MICHAEL E. HEANEY

IBLA 75-453 Decided August 18, 1975

Appeal from decision (I-8397) of the Idaho State Office, Bureau of Land Management, holding appellant's desert land application deficient and granting priority to subsequently filed completed land applications (I-8089, I-8090).

Set aside and remanded.

1. Administrative Practice -- Applications and Entries: Filing -- Applications and Entries: Priority -- Desert Land Entry: Applications -- Rules of Practice: Appeals: Generally

   Where a desert land applicant appeals from a decision of the Bureau of Land Management holding his application incomplete and, therefore, without priority of filing as against subsequent applications which were allegedly perfected before the earlier application was corrected and refiled, the case will be remanded for final action on the respective applications so as to avoid premature, piece-meal adjudication.

APPEARANCES: James L. Martsch, Esq., of Furchner, Martsch & Baker, Blackfoot, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Michael E. Heaney has appealed from that portion of a decision of the Idaho State Office, Bureau of Land Management, dated March 17, 1975, holding that two other desert land applications had been filed for lands described within appellant's application, and had priority over his application. The decision also held that his desert land application was incomplete and contained several deficiencies and was, therefore, unacceptable for filing.

Appellant's original application (I-8397) was filed on May 16, 1974, for 200 acres of land in sec. 21, T. 4 S., R. 31 E., Boise Meridian, Idaho. Prior to that time, on March 14, 1974, Paul B.

Caveness and Linda L. Caveness filed, respectively, desert land applications I-8089 and I-8090 for some of the lands included within appellant's subsequently filed application. By letters dated August 12, 1974, the Cavenesses were informed that their applications contained deficiencies and could not be accepted for filing. Both were given additional time to correct their applications and were informed that appellant's application had been filed and could gain priority with respect to the lands described above. On September 9, 1974, the Cavenesses filed corrected desert land applications. On September 12, 1974, the Bureau informed Linda Caveness of additional deficiencies in her application, which were subsequently corrected and her application refiled a second time on September 18, 1974.

Thereafter, by its decision dated March 17, 1975, the Bureau informed appellant that his application had several defects and deficiencies which rendered it incomplete and unacceptable for filing and did not afford the applicant any priority of filing on the lands involved. Appellant was given 30 days in which to correct the defects. 1/ Appellant was also informed of the two

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1/ The following corrections were required:

"1. Question 3f, page 1 of the application, must be answered. All questions on page 3 (checked with red ink) must be answered.

"2. Exhibit No. 1 (Soil Characteristics) must be completed according to the enclosed instructions. Each legal subdivision (lot or 40 acres) must be listed separately.

"3. Exhibit No. 2 (Irrigation Requirements) must be completed, furnishing all information required.

"4. A map plan of irrigation must be submitted which shows the following:

a. All legal subdivisions applied for, properly identified.

b. Location of well or other proposed source of water.

c. Location, size, type, and specifications of all mainlines and laterals (plus specifications of sprinkler heads) if sprinkler irrigation is planned.

d. Location, type, size, and gradient in percent, of all water distribution ditches and laterals if flood irrigation is proposed.

"5. Exhibit No. 4 (Estimated Annual Farm Budget) must be completed in its entirety. The purpose of this exhibit is to demonstrate the economic feasibility of a completely developed farming operation of all the irrigable lands on a continuing annual basis. The estimated production costs should only include the expense costs of operation, as pertain to each of the items listed therein. The estimated income should be arrived at and shown by multiplying each crop production per acre times the number of acres times the price per unit. Net income should be determined by subtracting the total operating costs from the gross estimated income.

other desert land applications which had been filed and was told that, "these applications have a priority of filing on the lands involved." 2/

On April 17, 1975, appellant filed a corrected application. 3/ Accompanying the application was a notice of appeal which stated the

> According to our record, Mr. Heaney filed his original application with the Idaho Falls office prior in date to the other applications involved. Thereafter, Mr. Heaney's application was sent to Boise and apparently approved. Mr. Heaney was not notified that his original application was defective for a period of ten months, which made it impossible for him to file a corrected application. Apparently, in the meantime, the other applications were filed which you now claim have priority. It is from this decision that we appeal at this time.

The appeal is thus limited only to so much of the decision as held that the Caveness' applications have priority of filing.

[1] It is clear that if the Bureau rejects appellant's application he would have a right of appeal, but in its present posture the case is not ripe for consideration by this Board. George M. Crapo, 19 IBLA 208 (1975). If the Bureau should finally act on appellant's application in a manner adverse to his interests, a proper appeal from such action would afford a sufficient basis for our consideration. As we noted in the Crapo case, supra, it would be advisable for the Bureau to take simultaneous action on the applications in order to avoid premature, piece-meal adjudication.

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fn. 1 (continued)

"6. The applicant must submit a sworn statement or declaration containing the required information or disclosure of all his plans, either independently or by agreements or arrangements with other persons or parties, for the financing, development, irrigation, cultivation, and farming of the lands. A declaration form is enclosed which may be used. The complete declaration must be notarized."

2/ The decision inviting appellant to complete his application was not a gesture inviting futile action since the subsequently filed "priority" applications had not yet been approved and might still be withdrawn or the applicants found to be disqualified to receive desert land entries.

3/ In a Bureau memorandum to the case file dated April 25, 1975, it was noted that the corrected application filed by appellant had a number of additional deficiencies which would be resolved after consideration was completed by the Board.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded for appropriate action.

Martin Ritvo
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge