

ELBERT O. SOWERWINE, JR.

IBLA 80-415

Decided September 9, 1980

Appeal from decision of the Wyoming State Office, Bureau of Land Management, concerning desert land entry petition-application W 57196.

Affirmed.

1. Desert Land Entry: Classification--Rules of Practice: Generally

Certified mailing is an acceptable form of service under Department practice. 43 CFR 1821.2-4. Sending land classification proposals and decisions to a petitioner-applicant by certified mail meets the requirements in 43 CFR 2450.3 and 2450.4 that those documents be served on the petitioner-applicant.

APPEARANCES: Elbert O. Sowerwine, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

On October 15, 1976, Elbert O. Sowerwine, Jr., filed desert land entry application W 57196 for certain lands in Park County, Wyoming. Since the lands had not been previously classified as appropriate for desert land entry, the Cody, Wyoming, Resource Area Manager for the Bureau of Land Management (BLM), initiated the required classification examination of the land and, on October 5, 1979, issued a proposed classification decision designating the land unsuitable for desert land entry. The proposed decision was then sent by certified mail to various interested individuals including Sowerwine. Thirty days were allowed for protest pursuant to 43 CFR 2450.4. BLM issued a corrected proposed decision dated October 18, 1979, which it again sent by certified mail to the same interested parties. After these mailings to Sowerwine were returned unclaimed, BLM also attempted personal delivery of the decision. Since no protests were received, the Cody

Resource Area Manager issued an Initial Classification dated December 4, 1979, classifying the land as unsuitable for desert land entry. This decision was also sent by certified mail to Sowerwine and others providing another 30-day period for protest after which the decision would become a final order of the Secretary of the Interior. 43 CFR 2450.5. This mailing to Sowerwine was also returned to BLM unclaimed. BLM finalized the land classification and notified Sowerwine by letter dated January 9, 1980, that his desert land entry application was denied as a result of the unfavorable land classification.

By letter dated January 30, 1980, Sowerwine protested the BLM decision claiming that he had been out of the country and therefore he was unable to pick up the certified mailings within the time allowed by the post office. He argues that if BLM had sent the classification decisions by regular mail, friends collecting his mail would have notified him of them. BLM dismissed the protest on February 11, 1980, indicating that the decisions had been properly served as provided by 43 CFR 1810.2 and 43 CFR 4.401(c). On appeal, Sowerwine reiterates his earlier arguments claiming that it is unfair for BLM to hold his application for a long period of time and then allow him only a short period of time to receive notice of the decision.

[1] The classification procedures in 43 CFR Part 2450 require that classification decisions be "served" upon the petitioner-applicant. While BLM regulations do not define the term "service," certified mailing is an acceptable form of service under departmental practice. 43 CFR 1821.2-4. See 43 CFR 4.401(c), 4.422(c). Furthermore, when a BLM officer uses the mail to send a communication to someone entitled to such communication, "that person will be deemed to have received the communication if it was delivered to his last address of record [with BLM] regardless of whether it was in fact received by him." 43 CFR 1810.2(b). The procedures followed by BLM satisfy the requirement that the classification decision be served on the petitioner-applicant.

This Board has no authority to review the Secretarial land classification. 43 CFR 2450.5(d); 43 CFR 4.410. See Rulon Van Tassel, 33 IBLA 221, 222 (1977); Ralph G. Faulkner, 26 IBLA 110, n.2 (1976). A Secretarial classification order, once final, continues in effect until revoked or modified and applications for lands which are not consistent with the classification may not be allowed. Rulon Van Tassel, supra; 43 CFR 2450.6(a). Appellant has stated that he would submit an additional statement of reasons concerning the classification criteria when he receives certain technical information from BLM. As the classification is now final, there is no basis for delaying our decision because we would have no authority to review the classification order.

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 affirmed.

Joan B. Thompson
Administrative Judge

I concur:

Edward W. Stuebing
Administrative Judge

ADMINISTRATIVE JUDGE GOSS DISSENTING:

Appellant states that (1) because of the revolution in Nicaragua it was necessary for him to make an emergency trip to Central America and Washington, D.C.; (2) he arranged for friends to pick up his mail and was in touch with them by telephone when this was possible; (3) the BLM communications were sent to his home by certified mail but were not delivered to the friends; and (4) over a period of 3-1/2 years appellant has spent considerable time and money on his application.

Appellant did not receive the initial classification decision until February 13, 1980, when it was attached to the BLM decision appealed. In his appeal filed March 10, 1980, appellant requested that, in order to prepare his statement of reasons for appeal, BLM send him copies of certain regulations and the calculations which were the basis for the BLM conclusion that the cost-benefit ratio for the desert land entry "was calculated to be 1.00 to .46." The record does not show there has been a response to appellant's request.

I would remand the case to BLM in order that appellant can be furnished the requested material so that he may perfect his appeal. Only after the appeal is complete can the authorized officer properly evaluate whether to consider appellant's protest as timely filed under the authority set forth in 43 CFR 1821.2-2(g). That section provides:

(g) When the regulations of this chapter provide that a document must be filed or a payment made within a specified period of time, the filing of the document or the making of the payment after the expiration of that period will not prevent the authorized officer from considering the document as being timely filed or the payment as being timely made except where:

- (1) The law does not permit him to do so.
- (2) The rights of a third party or parties have intervened.
- (3) The authorized officer determines that further consideration of the document or acceptance of the payment would unduly interfere with the orderly conduct of business.

Joseph W. Goss
Administrative Judge

