

ART FIELDS  
RUSSEL ADAMS

IBLA 81-587

Decided August 25, 1981

Appeal from decision of the Fairbanks District Office, Bureau of Land Management, declaring mining claims abandoned and void. F-72586 through F-72595.

Appeal dismissed in part; decision affirmed in part.

1. Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Timely Filing

The provisions of 43 CFR 4.411, requiring that a notice of appeal be filed within 30 days of receipt of the decision appealed from, are mandatory, inasmuch as they determine the jurisdiction of the Board to hear an appeal, and are not subject to waiver. An appeal which was not filed timely must be dismissed.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR (3833.1-2(b)). This requirement is mandatory and where a mining claimant fails to comply therewith the claims are properly declared abandoned and void.

APPEARANCES: William G. Azar, Esq., Anchorage, Alaska, for appellants.

## OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is taken from a decision dated January 28, 1981, by the Fairbanks, Alaska, District Office, Bureau of Land Management (BLM), declaring the Alice Ann Nos. 1 through 10 lode mining claims, F-72586 through F-72595, owned by Art Fields and Russell Adams, abandoned and void for failure to comply with recordation requirements for location notices set forth in the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the implementing regulations, 43 CFR 3833.1-2(b).

On January 28, 1981, according to BLM's certified mail log, a copy of the decision was sent to Fields, with a copy to Adams. The return receipt shows it was sent to Fields at P.O. Box 13, Kotzebue, Alaska 99752. The receipt for certified mail lists the same address for Adams. The return receipt card signed by Fields bears a delivery date stamp of January 30, 1981. There is no return receipt card showing the date of delivery to Adams, but counsel alleges in the statement of reasons that Adams received the decision on or about April 1, 1981, 2 weeks before the appeal therefrom was taken. The BLM log, however, indicates that a copy of the decision was sent to Adams "1/28/81" and received "2/6/81 2/11/81." A memo from the Fairbanks District Office to the Board states that the certified mail receipt card (P13 9840515) "cannot be located." It also states that "[a] tracer has been sent to ascertain if and when Mr. Adams was served." The BLM memo is dated April 23, 1981.

Counsel for appellants concedes that appellant Fields was served with the decision more than 30 days before the appeal was filed, but urges that the 30-day appeal period should be waived as to Fields. Counsel also asserts that appellant Adams lives in Kivalina, Alaska, and received the decision approximately 2 weeks before the appeal was taken.

The first issue before the Board is whether the appeal was timely filed and whether the Board has jurisdiction over the case.

[1] With respect to appellant Adams, the situation is covered by regulation, 43 CFR 1810.2(b), which provides:

(b) 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.

In Robert D. Nininger, 16 IBLA 200 (1974), aff'd, Nininger v. Morton, Civ. No. 74-1246 (D.D.C. Mar. 25, 1975), the Board made the following pertinent comment on the regulation:

The regulation is reasonable and necessary to expeditious administration. The conduct of Government business cannot be made to await the pleasure or convenience of those individuals who seek to treat with it, nor should federal employees have to search out those individuals who have neglected to arrange their own affairs so that they might receive official communication promptly.

Id. at 202. The record indicates the decision was transmitted to Adams at his last address of record. As the envelope containing the decision was mailed on January 28, 1981, and was not returned to BLM as "undeliverable" by the Postal Service, there is a presumption that the envelope was delivered.

The regulations require that a notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. 43 CFR 4.411(a). These requirements are mandatory, inasmuch as they determine the jurisdiction of the Board to hear an appeal and are not subject to waiver. DNA -- People's Legal Services, 49 IBLA 307 (1980). Failure of an appellant to file a notice of appeal within the time prescribed by regulation mandates dismissal of the appeal. Ilean Landis, 49 IBLA 59 (1980); Presentin v. Seaton, 284 F.2d 195, 199 (D.C. Cir. 1960). Therefore, the appeal, as it relates to Fields, must be dismissed.

[2] Assuming, arguendo, that the appeal is timely as to Adams, it is without merit because of failure of the claimant to comply with the mining claim recordation requirements set forth in section 314 of FLPMA, supra, and the implementing regulations in 43 CFR 3833.1. The statute provides in pertinent part:

Sec. 1744 (a) \* \* \* The owner of an unpatented lode or placer mining claim located after October 21, 1976, \* \* \* shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

\* \* \* \* \*

(b) \* \* \* The owner of an unpatented lode or placer mining claim \* \* \* located after October 21, 1976, shall, within ninety days after the date of location of such claim, file in the office of the Bureau [of Land Management] designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim \* \* \* sufficient to locate the claimed lands on the ground.

\* \* \* \* \*

(c) The failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim \* \* \* by the owner; \* \* \*.

Under the facts of the case, appellants' mining claims were located on September 20, 1979. Under FLPMA and its implementing regulations, copies of the official record of the notices of location of the claims were required to be filed with BLM on or before the 90th day after September 20, 1979, or by December 19, 1979. Copies of the location notices were submitted to BLM December 5, 1980, nearly a year after the time prescribed by statute. BLM properly returned the location notices unrecorded. Even if the notices had been timely filed, recordation could not have been made because the claimants did not submit the service fee of \$5 for each location notice.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal by Fields is dismissed, and the decision appealed from is affirmed as to the appeal by Adams.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Bruce R. Harris  
Administrative Judge

