG FORM NOTICE**

The postcard notice will refer recipients to the website for this class action. The long form of notice with detailed information is provided herewith as **Attachment 2**. This form of notice will be available on the website and is available to any class member requesting a copy by mail or email.

#### **OPT-IN CLAIM FORM**

Silver Buckle proposes the opt-in claim form provided herewith as **Attachment 3**. It is anticipated that a significant percentage of claimants will submit the opt-in claim form online. As previously indicated, the proposed claims administrator intends to pre-populate data for known claim holders in order to simplify and expedite filing. Some claim holders listed in data provided by BLM have a significant number of claims. Pre-population of the data will allow those claim holders to confirm the data provided or make appropriate changes. In any event the claim holder or its authorized signer should certify under penalty of perjury that the information on the claim form is

accurate; that it was the claim holder on the date of payment; and the claim holder is entitled to a refund.

### **LEGAL AUTHORITIES**

RCFC 23(c)(2) governs Notice for any class certified under RCFC 23(b). The court must direct to class members the best notice that is practicable under the circumstances including individual notice to all members who can be identified through reasonable effort.

The BLM data provided in discovery in 2015 will be updated by BLM to reflect any contact information changes. As indicated in the prior sections, the class administrator will utilize that data to provide notice to all members who can be identified through reasonable effort.

RCFC 23(c)(2) further provides that the notice must clearly and concisely state in plain, easily understood language the following:

- (i) the nature of the action;
- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an attorney if the member so desires;
- (v) that the court will include in the class any member who requests inclusion;
- (vi) the time and manner for requesting inclusion; and
- (vii) the binding effect of a class judgment on members under RCFC 23(c)(3).

Silver Buckle does not believe there should be significant objection to the notice forms provided herewith. Additionally, the proposed opt-in claim form is believed to contain all necessary information and verification of a claim holder's right to refund.

The Federal Judicial Center (<https://www.fjc.gov/content/301253/illustration-forms-class-action-notice-introduction>) has developed illustrative notices of proposed class action forms and guides designed to illustrate how attorneys and judges might comply with FRCP 23 which, like

RCFC 23 provides that class action notices must clearly and concisely state pertinent information for class members. The website offers a Plain Language Notice Guide and form notices. A sample long form notice from the website is provided herewith at **Attachment 4**.

Silver Buckle believes that its proposed forms fully comply with RCFC 23. Its proposed class administrator is fully qualified and the proposed administration procedures fully comply with modern class action protocol.

#### **CONCLUSION AND RELIEF REQUESTED**

Silver Buckle requests approval of its form of notices, its proposed opt-in claim form, its proposed administrator, KCC LLC, and the process for providing notice to class members as set forth more fully herein. Additionally, the Government should be required to update class member contact information.

DATED this 27th day of April, 2018.

/s/ Frank R. Siderius  
Frank R. Siderius WSBA 7759  
SIDERIUS LONERGAN & MARTIN LLP  
Attorneys for Plaintiffs  
500 Union St., Ste 847, Seattle, WA 98101  
email: [franks@sidlon.com](mailto:franks@sidlon.com)  
telephone: 206/624-2800; facsimile: 206/624-2805