

INTERIOR BOARD OF LAND APPEALS

Gifford H. Allen, et al.

131 IBLA 195 (November 9, 1994)

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Editor's note: Reconsideration denied by Order dated Feb. 15, 1995.

GIFFORD H. ALLEN ET AL.

IBLA 92-97, 93-83

Decided November 9, 1994

Appeals from a decision and memorandum of the Colorado State Office, Bureau of Land Management, denying approval of assignment of a coal lease and subleases, accepting relinquishment of the lease, and concluding that advance royalties had properly been paid by the lessee. C-033301.

Appeal dismissed in part and decision affirmed in part (IBLA 92-97); appeal dismissed (IBLA 93-83).

1. Administrative Procedure: Administrative Review--Res Judicata--
Rules of Practice: Appeals: Dismissal--Rules of Practice: Appeals:
Effect of

The doctrine of administrative finality, the administrative counterpart of the doctrine of res judicata, dictates that once a party has availed himself of the opportunity to obtain administrative review of a decision within the Department, that party is precluded from litigating the matter in subsequent proceedings except upon a showing of compelling legal or equitable reasons.

2. Coal Leases and Permits: Assignments and Transfers

BLM properly denies approval of an assignment of a coal lease where the assignee fails to submit a lease bond in response to a requirement to do so issued pursuant to 43 CFR 3453.2-4(a).

3. Rules of Practice: Appeals: Dismissal--Rules of Practice: Appeals:
Timely Filing

The Departmental appeal regulation at 43 CFR 4.411 requires that an appeal of a decision be filed within 30 days of receipt of the decision. This requirement is jurisdictional and, hence, an untimely appeal is properly dismissed.

APPEARANCES: Gifford H. Allen, for appellants; Richard L. Fanyo, Esq., Denver, Colorado, for intervenors Grand Mesa Properties Company and Blue Ribbon Coal Company.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Gifford H. Allen, on behalf of himself and others, 1/ has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated October 9, 1991, denying approval of assignment of Federal coal lease C-033301 and related subleases. The BLM decision also accepted a relinquishment of the lease filed by the lessee and the sublessee. Allen has also appealed a memorandum from BLM to the Minerals Management Service (MMS), dated July 20, 1992, concluding that advance royalties had properly been paid on account of that lease. Because of the related nature of these two appeals, we have, sua sponte, consolidated them for decision by the Board.

This case is the latest round in a sequence of State court litigation and administrative appeals within the Department involving appellant, their assignors, and officials of BLM. Much of the factual background of this case is set forth in our prior decision in this matter, cited as G. H. Allen, 119 IBLA 272 (1991). On October 11, 1988, appellants filed a request seeking BLM's approval of an assignment of Federal coal lease C-033301 and its subleases from the current lessee, Grand Mesa Properties Company (Grand Mesa), and its sublessee, Blue Ribbon Coal Company (Blue Ribbon). We noted in our prior decision that:

It is clear from the administrative record in this case, including the submissions on appeal by the parties hereto, that there is a dispute between the assignees and the assignors regarding the terms of the assignment of the subject coal lease. Indeed, between the execution of the assignment on December 22, 1986, and the filing of the request for approval of the assignment in October 1988 there was litigation in the Colorado State courts which culminated in a release dated September 21, 1988. Pursuant to the terms of the release, appellants accepted the December 22, 1986, assignment of the coal lease by the assignors except as to lot 21 which was thereafter relinquished by the assignors. Subsequently, a request for approval of assignment of coal lease C-033301, except lot 21 relinquished by the assignors, was executed by appellants on October 4, 1988, and filed with BLM on October 11, 1988. [Footnote omitted.]

119 IBLA at 274.

The subject lease had originally been issued to the USX Corporation (formerly the U.S. Steel Corporation) effective July 1, 1960, readjusted effective July 1, 1980, 2/ and then been assigned to Grand Mesa on

1/ The other appellants are Corinne Allen, Dean and Carrie Allen, and Paul and Erma J. Allen.

2/ Following readjustment, the lease became subject to the continued operation requirement of section 7(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 207(b) (1988), and its implementing regulations. See Atlantic Richfield Co., 112 IBLA 115, 117 (1989). As such, the lessee

November 25, 1986. The assignment was approved by BLM effective March 1, 1988. ^{3/} At the time of that assignment from USX, Grand Mesa was a sublessee pursuant to the assignment of prior subleases of the leased land. ^{4/} Further, on October 1, 1981, Grand Mesa executed a sublease of the leased lands embraced in both subleases I and II to Blue Ribbon which operated the Blue Ribbon Mine on that land. This assignment was approved by BLM effective September 1, 1987. This mine was shutdown at the end of 1984, following declining coal production, and was fully reclaimed by 1986. On December 22, 1986, Grand Mesa and Blue Ribbon entered into the agreement assigning the lease and associated subleases to the Allens, who own land adjacent to the leased land.

By a prior decision dated December 19, 1989, BLM required, as a condition of its approval of the assignment to the Allens, that they submit a \$5,000 lease bond within 30 days of receipt of the decision in accordance with 43 CFR 3453.2-4(a). Significantly, BLM also held that, with the exception of the requirement to submit the lease bond, all of the "other" regulatory prerequisites for approval of the assignment had been satisfied (BLM Decision, dated Dec. 19, 1989, at 2). The Allens protested the December 1989 decision, asserting that the other regulatory requirements had not been satisfied and, specifically, the requirement that the lease account (reflecting the payment of rent and advance royalties) be

fn. 2 (continued)

was required, after achieving diligent development, to continue to operate mine(s) on the leased land by producing 1 percent of the recoverable coal reserves or, in lieu thereof, to pay advance royalties on that amount, with

respect to each continued operation year (COY) thereafter. See 43 CFR 3480.0-5(a)(6) and (8), 3483.1(a)(2), 3483.3(a)(2), and 3483.4; Western Slope Carbon, Inc., 98 IBLA 198, 199 (1987).

Recoverable coal reserves are those coal reserves within the leased land that were commercially mineable. See 43 CFR 3480.0-5(a)(5), (23), and (32); Atlantic Richfield Co., supra at 118-19; Coastal States Energy Co., 110 IBLA 179, 180 n.2, 183 (1989). In the present case, diligent development was determined to have been achieved in January 1981. Therefore, the COY's were deemed to begin on Feb. 1 and end on Jan. 31 of each year thereafter. See 43 CFR 3480.0-5(a)(9); Letter to USX Corporation from BLM, dated May 18, 1987, at 1.

^{3/} Many of the lands originally leased to USX were relinquished with BLM's approval in 1986, following the shutdown of the Somerset Mine. The remaining lands that were transferred to Grand Mesa consisted of lots 19, 20, and 21 situated in sec. 35, T. 12 S., R. 91 W., sixth principal meridian, Delta County, Colorado. The surviving lease was partially relinquished as to lot 21 on Oct. 11, 1988.

^{4/} Sublease I covering lots 20, 21, and the easternmost 184 feet of lot 19, T. 12 S., R. 91 W., sixth principal meridian, was issued July 28, 1976, from USX to Sunflower Energy Corporation. The sublessee's interest was subsequently assigned to Grand Mesa as approved by BLM decision of Aug. 13, 1982. The balance of lot 19 was subject to a sublease from USX to Grand Mesa dated Sept. 3, 1981 (Sublease II), which was also approved by the August 1982 BLM decision.

in good standing. ^{5/} Specifically, G. H. Allen's letter of January 3, 1990, addressed to Grand Mesa with a copy provided to BLM, protested that "if only Sublease #1 had been assigned to the Allens, as Allens had assumed it would be, the Allens would be the Sublessors of Sublease #1 of USX's Federal Coal Lease C-033301." Further, the letter stated that "[t]he Allens now demand that [Grand Mesa] stand by their warranted responsibilities within the [September 21, 1988] release." By letter to BLM dated January 4, 1990, G. H. Allen protested the BLM decision holding the assignment for approval (pending receipt of a bond). Allen asserted that Grand Mesa had failed to abide by the 1988 release and contending that "[a]n assignment of just Sublease #1 was all that was really needed."

Following a January 8, 1990, denial of their protest by BLM, the Allens took an appeal to the Board. We dismissed their appeal for lack of standing to appeal in G. H. Allen, supra. ^{6/} In considering this case on appeal before, we found that:

The essence of this controversy is summed up in appellants' contention that approval of the assignment under the circumstances would be in breach of certain third party agreements: "For the reasons given and shown, the Allens request that the December 19, 1989 decision be withdrawn and that any further action on the assignment process be suspended until the Allens and GMP have reached agreement on all issues involved" (SOR at 6). [Footnote omitted.]

G. H. Allen, supra at 273. In ruling on the appeal, we held that:

Since appellants have the ability to withdraw their request for approval of the assignment at any time prior to approval, they

^{5/} Grand Mesa had initially declined to be responsible for any advance royalty due with respect to the COY beginning Feb. 1, 1988, and ending Jan. 31, 1989, on the ground that they would avoid such an obligation by relinquishing the lease and the only reason that they had not done that was to accommodate the assignment to the Allens. See Letter to Joseph Coleman, Attorney for the Allens, from Richard L. Fanyo, Attorney for Grand Mesa, dated Oct. 6, 1988, at 2 (Exh. 2 to appellants' Response to Answer and Motion to Dismiss). However, we note that, according to a Nov. 11, 1988, letter to BLM, Grand Mesa and G. H. Allen requested permission to pay advance royalty in lieu of production as to lots 19 and 20 and stated that the "Allens intend to make the advance * * * royalty payments." The request was approved on Dec. 14, 1988. In the end, Grand Mesa paid the advance royalty in March 1989.

By letter dated Jan. 11, 1989, responding to an inquiry from G. H. Allen, BLM advised that the lease account was currently considered to be in good standing. The letter noted that advance royalty for the next COY commencing Feb. 1, 1989, calculated on the basis of 1 percent of the recoverable coal reserves, would be due at that time.

^{6/} A petition for reconsideration of the Board's May 1991 decision was denied by the Board, by order dated Aug. 22, 1991.

have not been adversely affected by the BLM decision [holding the assignment for approval upon provision of the required bond]. As noted above, the request for approval of an assignment is made by the assignee and, hence, can be withdrawn by the assignee at any time prior to approval of the assignment. The BLM decision required assignees to post a bond as a condition of approval of the assignment. Appellants acknowledge they are not adversely affected by this requirement. Appellants are free to withdraw their request for approval of the assignment, but they may not delay adjudication pending an attempt to negotiate a different agreement with the assignors.

Appellants contend they are adversely affected by the failure of BLM to suspend consideration or withhold approval of the assignment pending further negotiations between assignees and assignors regarding the terms of the lease assignment. However, we find this case distinguishable from Petrol Resources Corp., [65 IBLA 104 (1982)], where the unapproved assignee was adversely affected by rejection of the assignment at the request of the assignor. In the present case the assignees, who are the proponents of the assignment, have expressed a desire to withdraw their request for approval as they have a right to do. As we held in Petrol Resources Corp., supra at 108: "Logic dictates that since the application for approval of assignment is filed by the assignee, it can only be withdrawn by or returned unapproved to the assignee." We know of no authority for the assignees to require BLM to withhold action on a request for approval of an assignment which they have effectively withdrawn pending the assignees' determination whether to reinstate their request for approval. Accordingly, we are unable to find that appellants have been adversely affected by the decision from which they have appealed. Standing to appeal to this Board requires that an appellant be a party to the case and adversely affected by the decision on appeal. 43 CFR 4.410; Donald Pay, 85 IBLA 283 (1985). Appellants have not shown that they are adversely affected by the decision under appeal. Hence, the appeal must be dismissed for lack of standing.

G. H. Allen, supra at 275.

Subsequent to the prior Board decision in this case, BLM issued a decision dated July 10, 1991, which again required the Allens to submit a \$5,000 lease bond within 30 days of receipt of the decision. BLM further stated: "Failure to file the required bond within the time allowed will result in our denial of the assignments" (BLM Decision, dated July 10, 1991, at 2). No bond was submitted. Therefore, in its October 1991 decision, BLM denied approval of the assignment of the subject coal lease and subleases due to failure to comply with the requirement to submit the lease bond.

During the time period in which the request for approval of the assignment to appellants was pending, Grand Mesa and Blue Ribbon filed with BLM, on January 30, 1989, a relinquishment of the coal lease, which

relinquishment was "conditioned" upon the Allens fulfilling the requirements for approval of the assignment or, in the event they failed to do so, BLM's final decision on the assignment. It was explained in the con-conditional relinquishment that Grand Mesa and Blue Ribbon had been prepared to divest themselves of all interests in the lease since December 1986, either by relinquishment or assignment; that appellants claimed a right to reassignment of Sublease I at that time; and, hence, Grand Mesa and Blue Ribbon executed an assignment of the lease and subleases.

Accordingly, upon denial of the assignment for failure of appellants to file the required bond, BLM proceeded in its October 1991 decision to address the matter of relinquishment. Noting that the lease had been conditioned for abandonment and that MMS had reported, by memorandum dated February 7, 1990, that all required rental and royalty payments had been received, BLM accepted the relinquishment effective the date of its receipt, *i.e.*, January 30, 1989. ^{7/} However, BLM stated that Grand Mesa's outstanding lease bond would be held until MMS had completed a final review of the lease account and verified that no additional monies were owing. The Allens' appeal from the October 1991 BLM decision was docketed as IBLA No. 92-97.

Following denial of the assignment and acceptance of the relinquishment, BLM undertook to confirm that there were no outstanding obligations in connection with the relinquished lease in anticipation of release of the bond. This review was complicated by the fact that MMS made a preliminary finding in May 1992 that Grand Mesa owed advance royalties (in the amount of \$6,377.58) for the continued operation year (COY) from February 1, 1988, to January 31, 1989. ^{8/} See Exh. 1 attached to Response. The determination of the advance royalty due for the COY beginning February 1, 1988, was based on an assessment of 1 percent of the total amount of recoverable coal reserves that could be derived from the leased land (*i.e.*, lots 19 through 21) multiplied by the unit value of coal and then translated into a royalty value based on an 8-percent royalty rate. See 43 CFR 3483.4(c); Letter from BLM to G. H. Allen, dated Jan. 11, 1989, at 1-2. By letter dated May 5, 1992, MMS required Grand Mesa to pay the overdue advance royalty by June 6, 1992. The overdue royalty was later recalculated by MMS to be \$2,008.64, using a lesser unit value. See Exh. C attached to Grand Mesa's Reply to Response to Answer and Motion to Dismiss, IBLA 92-97 (Reply). Based on additional information in the BLM records, however, BLM concluded that no advance royalty was due, either for the COY beginning February 1, 1988, or prior years. ^{9/} Thus, in its July 1992 memorandum, BLM notified MMS that it had

^{7/} Once approved by BLM, relinquishments are effective on the date the lessee filed the relinquishment. 43 CFR 3452.1-3.

^{8/} MMS concluded, though, that Grand Mesa had overpaid annual rentals due for the 1987 through 1990 lease years in the amount of \$528. See Exh. 1 attached to Appellants' Response to Answer and Motion to Dismiss, IBLA 92-97 (Response), at 1.

^{9/} BLM's determination that no additional advance royalty was due with respect to the COY beginning Feb. 1, 1988, was based on its conclusion that the recoverable coal reserves did not include any coal in lot 21 since BLM had earlier determined that the mine used to recover coal in lot 21 had

concluded that Grand Mesa had properly paid advance royalties for the COY beginning February 1, 1988, and that no advance royalties were due for prior years. MMS subsequently, in effect, revoked its May 1992 letter requiring payment of advance royalty for the COY beginning February 1, 1988. See Exhs. F and G attached to Reply. The Allens appealed from BLM's July 1992 memorandum. The appeal was docketed as IBLA 93-83. Appellants have filed a motion for a lease audit in this latter case.

Motions filed by Grand Mesa and Blue Ribbon, intervenors in this case, 10/ have raised significant procedural issues in this case. Intervenors have filed a motion to dismiss the appeal from the decision denying approval of the assignment (IBLA 92-97), asserting that it is barred by the doctrine of administrative finality. Intervenors contend that appellants seek the same relief in this appeal that they requested in the prior case, i.e., delay in processing of the assignments pending further review by BLM and the parties to the assignments. Intervenors also move to dismiss the appeal in IBLA 92-97 for lack of standing to appeal on the ground that they were not "adversely affected" by the decision, as required by 43 CFR 4.410(a). See, e.g., Storm Master Owners, 103 IBLA 162, 177 (1988). A motion to dismiss on the grounds of an untimely appeal and of the lack of standing has also been filed by intervenors in IBLA 93-83.

In their statement of reasons (SOR) for appeal from the decision denying approval of the assignment, appellants again contest the propriety of the BLM determination to adjudicate the assignment. Thus, appellants argue that the conditional relinquishment filed by the assignors voided the assignment in violation of appellants' agreement with assignors. Further, it is asserted that BLM improperly accepted filing fees tendered by assignors when processing the assignment. Additionally, appellants contend that BLM erroneously determined the liability for advance royalty. Appellants again request that the assignment be put on hold. Clearly, appellants are again using the instant appeal to challenge BLM's underlying conclusion that all of the other regulatory prerequisites for approval of the assignment, especially the requirement that the lease account be in good standing, have

fn. 9 (continued)

been reclaimed and, hence, there was no recoverable coal to be included in its advance royalty computation (Memorandum from BLM to MMS, dated July 20, 1992, at 2). See Memorandum to the State Director, Colorado, BLM, from the Acting District Manager, Montrose District, Colorado, BLM, dated Jan. 24, 1990. According to BLM, this reduced the total quantity of recoverable coal reserves. Further, unlike MMS, BLM used a lower unit value which represented the value of coal mined from the Blue Ribbon Mine as distinguished from the value of the "coking" coal recovered from the Somerset Mine on the leasehold.

10/ Grand Mesa and Blue Ribbon moved to intervene in the appeal docketed as IBLA 92-97 on Dec. 9, 1991. That request was granted by order of the Board dated Dec. 11, 1991. We similarly granted their motion to intervene in the appeal docketed as IBLA 93-83 by order dated Aug. 11, 1994.

been satisfied, and also BLM's refusal to delay processing the assignment pending further inquiry.

[1] To the extent that appellants are challenging the prior BLM decision holding the assignments for approval subject to the condition of filing by appellants of the required bond, this matter has already been considered by the Board on appeal. The doctrine of administrative finality, the administrative counterpart of the doctrine of res judicata, dictates that once a party has had an opportunity to obtain administrative review within the Department and the decision has been upheld on appeal the decision may not be reconsidered in subsequent proceedings except upon a showing of compelling legal or equitable reasons. Melvin Helit v. Goldfields Mining Corp., 113 IBLA 299, 97 I.D. 109 (1990); Joe N. Johnson, 103 IBLA 5 (1988). Appellants are apparently concerned with potential liability as lessees for advance royalty payments. See Response to Entry of Appearance and Motion to Intervene and Motion to Dismiss, IBLA 93-83, at 4. It is true that the assignee of the record title interest in a coal lease agrees to assume the obligations of the lessee upon acceptance and, thus, the liability of an assignee for lease obligations generally attaches once an assignment is approved. See Alaska Statebank, 111 IBLA 300, 308-10 (1989). This liability stems not from the BLM decision, but rather from the request by appellants for approval of the assignment of record title to the lease. Prior to any approval of the assignment, appellants are not obligated under the lease, and thus are not required to make any rent or advance royalty payments (including any which might be past due). See 43 CFR 3453.2-4(b). Those obligations rest only on Grand Mesa and Blue Ribbon. Thus, prior to approval of the assignment, we conclude that appellants are not adversely affected by any determination that the lease account is in good standing (either generally or as to any particular rent or royalty obligation). This is so even if BLM's determination were in error since, prior to approval of the assignment, appellants could simply rescind their request for approval, and avoid assuming any liability under the lease. See Alaska Statebank, supra at 311. Accordingly, we find no compelling legal or equitable considerations which would support reconsideration of the prior BLM decision finding the assignments subject to approval upon provision of the required bond.

[2] With respect to appellants' challenge of the October 1991 BLM decision denying approval of the assignments of the coal lease because appellants failed to provide the required bond, we find that the bond requirement is clearly supported by relevant regulation. 43 CFR 3453.2-4(a); 3453.3-1(a)(2). It is clear that BLM is authorized by 43 CFR 3453.2-4(a) to require the assignee of a coal lease to submit either a new lease bond or written consent from the existing surety to the substitution of the assignee as the principal under the existing lease bond, before approving the assignment of the lease. BLM initially required appellants by decision dated December 19, 1989, to submit a lease bond. It reiterated that requirement in a July 10, 1991, decision. In both instances, appellants failed to submit the required bond within the mandated time period. Regulation 43 CFR 3453.3-2 requires BLM to deny approval of a requested assignment "if any reason why the transfer cannot be approved (listed in

§ 3453.3-1 of this title) is not cured within the time established by the authorized officer in a decision notifying the applicant for approval why the transfer cannot be approved." One of the listed reasons is that the "lease bond is insufficient." 43 CFR 3453.3-1(a)(2). Clearly, failure to submit any bond falls under this provision. Further, BLM's December 1989 and July 1991 decisions constituted notice to appellants of this deficiency. Appellants failed to correct the deficiency within the time specified. Therefore, we conclude that BLM was fully justified in denying approval of the requested assignment of the subject lease and subleases in its October 1991 decision.

On appeal, appellants have sought to excuse their failure to abide by this lawful requirement of BLM. Thus, they assert that the assignment was voided in any case by Grand Mesa's January 1989 relinquishment of the subject lease, and thus they could not be required to comply with any prerequisites for BLM's approval of the assignment. 11/ They ignore the fact that the relinquishment was conditional. Relinquishment was "condition[ed]" on BLM's final disapproval of the assignment, should that occur (BLM Decision, dated Oct. 9, 1991, at 2). See Letter to BLM from Grand Mesa and Blue Ribbon, dated Jan. 27, 1989, at 3. Moreover, the applicable statute and Departmental regulations provide that a relinquishment becomes effective only upon acceptance by BLM. See 30 U.S.C. § 187 (1988); 43 CFR 3452.1-3. BLM's disapproval of the assignment and subsequent acceptance of the relinquishment did not occur until issuance of the October 1991 BLM decision. At that time, BLM properly held that the relinquishment had then taken effect. Having already been disapproved, the assignment was not voided by the relinquishment.

Appellants also contend that BLM's erroneous acceptance of a \$100 assignment processing fee from Grand Mesa on April 10, 1989, when BLM was well aware that Grand Mesa was not acting on appellants' behalf, wrongly allowed BLM to proceed with processing the assignment, and ultimately to deny them the assignment. See SOR, IBLA 92-97, at 2. They, thus, indicate again that they have continued to seek to delay BLM's processing of the assignment. However, failure to submit the processing fee would not have delayed processing. Rather, it would have properly resulted only in BLM's disapproval of the assignment, following notice of and time to cure the deficiency. See 43 CFR 3453.3-1(a)(3), 3453.3-2(a), and 3473.2-1(a)(3). Appellants have provided no reason to overturn the BLM bonding requirement

11/ Appellants also assert that the relinquishment violated the terms of the Dec. 22, 1986, assignment of the subject lease and sublease and the agreed settlement of their lawsuit. This is a matter between the parties to the agreements and their successors-in-interest. It does not involve the Department. Cf. Pat Reed, 119 IBLA 338, 342-43 (1991) (private dispute regarding oil and gas lease assignment). We, therefore, express no opinion on the question. We note only that the relinquishment would not have taken effect if appellants had complied with the requirement to submit the lease bond, and thus avoided disapproval of the assignment.

on appeal. Hence, the BLM decision denying the assignment for failure to provide the required bond is properly affirmed.

[3] Intervenors have moved to dismiss the appeal in IBLA 93-83, asserting that it was untimely filed, and thus the Board lacks jurisdiction to consider the appeal. The July 1992 memorandum was not directly served on appellants since it was a confidential memorandum directed by BLM to MMS. Appellants clearly received a copy of the memorandum at some point after its issuance. Appellants acknowledge that it was received "at a later date" (Letter to BLM, dated Nov. 9, 1992, at 1). However, as Grand Mesa and Blue Ribbon point out, appellants indicated that they had received a copy of the memorandum in a September 15, 1992, letter to MMS. See Exh. C attached to Motion to Dismiss, IBLA 93-83, at 1. Departmental regulation at 43 CFR 4.411(a) requires that a notice of appeal from a BLM decision be filed "within 30 days after the date of service" of the decision. In those cases where a decision is not directly addressed to the appellant, the 30-day appeal period will be computed from the date that the appellant actually had notice of the decision. See Minchumina Homeowners Association, 93 IBLA 169, 173 (1986). In appellants' case, that occurred at least as of September 15, 1992. Thus, they were required to file an appeal by October 15, 1992. Appellants' notice of appeal from the July 1992 memorandum was not filed with BLM until November 16, 1992, clearly well after the 30-day appeal period. The Board lacks any jurisdiction to hear an appeal that was untimely filed and, consequently, the appeal must be dismissed. Ilean Landis, 49 IBLA 59 (1980). We, therefore, grant the motion to dismiss appellants' appeal from the July 1992 memorandum because it was untimely filed. Accordingly, appellants' motion for a lease audit is denied.

Grand Mesa and Blue Ribbon also move to dismiss the appeal in IBLA 93-83 for lack of standing to appeal. While we need not resolve this question to dispose of the case, we are unable to find that appellants are adversely affected by the July 1992 BLM determination that the lease account was in good standing as of the end of the COY on January 31, 1989. Appellants are not adversely affected by a finding that the lease account was in good standing as of that date and no amounts were owing. Although appellants may have concerns regarding liabilities for subsequent years, the memorandum decision did not address those years. We, therefore, would grant the motion by Grand Mesa and Blue Ribbon to dismiss appellants' appeal from the July 1992 BLM memorandum for lack of standing to appeal. See Resource Associates of Alaska, 114 IBLA 216, 219 (1990).

We, thus, do not reach the questions regarding whether BLM properly determined, in accordance with the applicable statute and Departmental regulations, the advance royalty due for the COY beginning February 1, 1988, and that no advance royalty was due for prior COY's. Nor, in any case, do we reach the question raised on appeal regarding whether Grand Mesa was obligated to pay advance royalties for the three subsequent COY's beginning in February of 1989 through 1991 or annual rents for the 3 lease years beginning in July of 1989 through 1991. See SOR, IBLA 93-83, at 4. These matters were not decided by BLM in its July 1992 memorandum, and thus

are not subject to review by the Board. See Mobil Producing Texas & New Mexico, Inc., 115 IBLA 164, 177-78 (1990). We note, however, that the lease is deemed to have been relinquished effective January 30, 1989, thus eliminating any liability for subsequent rents and royalties. See Ametex Corp., 121 IBLA 291, 292-93 (1991). Similarly, we do not reach the question whether annual rents or advance royalties were paid for other years since this was not addressed in BLM's July 1992 memorandum. 12/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal of BLM's October 1991 decision denying approval of the assignment (IBLA 92-97) is dismissed in part and affirmed in part and the appeal from the July 1992 BLM memorandum (IBLA 93-83) is dismissed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

James L. Byrnes
Chief Administrative Judge

12/ Appellants also assert that BLM has, by accepting the relinquishment, left rents and advance royalties unpaid. See SOR, IBLA 92-97, at 5. Appellants lack any standing to raise this issue on appeal since they are asserting it only as members of the public. See In Re Thompson Creek Timber Sale, 81 IBLA 242, 243-44 (1984). In any case, we note that BLM has decided to withhold terminating Grand Mesa's liability under its existing lease bond until a final accounting is made. See BLM Decision, dated Oct. 9, 1991, at 2. This is justified by section 20 of the instant lease which provides that the effectiveness of a relinquishment is "subject to the continued obligation of the lessee and his surety to pay all accrued rentals and royalties."