

INTERIOR BOARD OF LAND APPEALS

Lynco, Inc. of California

138 IBLA 15 (January 28, 1997)

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LYNCO, INC. OF CALIFORNIA

IBLA 94-338

Decided January 28, 1997

Appeal from a decision of the California State Office, Bureau of Land Management, declaring the Protective #1 and Protective #2 lode mining claims abandoned and void (CAMC 45478 and CAMC 45479).

Reversed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claims—Federal Land Policy and Management Act of 1976: Service Charges—Mining Claims: Abandonment—Mining Claims: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold—Mining Claims: Rental or Claim Maintenance Fees: Generally—Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

An affidavit of annual assessment work was timely filed when the required service charge was submitted within 30 days of receipt of BLM's notice of deficiency in accordance with 43 CFR 3833.1-3(b)(2) (1993).

APPEARANCES: Valerie Borck, Executrix of Lynco, Inc. of California.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Lynco, Inc. of California has appealed the February 2, 1994, decision of the California State Office, Bureau of Land Management (BLM), declaring the Protective #1 and Protective #2 (CAMC 45478 and CAMC 45479) lode mining claims abandoned and void by operation of law for failure to file an affidavit of assessment work on or before December 30, 1993.

The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. 102-81, 106 Stat. 1374 (1992), required mining claimants either to pay a rental fee of \$100 per claim or qualify for a small miner exemption on or before August 31, 1993. On August 27, 1993, appellant filed certification of exemption from payment of rental fee forms for both claims for the 1992-93 and 1993-94 assessment years.

Appellant timely filed its required affidavit of assessment work with BLM on December 27, 1993, but neglected to include the \$5 per claim service charge required by 43 CFR 3833.1-4(b) (1993). On December 29, 1993, BLM

returned the affidavit "without further action," citing "43 CFR 3833.1-(B)." Appellant mailed it back to BLM with the required \$10 on January 5, 1994, and BLM received it on January 7. In its February 2, 1994, decision BLM considered the affidavit untimely because it was not filed on or before December 30, 1993, citing 43 CFR 3833.1-7(b)(1) (1993).

[1] In Steve Hicks, 136 IBLA 190, 192 n.3 (1996), we observed that 43 CFR 3833.1-3(b)(2) (1993) provided:

Filings submitted pursuant to 3833.2, 3833.3, and 3833.1-7, and amended locations filed under § 3833.0-5(p), that are not accompanied by the full payment of service charges set forth in § 3833.1-4 shall be curable. Such filings shall be noted as being recorded on the date received provided that the claimant submits the proper service charge within 30 days of receipt of a deficiency notice from the authorized officer. Failure to submit the proper service charge shall cause the filing to be rejected and returned to the claimant/owner. [Emphasis added.]

In Hicks we set aside BLM's decision rejecting an affidavit of assessment work filed without the required service charge, stating that BLM should have provided Hicks with a deficiency notice as provided in 43 CFR 3833.1-3(c) (1994). See also R. Keith Barrett, 123 IBLA 240, 243 (1992). In this case BLM declared appellant's claims abandoned and void even though appellant timely submitted its required affidavit of assessment work and the \$5 service charge within 30 days of receiving BLM's December 29, 1993, letter returning its affidavit. BLM erred in not treating the affidavit as timely filed or recorded.

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 reversed.

Will A. Irwin
Administrative Judge

I concur:

David L. Hughes
Administrative Judge