

MICHAEL E. BURNS

IBLA 97-201

Decided March 28, 1997

Appeal from a decision of the Elko District Office, Bureau of Land Management, cancelling the Private Maintenance and Care Agreement for wild horse #92790238.

Appeal dismissed.

1. Administrative Procedure: Administrative Review--Appeals: Generally--Bureau of Land Management--Rules of Practice: Appeals: Effect of

In keeping with the principle that the filing of a notice of appeal vests exclusive authority over the matter under appeal with the Board of Land Appeals, BLM must forward the case (as represented by BLM's case file) to the Board within no more than 10 working days so that it may exercise its authority to resolve the dispute.

APPEARANCES: Michael E. Burns, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE BYRNES

Michael E. Burns has appealed from the November 22, 1996, Decision of the Elko, Nevada, District Office, Bureau of Land Management (BLM), cancelling his Private Maintenance and Care Agreement (PMCA) with BLM for wild horse #92790238. In its Decision, BLM notified Burns that it was cancelling the PMCA because he had "sold or given away" the wild horse, and that pursuant to 43 C.F.R. § 4770.3(b), the Decision was placed into full force and effect.

On February 10, 1997, the Board received from BLM a memorandum which stated:

Enclosed please find a signed statement from Mr. Michael E. Burns withdrawing his appeal of the decision by the Assistant District Manager \* \* \* which cancelled his Private Care and Maintenance Agreement for wild horse #92790238. This appeal had not yet been transmitted to your office, while our office attempted to work with Mr. Burns in the resolution of this matter.

The statement signed by Burns, which appears to have been prepared by BLM, provides that he will drop his Appeal based upon his understanding that "BLM will not pursue any further legal means against [him] in this matter."

The BLM is admonished that it failed to follow the correct procedure in handling this Appeal. The correct procedure is for BLM to forward the complete, original case file to the Board within the 10-day period provided by BLM Manual 1841.15 A. E.g., Patrick G. Blumm, 116 IBLA 321 (1990). The Board reviewed a similar situation in Thana Conk, 114 IBLA 263 (1990), in which Conk appealed from decisions of BLM repossessing a wild horse and cancelling her PMCA. The BLM failed to forward the case file to the Board for 13 months. The Board's response to BLM's handling of the Conk matter applies equally to the Burns Appeal:

The filing of a notice of appeal vests exclusive authority over the matter under appeal with the Board of Land Appeals, and BLM's authority is not restored until the Board takes action disposing of the appeal. AA Minerals Corp., 27 IBLA 1 (1976). In keeping with this principle, BLM must forward the case (as represented by BLM's casefile) to the Board so that it may exercise its authority to resolve the dispute.

Under governing procedures, an appellant is not required to serve a copy of his notice of appeal on the Board, which normally becomes aware that a notice of appeal has been filed only when BLM forwards the notice of appeal and its complete, original casefile in the matter to the Board. BLM must forward the record to the Board within no more than 10 business days after receipt of the notice of appeal. Utah Chapter Sierra Club, 114 IBLA 172, 175 (1990) (citing with approval BLM Manual 1841.15 A). Until the file is received, the Board is unable to intelligently review the details of the dispute, and may not even be aware (as in this case) that a notice of appeal has been filed.

The Board is very sensitive to delays in forwarding the case when a notice of appeal is filed, as BLM's failure to promptly transmit a file might be seen as recalcitrance, resulting in delaying an appellant's right to have BLM's decision reviewed by the Board. See Harriett B. Ravenscroft, 105 IBLA 324, 331 (Hughes, A.J., concurring). We are surprised by BLM's failure to initially realize (or to become aware during the more than 13 months that it held the case following the filing of the notice of appeal) that it was required to forward the case to the Board, so that the administrative appeals process could begin to run its course. It is hoped that BLM will take steps to conform their procedures to these realities to avoid similar mishandling of appeals in the future.

Thana Conk, supra, at 273-74 (footnotes omitted).

This procedure in no way impinges on BLM's ability to have further discussions with an appellant relating to settlement of a case. However,

failure to forward a case file to the Board in a timely manner not only infringes on the due process rights of appellants, as noted, it is in violation of BLM Manual 1841.15 A.

In light of Burns' signed statement, we hereby dismiss the Appeal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, we hereby dismiss Burns' Appeal.

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James L. Bymes  
Chief Administrative Judge

I concur.

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James F. Roberts  
Acting Administrative Judge

