

LITE SABIN

IBLA 80-923

Decided December 15, 1980

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM 38277.

Reversed and remanded.

1. Administrative Procedure: Generally -- Rules of Practice: Generally -- Notice: Generally

Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the post office of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

APPEARANCES: Craig R. Carver, Esq., Head, Moye, Carver & Ray, Denver, Colorado, and James W. McDade, Esq., Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

This appeal is from a decision dated July 22, 1980, by the New Mexico State Office, Bureau of Land Management (BLM), rejecting appellant's oil and gas lease offer NM 38277.

The offer, filed for Parcel No. 1122, was first drawn at the public drawing held in the State Office on September 11, 1979.

The decision rejected the offer on the ground that appellant had failed to timely file a "Certification of Qualifications to Hold a Federal Oil and Gas Lease."

On May 22, 1980, BLM mailed appellant's certification via certified mail "restricted delivery" to her address of record, 115 South LaSalle, Chicago, Illinois. This is the address of Stewart Capital Corporation (Stewart), appellant's filing service.

With her statement of reasons appellant has included the affidavit of one of Stewart's employees. The affidavit states that the envelope bearing the certification was received by Stewart on May 28, 1980, appellant's permanent address was written thereon by Stewart, and it was forwarded to appellant. However, the post office attempted a second delivery of the envelope to the South LaSalle street address on Saturday, May 31, 1980, when Stewart's offices were closed. Affixed

to the envelope are stickers marked "05/31/80, Return to Sender, Not Deliverable as Addressed, Unable to Forward." Appellant's permanent address has been crossed out by heavy black crayon. The envelope was returned to the New Mexico State Office on June 9, 1980.

The affidavit asserts that the New Mexico State Office routinely mails the correspondence of its clients to the South LaSalle street address via restricted delivery. The affidavit explains Stewart's procedure for handling such correspondence:

Unable to sign for such documents, Stewart Capital Corporation has determined that it should have these documents forwarded to the client at his/her permanent address. Consequently, the envelopes so marked which are received by Stewart Capital Corporation are marked "Please Forward" and the client's permanent address is affixed. A copy of the envelope is taken to verify the forwarding request and the envelope, unopened, is given back to the postman for further handling. Stewart Capital Corporation then immediately notifies the client to expect the envelope and requests that the client advise it as to the contents of the envelope so that it can advise the client as to the proper method of complying with the BLM's request. If Stewart Capital Corporation has received no response to this letter from the client within a week or so, it contacts the client to see if the letter has, in fact, been received by the client. If not, steps are then taken to obtain a copy of the contents of the envelope directly from the Bureau of Land Management office from which is originated.

With respect to the envelope here at issue the affidavit states that a

restricted delivery letter from the New Mexico office of the Bureau of Land Management was received by Stewart Capital Corporation and forwarded to Lite Sabin per established procedure on May 28, 1980. Mrs. Sabin was immediately notified of this fact and she advised Stewart Capital

Corporation June 19, 1980, that she had still not received it. At that point, Stewart Capital's legal counsel took steps to obtain a copy of the documents involved, which turned out to be a Certification of Qualifications to hold a Federal Oil and Gas Lease. These copies were forwarded to Mrs. Sabin for action. It was ascertained at that time that the forwarding request applied to the envelope by Stewart Capital Corporation had been obliterated by the Post Office at its own discretion and that the envelope had been returned to the New Mexico office of the BLM as unforwardable on June 9, 1980. Believing that Mrs. Sabin would be allowed thirty days from the date of the return of the envelope to the point of its origin within which to reply, our legal counsel advised that she should submit the documents requested no later than July 8, 1980. Mrs. Sabin signed the documents and forwarded them to the BLM on July 2, 1980, and they were received by the BLM, per its decision dated July 22, 1980, on July 7, 1980.

Appellant contends that 43 CFR 1810.2(b) 1/ does not allow a presumption of receipt of a BLM document to arise where the actions of the New Mexico State Office precluded 2/ receipt.

Appellant contends

1/ 43 CFR 1810.2(b) provides:

"Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities."

2/ Appellant's posture is not without logic. If appellant had gone to Europe for 6 months and had left an agent fully authorized to act on her behalf and BLM had sent a communication by "restricted delivery," it is obvious that appellant would not have received notice within which timely action could have been taken. It is not apparent from the record what useful purpose, if any, was sought to be served by the use of "restricted delivery."

that BLM failed to comply with this regulation because it mailed the certification in a manner in which it could not be accepted by appellant's agent at appellant's address of record. Restricted delivery, appellant argues, defeated due process and notice which are policies of the regulation.

Appellant further contends that in any case, the completed certification was timely received by BLM. 3/

[1] We need not discuss the issue whether BLM complied with the cited regulation because we agree with appellant that her completed certification was timely received by BLM. In James W. Heyer, 2 IBLA 318 (1971), the Board stated:

A document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the post office of the undelivered, certified letter, such constructive service being equivalent in legal effect to actual service of the document.

This principle is stated also in 43 CFR 4.401(c)(3).

We conclude that BLM incorrectly considered the 30-day period as running from May 31, 1980. According to the above authorities,

3/ The appellant also suggest that the information sought by BLM was already present in the record. The record does contain a second copy of the certification. That copy, however, is not executed or signed by appellant.

that period began to run as of June 9, 1980, when the undeliverable certification was returned to BLM. Thus, appellant had until July 9, 1980, to file her certification. Since the document was filed on July 7, the lease offer was improperly rejected for untimely filing of the certification.

Our holding herein is not inconsistent with that reached in Brooks Griggs, IBLA 80-924, 51 IBLA 232 (1980), also decided this date. The cases are distinguishable on their facts, in that in Griggs, we found that the certification was not delivered by the postal service to the offeror's address of record, whereas in the instant case it was.

Accordingly, 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 and BLM is instructed to issue appellant the lease, all else being regular.

Edward W. Stuebing
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

