

ETHEL E. SMITH

IBLA 71-36      Decided November 20, 1970

Rules of Practice: Request for Information or Guidance: Remand

A letter requesting information or guidance, considered by the State Office to be an appeal, nonetheless is not an appeal, and the case will be remanded to the Bureau of Land Management for appropriate action.

1 IBLA 100

IBLA 71-36: F 12518

ETHEL E. SMITH :

Mineral reservation to be  
imposed on native allotment

: Remanded

#### DECISION

A decision of the Alaska State Office, Bureau of Land Management, dated August 11, 1970, notified Mrs. Ethel E. Smith that, if granted, her native allotment, F 12518, would be impressed with a reservation of coal and allowed her 30 days from the date of receipt in which to petition for reclassification of the lands as nonmineral in character. Mrs. Smith was informed that she would have to support her petition with geological or other technical data that the lands were not mineral in character.

In a letter dated September 1, Mrs. Smith stated that she wished her land to be classified as nonmineral and asked the State Office to notify her if she should take further action. She also stated that she would send the Department the reasons why she was "appealing the reclassification." The State Office construed the letter as an appeal from its decision and forwarded the case to this office.

We find that Mrs. Smith's letter is not an appeal. Rather it is a request for guidance or information with respect to reclassification of the land as nonmineral.

The State Office should advise Mrs. Smith of the specific procedures set forth in 43 CFR 2093.3-3. 1/ (A photocopy is attached hereto.)

If she desires to challenge the classification that the land involved is valuable for coal, she must pursue, without delay,

---

1/ 35 F.R. 9538 (formerly 43 CFR 2023.4-3)

the instructions set forth in 43 CFR 2093.3-3(d). 2/ The burden of proof that the coal classification is erroneous rests upon her. If she cannot demonstrate error in the classification, reservation of the coal must be imposed if her application for a native allotment is granted.

To permit Mrs. Smith to avail herself of the procedure to seek reclassification of the land involved, it is proper to remand the case to the jurisdiction of the Bureau of Land Management.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the case is remanded to the Bureau of Land Management for further appropriate consideration.

---

Edward W. Stuebing, Member

I concur:    I concur:

---

Francis Mayhue, Member

---

Anne Poindexter Lewis, Member

---

2/ 35 F.R. 9539 (formerly 43 CFR 2023.4-3(d))

