

LEW LANDERS

IBLA 89-333

Decided June 26, 1989

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring mining claims null and void ab initio. OR MC 89560 -OR MC 89563.

Dismissed.

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

Departmental regulation 43 CFR 4.411 provides that 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. If a decision is published in the Federal Register, a person not served with the decision must transmit a notice of appeal in time for it to be filed within 30 days after the date of publication. If a decision is not published in the Federal Register and an appeal is brought by a person who is not served with the decision, the appellant must establish that he was entitled to personal service of the decision or that his appeal was filed within 30 days after service of the decision upon the party or parties of record.

APPEARANCES: Lew Landers, Issaquah, Washington, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Lew Landers has appealed from the February 13, 1989, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the A, B, C, and D lode mining claims (OR MC 89560 - OR MC 89563) null and void ab initio because the claims were located in their entirety on lands within the Alpine Lakes Wilderness Area which were segregated from mining by the Wilderness Act of 1964, 16 U.S.C. §§ 1131-1136 (1982), and the Alpine Lakes Area Management Act of 1976, P.L. 94-357, 90 Stat. 905 (1976), 16 U.S.C. § 1132 note (1982). The basis for BLM's action apparently was a December 28, 1988, letter from the North Bend Ranger District, Forest Service, United States Department of Agriculture, informing BLM that the Alpine Lakes Wilderness Area had been withdrawn from mineral entry on

January 1, 1984, and that the claims in question had been located subsequent to that date on July 25, 1986.

On appeal, appellant contends that his claims are not within the wilderness area and that there are no clearly marked signs or markers on the ground showing where the wilderness boundary is in relation to his claims. He contends that available maps are in conflict and that the exact boundary is important since his claims may be close to it or overlap it.

We are unable to adjudicate the merits of this case as the above appeal was not timely filed. The timely filing of a notice of appeal is a jurisdictional requirement and the failure to file timely mandates dismissal of the appeal. Ahtna Inc., 100 IBLA 7 (1987); T.C.G. May 1983, 94 IBLA 22 (1986); B.L. Newman, 92 IBLA 314 (1986); Oscar Mineral Group No 3, 87 IBLA 48 (1985).

A copy of a return-receipt card indicates that the appeal was served upon the Northwest Mineral Museum on February 15. Although appellant states that the claims are "his" claims, each of the location notices filed in 1986 is signed by Lewis Landers as "Director, Northwest Mineral Museum" and states that Landers is filing the notice "in behalf of the Northwest Mineral Museum, 6321 282nd S.E., Issaquah, Washington 98027." These notices of location were filed with a cover letter with Northwest Mineral Museum and the above address on the letterhead. The letter concludes: "It would be appreciated if any correspondence regarding the claims be sent to the address of the Secretary, given below." This letter was signed: "Jack Zektzer, Secretary, 5940 California Ave. SW, Seattle, Wash. 98136." Thus, the Seattle address was established as the last address of record, not the Issaquah address. ^{1/} In mailing the decision to the Northwest Mineral Museum at the Seattle address, BLM complied with the requirement of sending its decision to the claimant's last address of record. 43 CFR 1810.2. ^{2/} Thus, appellant was not entitled to service of the decision at his address, and for purposes of determining whether the notice of appeal in this case was timely, we must look to the February 15 date of service on Northwest Mineral Museum.

The Departmental regulation 43 CFR 4.411(a) states when a notice of appeal must be filed:

A person who wishes to appeal to the Board must file in the office of the officer who made the decision (not the Board) a

^{1/} The affidavits of labor filed on these claims in accordance with section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), are each signed by Jack Zektzer as Secretary, Northwest Mineral Museum, using the Seattle address.

^{2/} The Board has, in fact, reversed a decision of the Minerals Management Service dismissing an appeal as untimely where it failed to send the decision under appeal to the specific official identified by the party lessee as the officer "to whom selected agency notices should be directed." Coastal Oil & Gas Corp., 106 IBLA 90, 91 (1988).

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. If a decision is published in the Federal Register, a person not served with the decision must transmit a notice of appeal in time for it to be filed within 30 days after the date of publication.

The decision under appeal is not published in the Federal Register, so the provision relating to such decisions is not pertinent here.

Thus, under the regulation, a notice of appeal must have been filed by March 17. Appellant's notice of appeal was not received until March 24. Under 43 CFR 4.401(a), there is a 10-day grace period for filing but this applies only if the notice of appeal was "transmitted or probably transmitted to the office in which the filing was required before the end of the period in which it was required to be filed." In other words, appellant could only claim the benefit of this grace provision if his notice of appeal had been transmitted by March 17. A postage meter mark indicates that it was not transmitted until March 22.

[1] In summary, we note that departmental regulation 43 CFR 4.411 provides that 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. If a decision is published in the Federal Register, a person not served with the decision must transmit a notice of appeal in time for it to be filed within 30 days after the date of publication. If a decision is not published in the Federal Register and an appeal is brought by a person who is not served with the decision, the appellant must establish that he was entitled to personal service of the decision or that his appeal was filed within 30 days after service of the decision upon the parties of record. In this case the appeal was not filed within 30 days after service of the decision upon the party of record, and appellant was not entitled to personal service of the decision.

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.

Wm. Philip Horton
Chief Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge