

Editor's note: Reconsideration granted, decision sustained -- 82 IBLA 241 (Aug. 27, 1984)

VICTOR M. ONET, JR.

IBLA 84-13

Decided May 31, 1984

Appeal from decision of the Oregon State Office, Bureau of Land Management, rejecting noncompetitive geothermal lease applications OR 12392 and OR 12394.

Vacated and remanded.

1. Notice: Generally -- Rules of Practice: Generally -- Words and Phrases

"Last address of record." For the purposes of 43 CFR 1810.2(b), in the context of BLM's processing of a lease application, the address stated on the application is to be used as the "last address of record" unless the applicant has filed written notice of a change of address with the BLM office where the application was filed.

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

When BLM mails a decision to a lease applicant at an address other than the applicant's address of record, BLM cannot attribute constructive notice of the decision to the applicant under the provisions of 43 CFR 1810.2(b).

APPEARANCES: Victor M. Onet, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Victor M. Onet, Jr., appeals from the decision of the Oregon State Office, Bureau of Land Management (BLM), dated August 9, 1983, rejecting his noncompetitive geothermal resources lease applications OR 12392 and OR 12394.

Appellant filed the rejected lease applications on February 25, 1974, and listed his address as "c/o Shearson Hammill & Co., 14 Wall St., New York, N.Y. 10005" (Shearson address). On March 12, 1975, BLM issued a decision giving appellant 30 days to submit further information in support of his applications. BLM mailed this decision to appellant at the Shearson address. Appellant responded with the requisite information in a timely manner. The Shearson address appeared on appellant's cover letter.

On September 14, 1982, BLM issued a decision entitled "Notice of Intent to Award Lease." This decision was interlocutory in nature and required no affirmative response from appellant. BLM mailed this decision to the Shearson address, but the unopened envelope was returned to BLM bearing the notation: "No such employee at Shearson American Express." An attempt was made to find a current address for appellant by telephoning a lease filing service, which had apparently remitted the initial filing fees in 1974. The filing service gave "c/o Parker, Alexander & Co., 200 Park Ave., New York, N.Y. 10017" (Parker address) as appellant's address. BLM mailed its September 14 decision to the Parker address where it was accepted. However, the return receipt was signed by someone other than the appellant.

On June 3, 1983, BLM issued a decision entitled "Noncompetitive Lease(s) Offered," which it mailed to appellant at the Parker address. This mailing was accepted, but, again, the return receipt card was not signed by appellant. Appellant was given 30 days from the date of his receipt of the June 3 decision in which to execute and return the enclosed lease forms and stipulations, and submit an additional one dollar to cover fractional acreage in the two offers.

On August 9, 1983, BLM issued its decision rejecting appellant's applications because appellant did not execute and return the lease forms and stipulations within the 30-day period BLM prescribed in its June 3 decision. BLM mailed its August 9 decision to the Parker address, but the mailing was returned to BLM unopened with a notation on the face of the envelope that delivery was refused. BLM then contacted the lease filing service and obtained a new address for appellant. The address given was "Hunter Lane, Oyster Bay, New York 11771" (Oyster Bay address). BLM mailed its August 9 decision to appellant at the Oyster Bay address and appellant received the decision on September 24, 1983. On September 27, 1983, appellant gave notice of appeal stating that the reason for the appeal was "on the rather simple ground that I never received any correspondence from you pertinent to this matter." In his notice of appeal, appellant acknowledged the Oyster Bay address as his current address. BLM then sent photocopies of the earlier decisions it had sent to appellant at the various other addresses, as well as photocopies of the return receipts and the returned envelopes.

BLM based its rejection of appellant's lease applications on the conclusion that appellant actually or constructively received the June 3, 1983, decision requiring action by appellant within 30 days of his receipt thereof. From the facts before it the Board, as is explained below, has determined that BLM did not provide appellant with the notice of its June 3 decision required under 43 CFR 1810.2.

[1] The Departmental regulation governing communications by mail, 43 CFR 1810.2(b), 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.]

For the purposes of this regulation, in the context of BLM's processing of a lease application, the address stated on the application is to be used as the "last address of record" unless the applicant has filed written notice of a change of address with the BLM office where the application was filed.

1/ In this case appellant's address of record, until his filing of his notice of appeal, was the Shearson address on appellant's lease application.

[2] Because BLM did not mail its June 3 decision to appellant's address of record, but instead mailed it to the Parker address provided gratuitously by a third party who was not a party in interest, BLM could not attribute constructive notice of the decision to appellant under the provisions of 43 CFR 1810.2(b). 2/ BLM thus assumed the risk that appellant might not receive actual delivery of the decision. It appears from the record that, in fact, appellant did not receive actual delivery of the June 3 decision until after BLM rejected his lease applications for failure to comply with the requirements of that decision. The Board concludes, therefore, that BLM's August 9 decision rejecting appellant's lease applications was improper and that, if the land described in appellant's applications has remained open to noncompetitive leasing for geothermal resources during the resolution of

1/ This conclusion follows from the requirement that a lease application must include the applicant's address. E.g., 43 CFR 3210.2-1(a) (relating to noncompetitive geothermal lease applications). Also, logic dictates that notice of an address change must come from the applicant, or one serving as the applicant's duly authorized agent, to avoid potential abuse by third parties who might desire that the applicant not receive notice. The only way BLM could be sure that the documents were actually served on the applicant would be to send the documents to all of the various addresses furnished, as addresses given by a third party may or may not be correct. On the other hand, if the address change were furnished by the applicant or his duly authorized agent, BLM could rely on the document.

2/ Of course, an applicant who fails to keep BLM informed of changes of address risks the consequences of merely constructive receipt resulting from delivery to an address of record no longer current. This Board has repeatedly held that the 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. Red Rock Gold & Recreational Association, Inc., 77 IBLA 87 (1983); 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). In the instant case, however, BLM's solicitous but unsuccessful efforts to obtain a new address of record for appellant precluded application of the constructive notice provision in 43 CFR 1810.2(b).

this appeal, appellant must be afforded an opportunity to execute the appropriate lease offers and stipulations. ^{3/}

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 vacated and this case is remanded for further action consistent herewith.

R. W. Mullen
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

^{3/} Of course, BLM's execution of any leases on behalf of the Government must await a final report on whether the lands described in appellant's applications are part of a "known geothermal resource area" (KGRA). 43 CFR 3210.4; see, e.g., Renewable Energy, Inc., 67 IBLA 304, 86 I.D. 496 (1982).

