

ROBERT W. PERKIN

IBLA 80-328

Decided June 16, 1980

Appeal from a decision of the California State Office, Bureau of Land Management, declaring abandoned and void the Anatawi Qui Qui, Anatawi Chimney, and Anatawi Annex placer mining claims. CA MC 12581-12583.

Set aside and remanded.

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

A claimant who has located a mining claim in April 1975 and thereafter records his notice of location simultaneously with his filing of evidence of assessment work in May 1978 has satisfied the requirements of 43 CFR 3833.2-1(a) by filing evidence of assessment work on or before Dec. 30, 1979.

APPEARANCES: Robert W. Perkin, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Robert W. Perkin appeals from the January 17, 1980, decision of the California State Office, Bureau of Land Management (BLM), which declared the Anatawi Qui Qui, Anatawi Chimney, and Anatawi Annex placer mining claims (CA MC 12581, 12582, and 12583) abandoned and void pursuant to 43 CFR 3833.4(a) and 43 CFR 3833.2-1 for failure to file evidence of assessment work for the period September 1, 1978, to September 1, 1979, or before October 22, 1979.

Appellant contends that he had filed evidence of assessment work for the September 1, 1977, through September 1, 1978, assessment year with BLM on May 22, 1978. This evidence accompanied his notices of location for the claims which had been previously located on April 12,

1975. He argues that the cited regulation, 43 CFR 3833.2-1, prohibits late filings but does not prevent early filings of annual evidence of assessment work. We agree.

Regulation 43 CFR 3833.2-1 provides pertinently:

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

The record shows that Perkin first filed evidence of assessment work for the subject claims with BLM on May 22, 1978, when the notices of location were filed and given serial identification CA MC 12581, 12582, and 12583. That date of filing is prior in time to December 30, 1978, and to October 22, 1979. The second filing of evidence of assessment work for these claims was made on November 26, 1979, prior to December 30, 1979.

It seems transparently clear that appellant, in filing evidence of assessment work for the assessment year ending September 1, 1978, before December 31, 1978, and evidence of assessment work for the assessment year ending September 1, 1979, before December 31, 1979, has complied with the pertinent regulation in the matter of filing evidence of assessment work for the Anatawi Qui Qui, Anatawi Chimney, and Anatawi Annex placer mining claims. BLM, after the filing of the appeal, has informed appellant of its concurrence with this view.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside, and the cases remanded to BLM for further appropriate action consistent herewith.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Frederick Fishman
Administrative Judge

