



RANDY ROBERTS

175 IBLA 155

Decided July 14, 2008



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

RANDY ROBERTS

IBLA 2007-172

Decided July 14, 2008

Appeal from a decision of the Colorado State Office, Bureau of Land Management, rejecting Notices of Intent to Locate mining claims. COC Nos. 71112, 71114-16, and 71118-20.

Affirmed.

1. Mining Claims: Special Acts--Stock-Raising Homesteads--  
Notices of Intent to Locate Mining Claims

The mineral estate of lands patented under the Stock-Raising Homestead Act (SRHA), 43 U.S.C. §§ 291-301 (1970), is reserved to the United States. Any person qualified to locate coal or other mineral deposits or having the right to mine and remove such deposits shall have the right at all times to enter lands patented pursuant to the SRHA.

2. Mining Claims: Special Acts--Stock-Raising Homesteads--  
Notices of Intent to Locate Mining Claims

The filing of a Notice of Intent to Locate a Mining Claim (NOITL) with BLM commences the 90-day period during which no other person, including the surface owner, can file a NOITL or enter the lands covered by the claimant's NOITL, or file an application to acquire any interest in any portion of such lands. A mining claimant cannot enter lands patented under the SRHA until 30 days after the surface owner has received the NOITL by registered or certified mail, return receipt requested.

3. Mining Claims: Special Acts--Stock-Raising Homesteads--  
Notices of Intent to Locate Mining Claims

The term “complete NOITL” in 43 C.F.R. § 3838.14 means a NOITL filed on the form BLM prescribes that includes all the information required under 43 C.F.R. § 3838.12. As used in 43 C.F.R. § 3838.14, “complete NOITL” refers to the content of the document and not to what is necessary to complete a submission for the purpose of locating and recording a mining claim or tunnel site under 43 C.F.R. § 3838.11(a)(3).

4. Mining Claims: Special Acts--Stock-Raising Homesteads--  
Notices of Intent to Locate Mining Claims

A mining claimant need not submit proof that a NOITL has been served on the surface owner at the same time the NOITL is filed with BLM. 43 C.F.R. § 3838.15(a)(1). Nothing in the statute or implementing regulations requires that proof of service (green return receipt cards) must be filed with BLM before a mining claimant can enter SRHA lands to explore for minerals or to locate a mining claim or tunnel site. The statute provides that the authorized exploration period “shall begin 30 days after the NOITL is provided to the surface owner.” When the 30-day period has expired, the authorization to enter the patented surface of SRHA lands is effective as a matter of law.

APPEARANCES: Randy Roberts, *pro se*, Canon City, Colorado; William B. Prince, Esq., and Wells S. Parker, Esq., Salt Lake City, for Intervenor, Energy Metals Corporation (US); John S. Retrum, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

On April 23, 2007, Randy Roberts filed with the Colorado State Office, Bureau of Land Management (BLM) Notices of Intent to Locate (NOITLs) mining claims on lands patented pursuant to the Stockraising Homestead Act of 1916

(SRHA), 43 U.S.C. §§ 291-301 (1970),<sup>1</sup> in secs. 21 and 22, T. 17 S., R. 73 W., 6th Principal Meridian (P.M.), in Fremont County, Colorado. On May 2, 2007, BLM issued a decision rejecting the NOITLs filed by Roberts, serialized as COC Nos. 71112, 71114-16, and 71118-20, on the ground that the lands had been segregated previously, in whole or in part, as a result of NOITLs filed by Energy Metals Corporation (EMC), serialized as COC Nos. 71084-85 and 71087-92. Roberts timely appealed BLM's decision, asserting that EMC's NOITLs were void because EMC had failed to comply with regulatory requirements governing the filing of NOITLs, and that the "disputed lands" were not segregated at the time Roberts filed his NOITLs. EMC intervened in the appeal as an adverse party and timely responded to Roberts' Statement of Reasons (SOR).<sup>2</sup>

### *Statement of Facts*

On April 19, 2007, Ronald W. Driscoll, acting on behalf of EMC, filed NOITLs with BLM that were serialized as COC 71084-85 and COC 71087-92, indicating that it intended to conduct mineral exploration from May 18, 2007, to July 18, 2007, on

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<sup>1</sup> The SRHA was repealed in part by section 702 of the Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, Title VII, § 702, Oct. 21, 1976, 90 Stat. 2787. However, the Department has long recognized that it was impliedly repealed by the Taylor Grazing Act of 1934, 43 U.S.C. §§ 315, 315a to 315e (2000), *Daniel A. Anderson*, 32 IBLA 162, 164-65 (1977); *George J. Propp*, 56 I.D. 347, 350 (1938). The statutory provision reserving the mineral rights in such lands to the United States remained intact, and was subsequently amended in 1993. See 43 U.S.C. § 299(a)-(p) (2000).

<sup>2</sup> Neither BLM nor Roberts served EMC with copies of the decision, the Notice of Appeal, or the SOR. By order dated Feb. 14, 2008, the Board completed service of those documents on EMC, and established a briefing schedule for EMC and Roberts. The Board did not include the Office of the Solicitor in the briefing schedule, as Roberts indicated in his Notice of Appeal and SOR that he had served the Solicitor. After receiving EMC's Reply, the Solicitor informed the Board that it had not received a copy of either document, as required by 43 C.F.R. § 4.413(a) and (c)(2)(iv), although both documents list the Solicitor's Office as addressee, and a copy of the SOR shows the Regional Solicitor received it on June 1, 2007. The Board nonetheless served the Notice of Appeal and the SOR on the Office of the Regional Solicitor, Rocky Mountain Region. By order dated Apr. 17, 2008, the Office of the Solicitor was granted an opportunity to respond to the parties, who were allowed time to respond to BLM's Answer. EMC states that it agrees with BLM's Answer. EMC's Response to the Government's Answer dated May 12, 2008, and Reply at 2.

split estate lands patented under the SRHA and located in Lots 79 through 86, secs. 21 and 22, T. 17 S., R. 73 W., 6th P.M.

On April 23, 2007, Roberts filed his NOITLs, for lands that in whole or in part overlapped the lands described in the NOITLs filed by EMC,<sup>3</sup> pursuant to which he intended to stake claims and conduct sampling between June 1 and August 31, 2007. BLM rejected Roberts' NOITLs by decision dated May 2, 2007, on the ground that the land was segregated as a result of EMC's NOITLs. Roberts appealed on May 11, 2007.<sup>4</sup>

On May 18, 2007, the Board received the case files pertaining to the NOITLs filed by EMC and by Roberts. On June 2, 2007, Roberts filed his "Notice of Appeal and Supplemental Statement" (SOR). On February 8, 2008, EMC filed its Reply to the SOR, submitting copies of U.S. Postal Service (USPS) certified mail receipts, return receipts, and tracking confirmations, among other things. On February 15, 2008, BLM transmitted copies of EMC's receipts and tracking confirmations to the Board.

<sup>3</sup> The NOITLs filed by both EMC and Roberts, identified by Lot No. and Serial No., are as follows:

Lot No. 79: 71089 (EMC)	COC 71084 (EMC)	Lot No. 83: COC	
	COC 71114 (Roberts)	COC 71118 (Roberts)	Lot
No. 80:	COC 71092 (EMC)	Lot No. 84:	COC 71088 (EMC)
	COC 71114 (Roberts)		COC 71119 (Roberts)
Lot No. 81: 71087 (EMC)	COC 71091 (EMC)	Lot No. 85:	COC
	COC 71115 (Roberts)		COC 71120 (Roberts)
Lot No. 82: 71085 (EMC)	COC 71090 (EMC)	Lot No. 86:	COC
	COC 71116 (Roberts)		COC 71112 (Roberts)

<sup>4</sup> We note that the 90-day exploratory periods have long since expired. It is well established that the Board will dismiss an appeal as moot where, subsequent to the filing of the appeal, circumstances have deprived the Board of any ability to provide effective relief and no concrete purpose would be served by resolution of the issues presented. *Michael Voegele*, 174 IBLA 313, 317 (2008), and cases cited. Relying on this standard, however, we have declined to dismiss an appeal on the basis of mootness where, as in the judicial context, it presents an issue which is "capable of repetition, yet evading review." *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U.S. 498, 515 (1911). Although we are unable to grant relief with respect to the expired 90-day exploratory periods, we elect to address the merits of this appeal.

The record as supplemented establishes that EMC mailed certified copies of its NOITLs to the surface owners on April 18, 2007, three days prior to the date Roberts' certified copies were mailed to the surface owners. The record also shows that both EMC and Roberts filed their respective NOITLs with BLM, without the registered or certified mail return receipts (green cards) that would verify the dates of delivery to the surface owners at their addresses of record.

### *Arguments on Appeal*

On appeal, Roberts argues that “critical irregularities occurred in the filing of competing NOITL’s,” as well as in BLM’s interpretation of the regulations, and states that his review of BLM files “showed no evidence” that EMC notified “the relevant surface owners” of its intentions, as the files contained no certified mail receipts establishing proof of notice. Notice of Appeal filed May 11, 2007; SOR at 1. He argues that BLM’s regulations require filers to provide BLM with “copies of the certified mail receipt(s),” and claims that EMC filed its NOITLs “prior to notifying surface owners by certified mail” in violation of “the regulatory process,” making the NOITLs at issue “null and void.” SOR at 1. Roberts avers that the surface owners informed him that they had received his NOITLs before they received EMC’s, but provides no documentary evidence supporting these assertions. *Id.* at 1-2.

EMC responds that it “completed and submitted” its NOITLs to BLM “in full compliance with BLM rules and regulations.” Reply at 3. It argues that 43 C.F.R. § 3838.11(b), which states that a person may “submit the NOITL to the BLM and serve a copy of the NOITL on the surface owner(s) at the same time,” establishes that there is no requirement that proof that the NOITLs have been served on the surface owners must accompany the copies of NOITLs filed with BLM, as Roberts contends. Reply at 4. EMC argues that it submitted copies of the certified mail return receipts to BLM in accordance with 43 C.F.R. § 3838.11(a), and otherwise complied with the regulatory requirements under 43 C.F.R. Part 3838. *Id.*

BLM argues that its decision should be affirmed, contending that 43 C.F.R. § 3838.11 does not require proof of service on surface owners when a NOITL is submitted to BLM. Answer at 8-9. Noting that EMC placed copies of the NOITLs in the mail on April 18, 2007, BLM states:

As a general rule, service of a document, properly addressed and sent by registered or certified mail, return receipt requested, is deemed to occur on the date that such document is deposited in the mail for delivery by the U.S. Postal Service. *See, e.g.,* 43 C.F.R. § 4.403(c)(1)

(rule for service of documents in public land hearings and appeals before the Office of Hearings and Appeals.)<sup>[5]</sup>

Answer at 10-11. The surface owners accepted service of EMC's NOITLS on dates between April 20 and May 12, 2007,<sup>6</sup> which commenced the 30-day waiting period; EMC submitted the green card receipts when they were returned to EMC. *Id.* at 11. BLM concludes that the 90-day segregative effect began to run on April 19, 2007, the date EMC submitted the NOITLS to BLM. *Id.* at 11. BLM filed the Affidavit of Jesse E. Broskey, the Land Law Examiner who adjudicated Roberts' NOITLs (Broskey Affidavit), in support of its response.

### *Analysis*

#### *The Stock Raising Homestead Act*

[1] Public lands could be entered for grazing purposes under the SRHA prior to its repeal, and conveyed by patent to the entryman. Patents issued under the SRHA conveyed the surface only, reserving to the United States "all the coal and other minerals . . . together with the right to prospect for, mine, and remove the same." 43 U.S.C. § 299(a) (2000); 43 U.S.C. § 299 (1988). SRHA patents thus created "split estates." *Margaret L. Berggren*, 171 IBLA 297, 298 (2007); *Susan J. Kayler*, 162 IBLA 245, 246 (2004). Reserved minerals within SRHA patented lands are locatable by members of the public. 43 C.F.R. § 3814.1. The SRHA expressly grants qualified persons the right to "enter" the land for prospecting and to "reenter" for mining and removal of the mineral. 43 U.S.C. § 299(a) (2000); 43 U.S.C. § 299

<sup>5</sup> It is not clear whether BLM means to cite 43 C.F.R. § 4.401(c)(1) (Appeals Procedures; General) or 43 C.F.R. § 4.422(c)(1) (Hearings Procedures), which are identical, but we note that 43 C.F.R. § 4.403 has no subparagraphs and relates to finality of Board decisions and reconsideration.

<sup>6</sup> Affected surface owners received EMC's NOITLS by certified mail on the following dates:

COC 71084	Apr. 25, 2007	COC 71090	Apr.
26, 2007			
COC 71087	Apr. 20, 2007	COC 71091	Apr.
26, 2007			
COC 71088	Apr. 21, 2007	COC 71092	Apr.
21, 2007			
COC 71089	Apr. 21, 2007		

In one instance, COC 71085 (to Andrew and Thomasine Lane), there is no copy of a signed green card, although copies of the USPS online Track & Confirm record show that delivery of the NOITL was attempted on Apr. 21, 2007, and completed on May 12, 2007.

(1988); *Richard Rudnick*, 143 IBLA 257, 260 (1998), citing *William and Pearl Hayes*, 101 IBLA 110, 114-15 (1988), and *Brock Livestock Co.*, 101 IBLA 91, 98 (1988). The right to exploit the mineral estate has historically been superior to the right of the surface owner to use the surface. *Margaret L. Berggren*, 171 IBLA at 298 (2007); *Susan J. Kayler*, 162 IBLA at 247.

By Public Law No. 103-23, enacted on April 16, 1993, Congress added specific protections for the surface owner, but maintained the right of qualified persons (miners) to enter the surface for “purposes reasonably incident to the mining or removal” of the mineral. 43 U.S.C. § 299(a) (2000). As amended, the statute permits a person to enter the surface of lands patented under the SRHA to explore for minerals, to locate mining claims or tunnel sites, or to reenter to mine or remove minerals, even over a surface owner’s objection, provided, among other things, (1) advance notice of such activities is given to BLM and surface owners (43 U.S.C. § 299(b) (2000)); (2) a bond or other financial guarantee is posted (43 U.S.C. § 299(e) (2000)); and (3) a mining plan of operations will include measures for protecting the surface owner’s property of (43 U.S.C. § 299(f) (2000)). *Margaret L. Berggren*, 171 IBLA at 298-99; *Susan J. Kayler*, 162 IBLA at 247-49.

With respect to notice, the 1993 amendments require that a person who wishes to enter lands patented under the SRHA must file “a notice of intention to locate” a mining claim with the Department, in such form as the Secretary shall provide, and must “provide written notice of such filing, by registered or certified mail with return receipt, to the surface owner . . . at least 30 days before entering such lands.” 43 U.S.C. § 299(b)(1)(A) and (b)(3) (2000). The Act further provides:

Any person seeking to locate a mining claim on lands subject to this subchapter in order to engage in the mineral activities relating to exploration . . . shall file with the Secretary of the Interior a notice of intention to locate a claim on the lands concerned. The notice shall be in such form as the Secretary shall prescribe. The notice shall contain the name and mailing address of the person filing the notice and a legal description of the lands to which the notice applies. . . . Whenever any person has filed a notice under this paragraph with respect to any lands, during the 90-day period following the date of such filing, or any extension thereof pursuant to this paragraph, no other person (including the surface owner) may—

(A) file such a notice with respect to any portions of such lands;

(B) explore for minerals or locate a mining claim on any portion of such lands; or

(C) file an application to acquire any interest in any portion of such lands . . . .

43 U.S.C. § 299(b)(2) (2000).

BLM proposed 43 C.F.R. §§ 3833.0-3(g) and 3833.1-2(c) (1995) to implement the 1993 amendments, describing the new requirements in the following terms:

SRHA lands may not be entered for the location of a mining claim until 30 days after the surface owner has received notice of the filing of such notice of intent to locate. Filing of the notice of intent with BLM also has the effect of segregating the land sought for 90 days from all other land and mineral entry by anyone else.

59 Fed. Reg. 24572 (May 11, 1994).

In the final rule, BLM rephrased 43 C.F.R. § 3833.1-2(c)(3) (BLM will not record any mining claim located on SRHA lands if the claimant has not complied with 43 C.F.R. § 3833.1-2) in response to a comment urging greater clarity, and added a new subparagraph (d) pertaining to the information that must be included in a NOITL. BLM proposed further revisions to the rules in 1999. Regarding the proposed revision of 43 C.F.R. § 3838.13, the section-by-section analysis in the 1999 rulemaking described the submission of the NOITL to BLM in terms of requiring mining claimants to “record” NOITLs with BLM and serve a copy on surface owners, and the additional requirement to then wait 30 days before entering the lands to explore for minerals or locate mining claims. 64 Fed. Reg. 47023, 47029 (Aug. 27, 1999). The proposed new rule at 43 C.F.R. § 3833.15 (“How do I benefit from properly filing a NOITL on SRHA lands?”) stated that for 90 days after BLM “accepts” a claimant’s NOITL, the claimant may enter the lands and that, during the 90-day period following BLM’s acceptance of the NOITL, no other person, including the surface owner, can file a NOITL or enter the lands covered by the claimant’s NOITL. In adopting the final rule, BLM noted the following comment, with which other commenters agreed, that

the period during which a claimant may enter lands covered by a NOITL does not begin when BLM accepts the NOITL, but 30 days after notice is provided under 43 U.S.C. 299(b)(3). It went on to state that the exploration period “ends 90 days after the NOITL was filed with

BLM.” The comment correctly states the law and we have revised the introductory text of paragraph (a) accordingly. In order to maximize the 90-day time period after you file a NOITL with BLM, you may give the surface owner notice 30 days before you plan to file the NOITL with BLM. If you give the surface owner notice at the same time you file a NOITL with BLM, the 90-day exploration and location period will be effectively diminished by the 30 days you must wait after you give the surface owner notice.

68 Fed. Reg. 61046, 61061 (Oct. 24, 2003).

[2] The final rule thus mirrored the statute in specifying that “[t]he authorized exploration period . . . shall begin 30 days after notice [to the surface owner] is provided . . . and shall end with the expiration of the 90-day period that follows the filing of a NOITL with BLM.” 43 U.S.C. § 299(b)(2); *compare with* 43 C.F.R. § 3838.13 (“What restrictions are there on submitting a NOITL on SRHA lands?”), and 43 C.F.R. § 3838.13(c) (“Your NOITL will expire 90 days after you submit it with BLM, unless you submit to BLM a plan of operations. . .”). Accordingly, the final rule, 43 C.F.R. § 3838.15(a) describes what is authorized as a result of filing a NOITL, while § 3838.13(b) explains what is precluded as a result of filing a NOITL. We conclude that BLM properly held that the filing of EMC’s NOITLs triggered the 90-day exploration period during which no one, including the surface owners, could file a notice for any of the lands identified in EMC’s NOITLs or explore for minerals or locate a mining claim on such lands. The other statutory requirement to be met before EMC could enter on the patented surface was to wait 30 days after the surface owners had received the NOITL by certified or registered mail, return receipt requested.

In so holding, we necessarily reject the parties’ arguments or suggestions that the 90-day exploration period is triggered by the mailing of the NOITL, by the surface owner’s receipt of the NOITL, by submission of proof of service (*i.e.*, the green return receipt card) to BLM, or by BLM’s noting of the NOITL on the land records. No such linkage is stated or suggested by the statute, which provides only that the filing of a NOITL with BLM starts the running of the 90-day exploration period and its attendant preclusive effect.

The statute refers to requirements to “file” NOITLS with the Department and to “submit” plans of operation that must be approved by BLM. In contrast, BLM’s implementing rules at 43 C.F.R. §§ 3838.11 through 3838.13 and 3838.15(a) and (b)(1) generally refer to requirements to “submit” NOITLS and proofs of service to BLM, while 43 C.F.R. §§ 3838.14 and 3838.15(b) refer to when BLM “accepts” a

NOITL, and only 43 C.F.R. § 3838.14 also addresses the start of the 90-day period the day in terms of when BLM “receives” a complete NOITL. *See* 68 Fed. Reg. 61061 (Oct. 24, 2003). That varying usage is to be compared to 43 C.F.R. § 3838.15(b)(3), which pertains to the “fil[ing]” of an application to acquire an interest under sec. 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719 (2000), and 43 C.F.R. § 3838.15(c), which relates to “fil[ing]” a plan of operations. More specifically, the regulation at 43 C.F.R. § 3838.11(a) (“How do I locate and record mining claims or tunnel sites on SRHA lands?”) states that to “complete submission of a NOITL with BLM,” a mining claimant must submit a NOITL, the fee for processing it, and proof that the NOITL was served on the surface owner by registered mail, return receipt requested. The regulation at 43 C.F.R. § 3838.14 (“What will BLM do when I submit a NOITL for SRHA lands?”) states that when BLM “accepts a properly completed and executed NOITL” it will note the land records, and that “[t]he 90-day segregation period begins the day we receive a *complete* NOITL.” (Emphasis added.)

[3] We note, however, that if the term “complete NOITL” in 43 C.F.R. § 3838.14 were held to mean a NOITL whose *submission* is “complete” so as to allow location and recordation of a mining claim or tunnel site under 43 C.F.R. § 3838.11(a)(3) — which requires proof of service on the surface owner — the term would conflict with 43 U.S.C. § 299(b)(2) (2000). The regulation at 43 C.F.R. § 3838.12 prescribes what information must be included in a NOITL, reflecting and implementing the statutory requirements of 43 U.S.C. § 299(b)(2) (2000) regarding content. In light of 43 C.F.R. § 3838.12, we construe the term “complete NOITL” as used in 43 C.F.R. § 3838.14 to mean a NOITL executed on the form BLM prescribes that includes all the information required under 43 C.F.R. § 3838.12.<sup>7</sup> Stated differently, we conclude that the reference to a “complete NOITL” in 43 C.F.R. § 3838.14 refers to the content of the document and not to what is necessary to complete a submission for purposes of locating and recording a mining claim or tunnel site under 43 C.F.R. § 3838.11(a)(3). So construed, 43 C.F.R. § 3838.14 does not conflict with 43 U.S.C. § 299(b)(2) (2000).<sup>8</sup> Our holding makes it clear that

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<sup>7</sup> Implicitly, it also includes payment of the filing fee, established under other legal authority and unchallenged here. Absent the filing fee, BLM will decline the proffer of a NOITL and it is not “accepted,” “filed,” “submitted,” or “received” for any purpose.

<sup>8</sup> In the event of a conflict with 43 U.S.C. § 299(b)(2) (2000), the statute would necessarily control. *See, e.g., Alice Rock*, 168 IBLA 54, 58-59 (2006), and cases cited; *Blue Mountain Energy, Inc.*, 162 IBLA 108, 119 (2004); *Alamo Ranch, Inc.*, 135 IBLA (continued...)

BLM cannot by its own actions extend the statutory 90-day exploratory period or establish a triggering event different from, or in addition to, that specified in the statute -- that is, the filing of a NOITL with BLM.

We find further support for our holding in the definition of *segregate* or *segregation* contained in 43 C.F.R. Part 3830, which specifies that the land remains segregated “*until the statutory period has expired, BLM ends the segregation under § 2091.2-2 of this chapter, or the Department . . . removes the notation of segregation from its records, whichever occurs first.*” (Emphasis added.) Therefore, a claimant’s delay in submitting a complete NOITL, or BLM’s delay in noting the land records pursuant to the authority of the SRHA, could not in any circumstance operate to give a miner more than the 90 days provided in the statute when a NOITL is filed with BLM.

[4] EMC and BLM also argue that a person need not submit the proof of service on affected surface owners at the same time the NOITLs are submitted to BLM. That is correct. The regulations acknowledge as much in providing guidance with respect to maximizing the 90-day exploration period. *See* 43 C.F.R. § 3838.15(a) and the preamble to the final rule quoted above.

To the extent EMC and BLM aim their arguments to defeat any suggestion that the proof of service must be filed before a mining claimant can enter SRHA lands, they are again correct. Nothing in the statute or BLM’s implementing regulation establishes such a requirement. The statute provides that the authorized exploration period “shall begin 30 days after the NOITL is provided to the surface owner.” 43 U.S.C. § 299(b)(C) (2000). When the 30-day waiting period has expired, the authorization to enter the patented surface of SRHA lands is effective as a matter of law. The regulation, 43 C.F.R. § 3838.15(a), likewise states that “[f]or a 90-day period after you submit a NOITL with BLM and 30 days after you give notice to the surface owner: (1) You may enter the lands covered by the NOITL . . . .”

Though we hold that neither proof of service nor the noting of the public land records is required to commence the statutory waiting and exploration periods or to initiate the segregative effect of a NOITL, we note that such NOITL will be void, and any mining claim or tunnel site located under a void NOITL will be null and void *ab initio* and canceled in any case in which a claimant fails to comply with any requirement in 43 C.F.R. Part 3838. 43 C.F.R. § 3838.91.

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<sup>8</sup> (...continued)  
61, 71 (1996).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

\_\_\_\_\_/s/\_\_\_\_\_  
T. Britt Price  
Administrative Judge

I concur:

\_\_\_\_\_/s/\_\_\_\_\_  
James K. Jackson  
Administrative Judge