

WILLIAM J. THOMAN
v.
BUREAU OF LAND MANAGEMENT

IBLA 91-34

Decided January 8, 1993

Appeal from an order of Administrative Law Judge John R. Rampton, Jr., dismissing an appeal from a decision by the Green River Resources Area Manager, Wyoming, Bureau of Land Management, alleging grazing trespass. WY 04-89-3.

Reversed and remanded.

1. Administrative Procedure: Generally--Appeals:
Generally--Grazing Permits and Licenses:
Administrative Law Judge--Grazing Permits and
Licenses: Appeals--Grazing Permits and Licenses:
Hearings--Grazing Permits and Licenses: Trespass--
Rules of Practice: Appeals: Notice of Appeal--Rules
of Practice: Appeals: Timely Filing--Rules of
Practice: Appeals: Protests--Rules of Practice:
Protests

The time limits for protesting a proposed decision under 43 CFR 4160.2 and for filing an appeal of a final decision under 43 CFR 4160.3 and 4160.4 are mandatory. If a proposed decision is not protested within 15 days after it is received it becomes a final decision without further notice and is then subject to appeal for 30 days.

APPEARANCES: William F. Schroeder, Esq., Vale, Oregon, W. Alan Schroeder, Esq., and John T. Schroeder, Esq., Boise, Idaho, and Michael J. Finn, Esq., Rock Springs, Wyoming, for appellant; Glenn F. Tiedt, Esq., Office of the Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

William J. Thoman has appealed an October 2, 1990, order of Administrative Law Judge John R. Rampton, Jr., granting a motion by the Bureau of Land Management (BLM) to dismiss as untimely Thoman's appeal of a proposed decision by the Area Manager, Green River Resources Area, Wyoming, BLM.

The Area Manager issued a Notice of Proposed Decision on July 12, 1989, regarding an alleged grazing trespass by appellant. Appellant received the

proposed decision on July 13, 1989. Appellant's appeal was dated and postmarked on August 15, 1989, and received by BLM on August 16, 1989. The proposed decision stated that permittees, lessees, or other affected interests could protest the proposed decision within 15 days after receiving it pursuant to 43 CFR 4160.2; that in the absence of a protest the proposed decision would become the final decision without further notice pursuant to 43 CFR 4160.3(a); and that an "appeal for the purpose of a hearing before an Administrative Law Judge of a Final Decision, be it as a result of an unprotested or protested Proposed Decision, * * * may be made by an adversely affected party within thirty (30) days of receipt of the Final Decision" pursuant to 43 CFR 4160.4.

The regulations just referred to are found in 43 CFR Subpart 4160, which provides administrative remedies for grazing decisions. The relevant portions of these regulations provide:

4160.1-2 Proposed decisions on alleged violations

If the authorized officer determines that a permittee or lessee appears to have violated any provision of this part he shall serve a proposed decision on the permittee or lessee, or his agent, or both, by certified mail or personal delivery. * * * The proposed decision shall provide for a period of 15 days after receipt for the filing of a protest.

4160.2 Protests

Any applicant, permittee, lessee or other affected interests may protest the proposed decision under § 4160.1 of this title in person or in writing to the authorized officer within 15 days after receipt of such decision.

4160.3 Final decision

(a) In the absence of a protest, the proposed decision shall become the final decision of the authorized officer without further notice.

(b) Upon the timely filing of a protest, the authorized officer shall reconsider his proposed decision in light of the protestant's statement of reasons for protest * * *. At the conclusion of his review of the protest, the authorized officer shall serve his final decision on the protestant or his agent, or both, and on other affected interests.

(c) A period of 30 days after receipt of the final decision is provided for filing an appeal. * * *

§ 4160.4 Appeals

Any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for

the purpose of a hearing before an administrative law judge under § 4.470 of this title by filing his notice of appeal in the office of the authorized officer within 30 days after the receipt of the decision.

Citing 43 CFR 4.411, which provides that a notice of appeal to the Board from a decision of BLM must be filed with BLM within 30 days after the date of service of the decision, that no extension of time for filing a notice of appeal will be granted, and that an untimely appeal will be dismissed, and Ahtna, Inc., 100 IBLA 7 (1987), Judge Rampton held:

Although section 4.411 specifically refers to appeals to the Interior Board of Land Appeals, the principle expressed that mandatory time limits given for filing appeals cannot be extended applies equally to appeals from an authorized officer in a grazing district to an administrative law judge.

* * * * *

* * * I conclude that the regulations governing appeals from grazing decisions to an administrative law judge unambiguously provide that an adversely affected party has 30 days from receipt of the proposed decision to dispute it. Only if he files a protest within 15 days of receipt, must the authorized officer process it as a protest and issue a final decision which gives the appellant an additional 30 days in which to file an appeal. However, the 15-day protest period is a part of, not an extension of the 30-day appeal period. A timely protest requires the authorized officer to issue a final decision; an appeal requires him to forward it on to an administrative law judge.

(Oct. 2, 1990, Order at 4).

[1] Although we agree that the time limits in 43 CFR Subpart 4160 are mandatory, we respectfully disagree with Judge Rampton's conclusion that the 15-day period for filing a protest is part of the 30-day period for filing an appeal from a final decision. A protest to BLM is different from an appeal to an Administrative Law Judge and the periods for doing them are separate. In our view, an applicant, permittee, lessee, or other affected interest may either protest a proposed decision within 15 days of receiving it, in which case the authorized officer will issue a final decision in response, or the applicant, permittee, lessee, or other affected interest may decide after the proposed decision has become a final decision whether or not to file an appeal for the purpose of a hearing before an Administrative Law Judge. The regulations in Subpart 4160, as well as those in 43 CFR 4.470 referred to in section 4160.4, say clearly that an appeal may be filed within 30 days after receipt of a "final" decision. Rather than read these regulations as meaning 30 days after receipt of a proposed decision, we believe it more consistent with the language of the regulations to regard a proposed decision as becoming a final decision after 15 days if it is not protested and then being subject to an appeal

for 30 days. In effect, "receipt of the final decision" under section 4160.3(c) occurs without further notice when the period for filing a protest of a proposed decision expires without the filing of a protest. 1/ Thus, in this case, appellant could have protested the Area Manager's proposed decision no later than July 28, 15 days after he received it, which he did not do, or could have filed a notice of appeal within 30 days after the proposed decision became a final decision on July 29, which he did do on August 16. 2/

As Judge Rampton recognized in his order, our decision to reverse his ruling necessitates remanding the case for his determination of the merits of the alleged grazing trespass.

Accordingly, pursuant to the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the order appealed from is reversed and the case is remanded to Administrative Law Judge Rampton for a decision on the merits.

Will A. Irwin
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

1/ Of course, if a protest is filed, receipt of the final decision will not occur until the authorized officer's final decision is received.

2/ See 43 CFR 4.22(e).