



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Wyoming State Office  
5353 Yellowstone Road  
Cheyenne, WY 82009  
[www.blm.gov/WY](http://www.blm.gov/WY)



In Reply Refer To:  
9660 (926)  
Group No. 652  
Wyoming

MAY 27 2020

### **CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Receipt No: 7020 0640 0000 7464 5430

Mr. Mark Fellermann, PLS  
Y2 Consultants  
180 S. Willow St.  
P.O. Box 2870  
Jackson, WY 83001

Dear Mr. Fellermann:

This letter dismisses your protest submitted on behalf of Walton Ranch Company, sent by email dated March 4, 2021.

The survey, which is the subject of your protest, is the dependent resurvey of a portion of the Fourteenth Auxiliary Meridian West, through T. 41 N., between Rs. 116 and 117 W., portions of the north boundary and subdivisional lines, and a portion of the Snake River, the subdivision of section 6, the survey of riparian partition lines, and a portion of the present right and left banks of the Snake River, T. 41 N., R. 116 W, under Wyoming Group No. 652, executed in 1998 and accepted September 28, 2001.

The protest is dismissed as untimely.

The Bureau of Land Management (BLM) protest regulation, found at 43 C.F.R. 4.450-2, provides that “any objection raised by any person to any action proposed to be taken in any proceeding before the Bureau will be deemed to be a protest and such action thereon will be taken as is deemed appropriate in the circumstances.” Under this rule BLM may properly dismiss a protest as untimely when the protest is filed after BLM has taken the action.<sup>1</sup> In the context of a survey, the “action proposed to be taken” is

<sup>1</sup> See, e.g., *John E. Davis, Sr.*, 187 IBLA at 111 (“[S]o long as a proposed action has not occurred, a protest challenging that action is timely.”); *Lazaro Mendieta*, 126 IBLA 394, 397 (1993) (“An objection filed after BLM has taken action is an untimely protest.”);

the official filing of the plat of survey.<sup>2</sup> If a protest of a survey is filed after BLM officially files the plat of survey, BLM may dismiss the protest as untimely.<sup>3</sup>

In this case, there is ample evidence in the record that interested parties had notice of the survey and the filing of the plats of survey. This survey plat was accepted by BLM on September 28, 2001. The *Federal Register* notice for this survey was published on February 13, 2002.<sup>4</sup> It provided notice of BLM's intent to officially file the plat 30 days after publication of the notice. The notice informed the public that any person objecting to the survey was required to file a protest within the 30-day timeframe. During that time, no protests were received. Following the completion of the 30-day notice period, BLM officially filed the plat of survey on March 15, 2002. It is well established that publication of a document in the *Federal Register* "imparts constructive notice of the contents and requirements in that document."<sup>5</sup> The plat of survey that is the subject of your protest was officially filed over 19 years ago. The BLM has therefore determined your protest is untimely.

If an appeal is desired, you are allowed 30 days from the date of receipt to file your Notice of Appeal with this office. The regulations in regard to an appeal from the dismissal of your protest are set out in Subpart E of the Department's regulations at 43 Code of Federal Regulations (CFR), particularly including 43 CFR 4.411. If an appeal is taken or claimed, the Notice of Appeal must be filed with this office so that the administrative record can be transmitted to the Interior Board of Land Appeals (IBLA), United States Department of the Interior. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations. We also call to your attention 43 CFR 4.413 that requires the appellant to serve a copy of the Notice of Appeal and any statement of reasons, written arguments, or briefs to Regional Solicitor, Office of the Regional Solicitor, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215. Their phone number is (303) 445-0610. A copy of form 1842-1, Information on Taking Appeals to the Interior Board of Appeals, is also enclosed.

For questions regarding this matter, you may contact Sonja (Suzie) Sparks, Chief, Branch of Cadastral Survey at (307) 775-6225, by mail at the BLM office in Cheyenne, Wyoming, or by email at [s75spark@blm.gov](mailto:s75spark@blm.gov).

Sincerely,

  
Kimber Liebhauser  
Acting State Director

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<sup>2</sup> *Peter Paul Groth*, 99 IBLA 104, 109 (1987).

<sup>3</sup> *Rudolph Hillstrom*, 194 IBLA 355, 362 (2019). *See also*, *State of Oregon Office of State Forester*, 78 IBLA 13, 14, n.1 (1983).

<sup>4</sup> 67 Fed. Reg. 6742 (February 13, 2002).

<sup>5</sup> *Casey E. Folks, Jr. (On Reconsideration)*, 183 IBLA 359, 366 n.6 (2013) (citing 44 U.S.C. section 1507 (2012); *see also*, *Federal Crop Insurance Co. v. Merrill*, 332 U.S. 380, 384-85 (1947)).

**Attachments:**

**Record of Federal Register Notice titled, "Filing of Plats of Survey; Wyoming" (Federal Register Notice publication dated February 13, 2002, vol 67, page 6742)**

**Form 1842-1 Information on taking Appeals to the Interior Board of Land Appeals**

**cc:**

**Dominica VanKoten, Chief Cadastral Surveyor  
HQ-350**

**Distribution:**

**CF**

**WY Group 652**

**WY926 RF**