

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting Alaska Native claim application in part and imposing easements on granted lands. AA 43392, AA 54975, AA 6661-C, and AA 11153-12.

Appeal dismissed.

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

Under the express terms of 43 CFR 4.411(a), a person who wishes to appeal a decision to the Board of Land Appeals must file his notice of appeal in the office of the officer who made the decision (not the Board). This requirement is strictly enforced. Thus, where a notice of appeal from a decision by a BLM state office is filed with a district office of BLM, an appeal is not initiated, and, if no other notice is timely filed in the correct office, the appeal must be dismissed.

APPEARANCES: Erik LeRoy, Esq., for Eklutna, Inc.; Mark Rindner, Esq., for Cook Inlet Region, Inc.; Dennis Hopewell, Esq., for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

On August 16, 1985, the Alaska State Office, Bureau of Land Management (BLM), issued a decision approving in part the village selection application of Eklutna, Inc. (Eklutna), for lands in the vicinity of Moose Creek, Alaska. The decision also rejected the application in part, as to certain lands found to be with the Alaska Railroad right-of-way and lands dedicated to public purposes and held in trust by the Federal Government, and it also imposed certain easements to be reserved on the granted lands.

BLM's decision advised as follows concerning the filing of an appeal to the Board of Land Appeals:

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional

corporation, may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in 43 CFR Part 4, Subpart E. * * * [I]f an appeal is taken, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of Conveyance Management (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513. [Emphasis supplied.]

The decision also expressly advised that parties receiving service of the decision by certified mail would have 30 days from receipt of the decision to file an appeal. Finally, it cautioned, "[t]o avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals."

A copy of BLM's decision of August 16, 1985, was received by Eklutna on August 19, 1985. Eklutna filed an original notice of appeal of BLM's decision with this Board on September 19, 1985. Eklutna also sent copies to the Anchorage District Office, BLM, at 4700 East 72nd Avenue, Anchorage, Alaska 99507, as well as to the Alaska Railroad Corp., and Cook Inlet Region, Inc. No copy of the notice of appeal was sent to the Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska.

More important, however, Eklutna admits that no notice of appeal was timely filed with the Alaska State Office, BLM. ^{1/}

Departmental regulation 43 CFR 4.411(a) provides as follows:

§ 4.411 Appeal; how taken, mandatory time limit.

(a) A person who wishes to appeal to the Board [of Land Appeals] must file in the office of the officer who made the decision (not the Board) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the notice of appeal in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. [Emphasis supplied.]

As set out above, BLM's decision expressly advised the State to this effect.

In San Juan Coal Co., 83 IBLA 379 (1984), we considered a similar case where a would-be appellant filed its notice of appeal with this Board, but

^{1/} A copy of Eklutna's notice of appeal was filed with the Alaska State Office on November 5, 1985. However, this notice was untimely, as the time for filing a notice of appeal expired in September. 43 CFR 4.401, 4.410.

not with the office of the officer who made the decision, and held as follows at 380:

The purpose of the requirement [in 43 CFR 4.411(a)] that the notice of appeal be filed in the office of the officer who made the decision (the "place-of-filing" rule) is to provide first notice to such office, in this case BLM. BLM is the exclusive custodian of records for matters on which it renders decisions. Neither the Board nor the Solicitor has any information whatsoever in its possession about matters pending before BLM. When a notice of appeal is filed with BLM, it then forwards this information to the Board and, in some cases, to the Solicitor, for review in connection with the appeal. Were we to allow appellants to violate the place-of-filing rule, it would be impossible to ascertain whether BLM is aware that a notice of appeal has been filed without communicating with it in every case. In view of the large number of appeals to the Board, this would present an insupportable administrative burden.

The place-of-filing rule also fosters administrative and program efficiency for BLM. Pursuant to the provisions of 43 CFR 4.21, the timely filing of a notice of appeal suspends the effect of the decision appealed from, except as otherwise provided by law or regulation. The most expedient way for the purposes of this regulation to be fulfilled is for notices of appeal to be filed with the proper BLM office.

Thus, for the sake of administrative convenience, the Department promulgated regulations governing place of filing, and BLM has been careful to notify appellants of these regulations. [The appellant] was expressly advised by BLM, both of the requirement that its appeal must be filed with BLM and not with Board, and of the consequences of its failure to file it properly. Accordingly, it works no injustice to enforce this requirement strictly.

* * * * *

[I]t is certain, and [appellant] has admitted, that no notice of appeal was filed with BLM within the mandatory 30-day time limit established in 43 CFR 4.411(a), or within the 10-day grace period established in some circumstances by 43 CFR 4.401(a). Under 43 CFR 4.411(b), "[i]f a notice of appeal is filed after the grace period provided in § 4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken." Accordingly, [the] notice of appeal may not be considered.

Even assuming the [appellant's] failure to file correctly were inadvertent, we would be bound to enforce the provisions of 43 CFR 4.411(a), since they determine the jurisdiction of the

Board to hear an appeal. The language chosen for this section leaves no room to question that the place-of-filing requirement is mandatory and, thus, not subject to waiver. See Red Rock Gold & Recreational Association, Inc., 77 IBLA 87 (1983). In the absence of a timely notice of appeal, the Board lacks jurisdiction to consider [the] appeal. Gary T. Suhrie, 75 IBLA 9 (1983); James M. Chudnow, 72 IBLA 60 (1983); and cases cited.

This holding applies in this case even though Eklutna filed a timely notice of appeal in the Anchorage District Office. Eklutna's failure to file a timely notice of appeal with the Alaska State Office, BLM, the office which issued the decision, mandates dismissal of its appeal. BLM has properly moved for dismissal on this ground.

As noted above, Eklutna did file a copy of its notice of appeal with the Anchorage District Office, BLM. However, although the Alaska State Office and the Anchorage District Office are located in the same city, they are several miles apart, have separate staffs and management, and have separate responsibilities. The place-of-filing requirement is explicit that the notice of appeal must be filed in the office of the officer who rendered the decision. Filing with another Departmental office separate from the office that actually issued the decision does not suffice under the regulations. See San Juan Coal Co., *supra* at 380. To hold otherwise would be to impose the burden of managing misfiled notices of appeal on offices whose personnel are totally unfamiliar with a matter, thus requiring these persons to take time away from their other duties in order to correct the would-be appellant's error. The Board has no choice but to dismiss the appeal, since the failure to file timely in the proper office deprives the Board of jurisdiction in the case.

Eklutna asserts that, in January 1985, it filed a document that could be construed as a timely notice of appeal of a determination by BLM on January 15, 1985, concerning conveyance of these lands. The January 15, 1985, determination was merely an internal recommendation from one branch of the Alaska State Office, BLM (the Branch of Alaska Native Claims Settlement Act Adjudication) to the Deputy State Director for Conveyance Management. It was not a "decision" under 43 CFR 4.410 and was not subject to appeal.

Accordingly, 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.

Wm. Philip Horton
Chief Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

