

AZL RESOURCES, INC.

IBLA 81-661

Decided May 20, 1982

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void. N MC 126208 through N MC 126278.

Reversed and remanded.

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

Where the evidence shows that the owner of unpatented mining claims located after Oct. 21, 1976, in calendar year 1979, did file with BLM by Dec. 30, 1980, a copy of the notice of intention to hold the claims which notice was filed also in the local offices of the state wherein the notices of location were filed, the mining claimant has complied with the statutory requirements of the Federal Land Policy and Management Act of 1976.

APPEARANCES: H. W. Van Loo, Vice-President, for AZL Resources, Inc.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

AZL Resources, Inc., appeals from an April 27, 1981, decision of the Nevada State Office, Bureau of Land Management (BLM), which declared the Gamble No. 1 through Gamble No. 71 mining claims (N MC 126208 through N MC 126278) abandoned and void. BLM stated in this decision that it did not receive either a notice of intent to hold the claims or evidence of assessment work by December 30, 1980, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Appellant asserted on appeal that it did comply with the requirements and attached a copy of a December 17, 1980, notice of intent to hold the

claims and a Xerox copy of an acknowledgment card from BLM, specifying these claims. 1/

[1] Section 314 of FLPMA requires owners of unpatented mining claims located after October 21, 1976, to record with BLM prior to December 31 of each year following the calendar year of location, a copy, as filed with the local office where the location notices are filed, of either notice of intention to hold the claims or an affidavit of assessment work performed. 43 U.S.C. § 1744(a) (1976). If neither of these documents is filed, the claims are conclusively deemed to be abandoned. 43 U.S.C. § 1744(c) (1976).

These claims were located on various dates in August 1979, recorded in Elko County, Nevada, on October 5, 1979, and recorded with BLM on October 25, 1979. Therefore, the first notice of intention to hold or evidence of assessment work had to be filed by December 30, 1980. The evidence shows that appellant did send a copy of the December 17, 1980, letter declaring its intent to hold these claims to BLM, where it was filed on December 19, 1980. Appellant later sent a photocopy of the same letter to establish that this letter had indeed been filed in the Elko County recorder's office as well. Appellant thereby fulfilled the statutory requirements. 2/

While appellant's letter of December 17, 1980, did not list all the elements outlined in 43 CFR 3833.2-3(a) relating to notices of intent to hold, since appellant did comply with the statutory requirements, the failure to comply with the additional regulatory specifications does not require a finding that appellant's claims are abandoned and void. As the court of appeals in Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), noted, failure to comply with a purely regulatory requirement should be treated as a curable defect and an individual should be afforded notice and an opportunity to submit the required supplemental information. See Harry J. Pike, 57 IBLA 15 (1981). Compliance with express statutory provisions constitutes compliance with "the minimum requirements of the law and regulations." Perry L. Johnson, 57 IBLA 20 (1981); Robert W. Hansen, 46 IBLA 93 (1980). Therefore, to the extent that the State Office wishes appellant to file supplemental information it should afford appellant specific notice and an opportunity to comply. Plet Avery, 60 IBLA 159 (1981); Harry J. Pike, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the

---

1/ After the appeal was filed, BLM purported to issue another decision, dated May 13, 1981, vacating its Apr. 27, 1981, decision and reinstating appellant's 1980 filing. We note that upon the filing of a timely notice of appeal BLM lost jurisdiction over the appeal and its decision of May 13, 1981, was thus ultra vires. BLM did, however, forward the appeal to the Board for disposition.

2/ We note that appellant filed evidence of assessment work in 1981, thus maintaining these claims.

[\*128] Nevada State Office is reversed and the case file remanded to BLM for further action.

James L. Burski Administrative Judge

CONCURBY: GRANT; LEWIS

We concur: C. Randall Grant, Jr., Administrative Judge Anne Poindexter Lewis, Administrative Judge.  
64 IBLA 128

