

Editor's Note: Reconsideration granted, decision reaffirmed by Order dated Oct. 14, 1998 – See 240A th 240G below.

ROBERT AND VIVIAN LEWIS
v.
BUREAU OF LAND MANAGEMENT

IBLA 98-237

Decided June 4, 1998

Appeal from a Decision of Administrative Law Judge James H. Heffeman, dismissing an appeal of a Bureau of Land Management grazing trespass determination and partial suspension of a grazing allotment authorization. NV-04-97-03.

Reversed and remanded.

1. Administrative Procedure: Hearings–Appeals: Jurisdiction–Grazing Permits and Licenses: Administrative Law Judge–Grazing Permits and Licenses: Appeals–Rules of Practice: Appeals: Notice of Appeal–Rules of Practice: Appeals: Statement of Reasons–Rules of Practice: Appeals: Timely Filing

Where appellants timely file a notice of appeal under 43 C.F.R. § 4.470 along with a request for additional time to file a statement of reasons in support of their appeal, a decision dismissing the appeal as untimely filed because no statement of reasons was filed within the 30-day appeal period is properly reversed.

APPEARANCES: Karen Budd-Falen, Esq., Cheyenne, Wyoming, for Appellants; John W. Steiger, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Robert and Vivian Lewis appeal from the March 18, 1998, Decision of Administrative Law Judge James H. Heffeman, dismissing their appeal of a Bureau of Land Management (BLM or Bureau) grazing trespass determination and partial suspension of their grazing allotment authorization. Judge Heffeman granted a BLM Motion to Dismiss the appeal because Appellants, instead of stating their reasons for appeal in their notice of appeal (which was timely filed in accordance with 43 C.F.R. § 4.470 and Subpart 4160), filed a request for extension of time to file such statement within

30 days. We have sua sponte expedited review due to the procedural nature of the issue and the fact that our Decision reinstates the appeal.

On July 30, 1997, the Ely, Nevada, Field Office, BLM, issued a Notice of Proposed Decision declaring that the Lewises had wilfully and repeatedly allowed their livestock to graze on certain public lands without proper authorization. The Notice proposed assessing costs of \$4,427.45 for the unauthorized grazing and suspending 25 percent of the animal unit months (AUM's) associated with the Lewises' authorized use of the Breedlove and Grapevine allotments (162 AUM's and 140 AUM's, respectively). The Proposed Decision allowed the Lewises 15 days from their receipt of the Proposed Decision to file a protest. It stated that, "[i]n the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision."

The record shows that the Lewises received the Proposed Decision on August 6, 1997. As we find nothing in the Notice providing otherwise, and no protest was filed, the Notice of Proposed Decision became BLM's final decision (and subject to appeal) on August 21, 1997, by its own terms. The Lewises thereafter had 30 days to file a notice of appeal to an administrative law judge under 43 C.F.R. § 4.470 and Subpart 4160. Thoman v. BLM, 125 IBLA 100, 102-03 (1993). The record shows that, on September 5, 1997, they timely filed a document styled "Notice of APPEAL," reciting as follows, in part: "In order to effectively respond to the allegations of [BLM, counsel for the Lewises] hereby requests an extension of time to file its Statement of Reasons for this APPEAL. This request is made pursuant to 43 C.F.R. § 4.22(f)." A Statement of Reasons (SOR) was filed with BLM on October 2, 1997, after the 30-day period to file a notice of appeal, but within the time requested by the Lewises' counsel.

The Ely Field Office, BLM, transmitted the matter to the Nevada State Office, BLM, on October 15, 1997. On November 20, 1997, the State Office transmitted the matter to the Hearings Division, along with a note that BLM had requested the Solicitor's Office to file a motion for dismissal, based on the failure to file the SOR timely. The matter was assigned to Judge Heffernan on December 2, 1997, and the Solicitor filed such motion on BLM's behalf on December 8, 1997. A supplement to the motion was filed with Judge Heffernan on December 17, 1997, noting that Administrative Law Judge Kusmack had rejected an argument similar to that raised in the motion to dismiss in another grazing appeal, and arguing that he had erred in doing so. The Lewises filed a response in opposition to BLM's motion to dismiss on December 29, 1997.

As noted above, Judge Heffernan dismissed the appeal in the Decision under appeal, granting BLM's motion to dismiss. Judge Heffernan concluded that the requirement in 43 C.F.R. § 4.470(a) for an appellant to state in the notice of appeal the reasons for appeal is jurisdictional and cannot be waived. He ruled that, when a notice of appeal is received without reasons stated therein or a statement is not received within the 30-day appeal

period, § 4.470(b) is triggered automatically and any further challenge is barred. For the following reasons, we reverse.

[1] The governing regulation, 43 C.F.R. § 4.470, provides:

(a) Any applicant, permittee, lessee, or any other person whose interest is adversely affected by a final decision of the authorized officer may appeal to an administrative law judge by filing his appeal in the office of the authorized officer within 30 days after receipt of the decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision of the authorized officer is in error. All grounds of error not stated shall be considered as waived, and no such waived ground of error may be presented at the hearing unless ordered or permitted by the administrative law judge.

(b) Any applicant, permittee, lessee, or any other person who, after proper notification, fails to appeal a final decision of the authorized officer within the period prescribed in the decision, shall be barred thereafter from challenging the matters adjudicated in that final decision.

(Emphasis supplied.) ^{1/}

In support of his Decision, Judge Heffernan quotes from Leonard Bown, 12 IBLA 192, 194 (1973):

Appellant's letter constituted his appeal from the decision of the District Manager. Appellant failed, however, to articulate any reasons showing why the decision of the District Manager was in error. Pursuant to 43 CFR § 4.470(d), where an applicant appeals to a Judge from a decision of a District Manager and fails to clearly and concisely state his grounds for error, the appeal is properly dismissed.

In that case, the appellant announced in his notice of appeal that he would "fight" BLM's grazing decision, but failed to address why he thought the decision was in error. Nothing shows that the appellant in Bown ever supplemented that inadequate statement or requested additional time to do so.

^{1/} The regulations further provide that the BLM State Director may elect to file a motion to dismiss the appeal "[w]ithin 30 days after his receipt of the appeal, * * * serving a copy thereof upon the appellant" if the appeal is frivolous, it was filed late, the errors are not clearly and concisely stated, the issues are immaterial, or the issues were previously adjudicated finally for the Department. 43 C.F.R. § 4.470(d). The appellant has 20 days from service of the motion to file an answer thereto. The regulation then provides that the "appeal, motion, * * * and the answers will be transmitted to the Hearings Division, Office of Hearings and Appeals." Id. That provision was duly followed here.

We find no Board decisions before or after Bown which have addressed the precise question here. In two cases preceding Bown, the Board held that the administrative law judge properly declined to review issues which had been the subject of appeals previously dismissed pursuant to the § 4.470 regulation (in its prior codification at 43 C.F.R. § 1853.1(a) (1971)) because the appellant had failed to articulate error in the appealed decision. See Eldon L. Smith, 8 IBLA 86, 89 (1972); Eldon L. Smith, 5 IBLA 330, 335, 79 I.D. 149, 151 (1972). However, neither of those cases involved a notice of appeal accompanied by a request for additional time to file a statement of reasons.

The regulation at 43 C.F.R. § 4.470(a) itself provides the administrative law judge reviewing a case with some discretion. In stipulating that "[t]he appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision of the authorized officer is in error," § 4.470(a) provides that "[a]ll grounds of error not stated shall be considered as waived." But the regulation then provides that the administrative law judge may permit a waived ground of error to be presented at the hearing. Thus, a failure to state error will not prove fatal to the appeal in every case. In view of such discretion, the regulation cannot be viewed as establishing a jurisdictional requirement. Further, 43 C.F.R. § 4.470(d) provides that the State Director must file a motion within 30 days after transmittal "requesting" dismissal for failure to satisfactorily articulate assertions of error and that the administrative law judge "shall rule on the motion," suggesting that a dismissal is not automatic, as Judge Heffernan concluded. Finally, as the administrative law judge has latitude in some cases to allow in grounds of error even though untimely filed, he must by necessity have authority to grant a party additional time beyond the original 30-day time period to articulate those grounds in order to review a request to consider them.

We note that § 4.470(a) speaks of "filing" an "appeal" without distinguishing individual documents or filings, while elsewhere (see 43 C.F.R. §§ 4.310, 4.411, 4.412, and 4.1282) the regulations clearly differentiate between "notices of appeal," for which no extensions can be granted (43 C.F.R. § 4.411), and "statements of reasons," for which extensions can be granted. 43 C.F.R. § 4.22(f); American Gilsonite Co., 111 IBLA 1, 7-8, 96 I.D. 408, 412 (1989). ^{2/} At best, there is an ambiguity in 43 C.F.R. § 4.470(a) concerning whether, in "filing" an "appeal" within 30 days, an appellant must also state reasons, or suffer dismissal. As noted above, the fact that an administrative law judge has discretion to forgive the failure to state reasons within 30 days can be reasonably read as providing that failure to file an SOR along with the notice of appeal would not result in dismissal of the appeal. In view of that ambiguity, and in the

^{2/} It is established that the requirement to timely file a notice of appeal under 43 C.F.R. Subpart 4160 is also mandatory. Thoman v. BLM, 125 IBLA at 102. Although it speaks in broad terms, that decision does not address the issue presented here.

absence of a clear warning that such failure would result in the mandatory dismissal of the appeal (see, e.g. 43 C.F.R. § 4.411(c)), we are unwilling to construe the regulation in a manner that forecloses a party's right to appeal. ^{3/}

We also agree with Appellants that an administrative law judge is empowered by 43 C.F.R. § 4.22(f) to grant a request for extension of time for filing an SOR. ^{4/} Appellant's request for extension explicitly cited that provision. We have regarded the provisions of 43 C.F.R. § 4.22(f) as granting this Board broad authority to grant extensions of time. American Gilsonite Co., 111 IBLA at 7-8, 96 I.D. at 412. By its own terms, that regulation also empowers administrative law judges with broad authority to grant extensions, being a "general rule[]" applicable to all types of proceedings before the Hearings Division and the several Appeals Boards of the Office of Hearings and Appeals." 43 C.F.R. § 4.20.

When reviewing the issue of procedural dismissal in the context of our own regulatory guidelines, the Board observed:

The Board avoids procedural dismissals if there has been no showing that a procedural deficiency has prejudiced an adverse party. Indeed, in the absence of such a showing, dismissal of an appeal might be deemed an abuse of discretion. See United States v. Rice, No. CIV. 72-467, PHX WEC (D. Ariz. Feb. 1, 1974), reversing United States v. Rice, 2 IBLA 124 (1971).

James C. Mackey, 96 IBLA 356, 359, 94 I.D. 132, 134 (1987). We find that BLM has not been prejudiced by the circumstances here. The record clearly shows that Appellants' SOR was received on October 2, 1997, well before the case file was sent to the Nevada State Office, and in ample time to allow

^{3/} We note that the "companion" BLM regulation governing the initiation of appeals, 43 C.F.R. § 4160.4, also contains nothing warning a prospective appellant that no extension to file an SOR could be granted or supporting a reading preventing the granting of extensions of time to file SOR's in lieu of filing a notice of appeal accompanied by an SOR within the 30-day time period. Although that provision invokes the terms of 43 C.F.R. § 4.470, it also simply refers to the 30-day "filing" deadline. No mention is made of a requirement that all reasons must be filed within the 30-day deadline, on pain of dismissal of the appeal for lack of jurisdiction.

^{4/} Regulation 43 C.F.R. § 4.22(f) reads:

"(1) The time for filing or serving any document may be extended by the Appeals Board or other officer before whom the proceeding is pending, except for the time for filing a notice of appeal and except where such extension is contrary to law or regulation.

"(2) A request for an extension of time must be filed within the time allowed for the filing or serving of the document * * *."

BLM to respond. In these circumstances, in view of the general provision authorizing granting of extensions set out at 43 C.F.R. § 4.22, and in the absence of an unambiguous regulatory provision mandating dismissal of an appeal where an SOR is not filed within the 30-day appeal period, failure to consider Appellants' SOR would be an abuse of discretion.

Accordingly, there is nothing remaining to adjudicate concerning the procedural validity of the appeal, and Judge Heffernan's Decision dismissing the appeal is properly reversed. Our action necessitates remanding the case for him to determine the merits of the alleged grazing trespass.

Accordingly, 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 reversed and the matter remanded for further review.

David L. Hughes
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

October 14, 1998

IBLA 98-237R	:	NV-04-97-03
	:	144 IBLA 235 (June 4, 1998)
	:	
ROBERT AND VIVIAN LEWIS	:	Grazing
v.	:	
BUREAU OF LAND MANAGEMENT	:	Petition for Reconsideration
(ON RECONSIDERATION)	:	Granted;
	:	Decision Reaffirmed

ORDER

The Bureau of Land Management (BLM) has filed a Petition for Reconsideration of the Decision of the Interior Board of Land Appeals in Robert and Vivian Lewis v. Bureau of Land Management, 144 IBLA 235 (1998), wherein we reversed a Decision of Administrative Law Judge James H. Heffernan dismissing an appeal of a BLM grazing trespass determination and partial suspension of a grazing allotment authorization and remanded the matter to him for consideration of the appeal. We held that, where appellants timely file a notice of appeal under 43 C.F.R. § 4.470 along with a request for additional time to file a statement of reasons (SOR) in support of their appeal, a decision dismissing the appeal as untimely filed because no SOR was filed within the 30-day appeal period is properly reversed. Lewis v. BLM, 144 IBLA at 238-39.

On reconsideration, counsel for BLM complains that the Board issued its Decision on an expedited basis without notifying BLM and prior to BLM's opportunity to file an answer to Appellants' SOR. 1/ (Petition at 5.)

1/ The case appeared to be ripe for prompt action. The controlling question was whether the Departmental administrative law judge lacked jurisdiction over the appeal because no cognizable notice of appeal was timely filed. That question had been fully briefed before the administrative law judge below, so that the record apparently contained a complete recitation of BLM's position on the issue. We found valid reasons to rule expeditiously, in that the motion to dismiss for lack of jurisdiction before the administrative law judge should have been denied, because a legally cognizable notice of appeal had in fact been timely filed. Since there was no middle ground (either there was jurisdiction or there was not), and since a grazing hearing had been called off because of the ruling below, we determined that expeditious treatment was appropriate to place the matter back on track before the Hearings Division as soon as possible.

144 IBLA 240A

This point is well taken; BLM's inability to participate fully before the Board constitutes extraordinary circumstances justifying the granting of its Petition. See 43 C.F.R. § 4.413. BLM has set out its views fully in its Petition. Having reviewed BLM's Petition, we reaffirm our earlier Decision.

The facts of this matter are fully set out in Lewis v. BLM, *supra*, and will not be reiterated here. The salient point is that, although the Lewises timely filed a document styled "Notice of APPEAL," they did not set out their reasons for appealing in that document, but instead stated: "In order to effectively respond to the allegations of [BLM, counsel for the Lewises] hereby requests an extension of time to file its Statement of Reasons for this APPEAL. This request is made pursuant to 43 C.F.R. § 4.22(f)." An SOR was filed with BLM on October 2, 1997, after the 30-day period to file a notice of appeal, but within 30 days of the deadline. Judge Heffernan dismissed the appeal in the Decision under appeal, granting a motion to dismiss filed by BLM. Judge Heffernan concluded that the requirement in 43 C.F.R. § 4.470(a) for an appellant to state in the notice of appeal the reasons for appeal is jurisdictional and cannot be waived. He ruled that, when a notice of appeal is received without reasons stated therein or a statement is not received within the 30-day appeal period, § 4.470(b) is triggered automatically and any further challenge is barred. 144 IBLA 236-37.

2/ Counsel for BLM points out that our Decision in Lewis incorrectly stated that the SOR was filed "within the time requested by the Lewises' counsel," when the Lewises' counsel actually did not specify a time period in which she would submit their SOR. This error is explained by the fact that the Lewises filed their SOR within 30 days of the deadline for filing their notice of appeal and requests for extensions of time are usually made and granted in 30-day increments from that deadline.

Counsel for BLM points out that the Lewis Decision "erroneously states that the Ely Field Office 'transmitted the matter' to the state office on 'October 15[,] 1997.'" Counsel notes that, "[a]lthough form 1850-2, entitled 'Grazing Appeal Transmittal' was signed by the authorized office on October 15, 1997, the actual transmittal did not occur on that date." (Petition at 3 n.2.) Apparently, the transmittal did not occur until Nov. 3, 1997. Counsel does not specify how the misstatement of that date has any relevance.

The governing regulation, 43 C.F.R. § 4.470, provides:

(a) Any applicant, permittee, lessee, or any other person whose interest is adversely affected by a final decision of the authorized officer may appeal to an administrative law judge by filing his appeal in the office of the authorized officer within 30 days after receipt of the decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision of the authorized officer is in error. All grounds of error not stated shall be considered as waived, and no such waived ground of error may be presented at the hearing unless ordered or permitted by the administrative law judge.

(b) Any applicant, permittee, lessee, or any other person who, after proper notification, fails to appeal a final decision of the authorized officer within the period prescribed in the decision, shall be barred thereafter from challenging the matters adjudicated in that final decision.

(Emphasis supplied.)

BLM asserts that "the plain language of the controlling regulations provides no authority to waive the requirement to submit the grounds of error in a grazing appeal" within the 30-day appeal period. (Petition at 7). Counsel cites the second sentence of 43 C.F.R. § 4.470(a), providing that the "appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision of the authorized officer is in error." As we held, reading this sentence in vacuo as imposing a mandatory requirement (such that failure to comply with it denies the administrative law judge of jurisdiction over the matter) is inconsistent with other provisions of the regulation granting the administrative law judge discretion to waive the failure to comply and consider the appeal. The regulation itself explicitly recognizes that "grounds of error not stated [are] considered as waived unless ordered or permitted by the administrative law judge." If the failure to comply removed the administrative law judge's jurisdiction, he or she would be without authority to forgive the failure in order to consider which arguments to "order" or "permit." BLM concedes that this is not the case under 43 C.F.R. § 4.474(a), where the administrative law judge has discretion to admit an issue not covered by an appellant's specifications of error if the administrative law judge rules that the issue is "essential" to the

"controversy." (Petition at 11.)^{3/} The presence of that authority necessarily means that the administrative law judge does not lose jurisdiction on account of the late iteration of reasons for appeal. Accordingly, we cannot agree that the "plain language" of the entire regulation supports Judge Heffernan's holding that dismissal of the Lewises' appeal was mandatory because they failed to state their reasons for appealing within the 30-day appeal period.

The language of 43 C.F.R. § 4.470(b) does not dictate another result here, as the Lewises did not fail "to appeal a final decision of the authorized officer within the period prescribed in the decision," but instead filed a timely notice of appeal and request for extension of time to file an SOR.

The language of 43 C.F.R. § 4.470(d) supports the rationale of our Decision. It allows BLM to file a motion "requesting that the appeal be dismissed" for any of several specified procedural grounds. By stating, "if the motion is sustained," it recognizes that, although the administrative law judge must "rule on the motion" to dismiss, he may deny it where it would be an abuse of discretion to "sustain" it. We do not dispute that the administrative law judge lacks authority to deny motions to dismiss where dismissal is plainly and unambiguously required, such as where no timely notice of appeal is filed. See 43 C.F.R. § 4.470(b). However, there is no regulation stating that failure to file an SOR within the 30-day time period for filing a notice of appeal mandates dismissal. Accordingly, we find no basis for BLM's presumption that failure to state reasons for appeal within the 30-day appeal period in all cases mandates granting of a motion under 43 C.F.R. § 4.470(b).

BLM argues that our Decision holds that we will not "enforce procedural requirements unless the regulations explicitly state that failure to comply will result in mandatory dismissal." (Petition at 6-7.) We stand by our policy of not interpreting any regulation to allow a

^{3/} BLM concludes that "the most reasonable and perhaps only correct reading of section 4.474(a) is that an administrative law judge can allow new issues to be raised only if the appellant timely submitted his or her original grounds of error" within the time allowed for filing the notice of appeal. (Petition at 11.) We do not share that view.

The provision grants the administrative law judge authority to narrow the evidence presented and issues raised by considering motions immediately prior to the hearing on the matter. We see nothing in it barring the granting of extensions of time to an appellant to prepare specifications of error. Nor would the granting of such an extension impair the operation of this provision: extensions can be restricted so that specifications of error are completed prior to the hearing date.

forfeiture of a party's right to appeal in the absence of unambiguous language mandating dismissal. The Department favors resolution of disputes on the merits and seeks to avoid technical dispositions where there is no showing of prejudice to an adverse party. James C. Mackey, 96 IBLA 356, 94 I.D. 132 (1987). In keeping with that policy, regulations that impose a forfeiture for noncompliance must be strictly construed. Compare Harvey A. Clifton, 60 IBLA 29, 34 (1981) (citing 3 Sutherland Statutory Construction §§ 59.02 and .03 (4th ed. 1974)). The present regulation, read as a whole, does not mandate dismissal for lack of jurisdiction. This is significant in that other regulations that do require dismissal contain express warnings.

As we held, and as BLM recognizes in its Petition (Petition at 16), the Board's decision in Leonard Bown, 12 IBLA 192 (1973), is completely distinguishable from the instant appeal, in that the appellant there failed to set out adequate reasons for his appeal and failed to request an extension of time to supplement those inadequate reasons. BLM nevertheless argues that "Bown is important because the Board did not require the BLM to show prejudice[, but r]ather the failure to submit grounds of error resulted in peremptory dismissal, and the Board held that this was appropriate." (Petition at 16.) BLM submits that this result "is inconsistent with if not directly contrary to the Lewis decision" (Petition at 16), which, it argues, holds that we will not "enforce procedural requirements unless * * * the BLM affirmatively demonstrates prejudice." (Petition at 6-7). BLM misperceives our Decision.

We held in Lewis v. BLM that the administrative law judge could not properly dismiss an appeal for lack of jurisdiction on account of failure to state reasons timely where the appellant had filed a timely request for additional time to file his reasons. Further, in the absence of a showing that granting an extension would prejudice BLM or other party, the request for extension may be granted under 43 C.F.R. § 4.22(f). In Bown the question whether a party would be prejudiced by granting an extension was not presented, as there was no request for extension. Bown remains as precedent for the proposition that, where a party timely files an inadequate SOR and evinces no intention to supplement that SOR, his appeal may properly be summarily dismissed, without necessity of showing prejudice. Bown and Lewis are entirely consistent with Board case law providing that, although it is the Board's policy to avoid procedural dismissal where there is no showing of prejudice to an adverse party (James Mackey, *supra*), an appellant bringing an appeal before the Board, must, with some particularity, show adequate reasons for the appeal and include argument or evidence of error, and that conclusory allegations of error, standing alone, are insufficient; and that an appeal is properly summarily dismissed without need of showing prejudice where no reasons are timely stated or inadequate reasons are stated. Livesay v. OSM, 112 IBLA 137 (1989); Add-Ventures, Ltd., 95 IBLA 44 (1986); United States v. De Fisher.

92 IBLA 226 (1986). Of course, if no (or inadequate) reasons are filed within whatever time is provided to do so (whether extended or not), the appeal may still be summarily dismissed.

Finally, the regulations at 43 C.F.R. § 4.22(f)(1) do provide administrative law judges authority to grant extensions, "except where such extension is contrary to law or regulation." BLM presumes that no extensions can be granted under 43 C.F.R. § 4.22(f) because "such extension is contrary to * * * regulation." Unlike in other regulatory contexts cited in our Decision where extensions to file specified documents are expressly disallowed, we find nothing in 43 C.F.R. § 4.470 banning extensions of time to file SORs in grazing appeals to the Hearings Division. We cannot hold that 43 C.F.R. § 4.470 is so clear that a reasonable person could conclude that an extension was prohibited here, that is, that filing a timely notice of appeal and request for extension of time to file an SOR would not preserve his or her appeal rights. Indeed, 43 C.F.R. § 4.22(f)(2) appears to set out the blueprint for a party to gain additional time to prepare an appeal or for counsel to effectively represent his or her client's interests.

Finally, we are unpersuaded, as urged by BLM, that our holding will encourage frivolous appeals. The administrative law judge still has authority to dismiss appeals that are not supported by clear and concise SORs, although he or she (and BLM) may have to wait a few days longer to determine what those reasons are. He or she also retains authority to prevent dilatory tactics or other abuse of the extension of time authority by denying requests for extension or limiting the time allowed where appropriate. However, there must be a reasonable basis for the exercise of this discretion, such as demonstrable prejudice to another party.

To the extent not addressed herein, the parties' arguments have been considered and rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Petition for Reconsideration is granted and our Decision in Lewis v. BLM, supra, is reaffirmed.

David L. Hughes

I concur: Administrative Judge

Will A. Irwin
Administrative Judge

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