

RED ROCK GOLF AND RECREATIONAL ASSOCIATION, INC.

IBLA 82-1226

Decided November 9, 1983

Appeal from a decision of the Nevada State Office, Bureau of Land Management rejecting recreation and public purposes application N-35342.

Dismissed.

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

The Bureau of Land Management's transmission of a decision to a person's address of record by certified mail constitutes constructive service even though the attempt by the post office to deliver the document at that address was unsuccessful. Such delivery meets the requirements of the regulations governing communications by mail, 43 CFR 1810.2(b).

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

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. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

APPEARANCES: James P. Sitter, Esq., of Las Vegas, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

On August 16, 1982, the Red Rock Golf and Recreational Association, Inc. (Red Rock), filed a notice of appeal from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated March 2, 1982, which rejected the corporation's recreation and public purposes application N-35342. The corporation had filed an application on January 27, 1982, for 320 acres of public land in T. 21 S., R. 60 E. Mount Diablo meridian, Clark County, Nevada.

The record shows that the March 2 decision rejecting appellant's application was sent to appellant's address of record, i.e., 300 South Fourth Street, #1011, Las Vegas, Nevada 89101, by certified mail, return

receipt requested. The decision was returned by the post office March 10, 1982, marked "refused 3/8." The decision was subsequently re-sent by regular mail on March 11. That envelope was returned stamped "Moved Left no Address -- Return to Sender." When BLM was unable to deliver its decision it considered the decision as having been delivered pursuant to 43 CFR 1810.2(b) and closed the case on its records.

After appellant inquired as to the status of the application on July 26, 1982, BLM responded by letter of July 28, 1982, to the corporation's new address advising of its action and enclosing a copy of the earlier decision.

Red Rock responded by filing this appeal with BLM August 16, 1982, alleging that the appeal was timely filed because it was not aware of the denial of its application until July 30, 1982.

Appellant explains that the law firm representing Red Rock moved its offices in December 1981, and this was one of those rare occurrences "wherein something gets lost in the shuffle." Appellant sets out the circumstances how the BLM decision may have inadvertently been returned and requests that the appeal be considered timely filed.

[1] When BLM delivered the March 2 decision to appellant's address of record by certified mail, return receipt requested, appellant received the required notice of the BLM action consistent with provisions of the Departmental regulation governing communications by mail, 43 CFR 1810.2(b), which states:

(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. [Emphasis added.]

Appellant was obligated to keep BLM informed of its change of address or suffer the consequences of any nonreceipt caused by delivery to an address no longer occupied. This Board has repeatedly held that transmission of a decision to a person's address of record by certified mail constitutes constructive service even though the attempt by the post office to deliver the document at that address was unsuccessful. Michele M. Dawursk, 71 IBLA 343 (1983); Lone Star Producing Co., 28 IBLA 132 (1976); John Oakason, 13 IBLA 99 (1973); Beryl Shurtz, 4 IBLA 66 (1971). The legal effect of constructive service is exactly the same as actual service. Beryl Shurtz, *supra*; Duncan

Miller, A-31054 (Aug. 21, 1969). Where a document is refused, constructive service is deemed to occur on the date of the refusal. 1/

[2] The applicable regulation requires 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 provisions are mandatory inasmuch as they determine the jurisdiction of the Board to hear an appeal, and are not subject to waiver.

When appellant failed to appeal that decision within the 30-day limit prescribed by the regulations, the rejection of the application became final, and BLM properly closed the case. Appellant's notice of appeal filed on August 16, 1982, was untimely and, therefore, the appeal cannot be considered and must be dismissed. Madison Locke, 65 IBLA 122 (1982); DNA -- People's Legal Services, 49 IBLA 307 (1980); Ilean Landis, 49 IBLA 59 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

James L. Burski
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Bruce R. Harris
Administrative Judge

1/ In this case, of course, BLM attempted again to effectuate a delivery. Its second transmission was returned on Mar. 23, 1982. Even if the July 26, 1982, status inquiry could be considered an appeal, it arrived over 80 days after this latter period for appealing had run. Thus, even granting appellant the most favorable interpretation of the record possible, the appeal was clearly late.

