

GRACE BELLE WILKERSON

IBLA 73-23

Decided April 17, 1973

Appeal from decision of Riverside, California, District and Land Office, Bureau of Land Management, holding an appellant's right-of-way for cancellation and requiring proof of construction.

Set aside and remanded.

Rights-of-Way: Cancellation -- Rights-of-Way: Act of February 15, 1901 -- Rules of Practice: Appeals: Generally

A decision of the Bureau of Land Management holding a right-of-way granted under the Act of February 15, 1901, for cancellation if proof of construction is not filed, will be set aside and remanded where the Bureau notifies the Board of Land Appeals that the requirement has been satisfied.

APPEARANCES: Willis Smith, Esq., of Smith and Schaefer, Bishop, California, for appellant; David K. Grayson, Office of the Solicitor, U.S. Department of the Interior.

OPINION BY MRS. THOMPSON

This appeal by Grace Belle Wilkerson 1/ is from a decision of the Riverside, California, District and Land Office, Bureau of Land Management, dated June 5, 1972, which held for cancellation a right-of-way, R-05410, and required proof of construction.

The right-of-way, five feet in width, had been granted March 17, 1967, pursuant to the Act of February 15, 1901, 43 U.S.C. § 959 (1970), for a domestic water pipeline which had already been constructed across 695.76 feet of public land.

Appellant's attorney has filed an affidavit deposing to the past construction of the pipeline and its present existence.

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1/ A. Thurman Wilkerson, deceased, was originally a co-grantee with his wife, the present appellant.

The Bureau of Land Management, through its attorney, has indicated that the condition of the Bureau's decision as to proof of construction has now been met, and that the right-of-way should not be canceled.

Accordingly, 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 remanded to the District and Land Office.

Joan B. Thompson, Member

We concur:

Martin Ritvo, Member

Edward W. Stuebing, Member.

