

GEORGE M. CRAPO  
RICHARD L. CRAPO

IBLA 75-141

Decided March 21, 1975

Appeal from decisions (I 8278-79) of the Idaho State Office, Bureau of Land Management, dismissing protests.

Set aside and remanded.

1. Administrative Practice -- Applications and Entries: Filing -- Applications and Entries: Priority -- Desert Land Entry: Applications -- Regulations: Interpretation -- Rules of Practice: Protests

Where a desert land applicant, whose application is prior in time, appeals from a decision of the Bureau of Land Management, dismissing his protest against affording priority to a later-filed desert land application on the basis that the earlier-filed application was incomplete, the cases are properly remanded to the Bureau of Land Management for action on the respective applications, so as to avoid piece-meal adjudication.

APPEARANCES: Terry L. Crapo, Esq., Idaho Falls, Idaho, for appellants.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

George M. Crapo and Richard L. Crapo have appealed from decisions of the Idaho State Office, Bureau of Land Management, dated August 6, 1974, which dismissed their protests urging that their desert land applications be afforded priority over subsequently-filed desert land applications. George Crapo's application was top-filed by Gwen Lee (I-8282), and by Robert L. Lee (I-8285). Richard L. Crapo's application was top-filed by Gwen Lee (I-8282) and by Sylvan Seely (I-8284).

George Crapo and Richard Crapo filed their respective applications on April 15, 1974, at 1:24 p.m. and at 1:54 p.m. Later on the same day the conflicting applications were filed. On July 12, 1974, and on July 11, 1974, letters were sent to George Crapo and Richard Crapo, respectively, reciting in part as follows:

There are a few deficiencies in your application that must be corrected before it will be complete and acceptable for filing. We are enclosing your original applications for your use in making the following corrections. All additions and corrections should be dated and initialed by you.

1. Your answers to Questions 8b [1/] and 9b, [2/] of the application, appear to be contradictory. You should either change any incorrect answer or explain the answers you have given.

2. Neither your application form nor map plan of irrigation and development provide enough information on the type, size, and other specifications for the circular sprinkler systems you propose. This information can be supplied on a separate statement.

3. In Exhibit No. 4 (Estimated Annual Farm Budget) you have not included any water charges. This item includes power costs for operating the pumps. If this cost is contained in any other item, you should indicate where it is included. If this cost was not previously considered, then appropriate changes should be made in your Total Costs and Net Income Figures.

Your complete and corrected application should be returned to this office within the next 30 days. Your application can gain no priority of filing until it is returned to this office, correct and complete.

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1/ Question 8b recited as follows:

"Is this application made to obtain title to lands that can be feasibly used for the production of agricultural crops without being reclaimed by conducting water thereto?"

In response to that query, appellants checked the box for "Yes."

2/ Question 9b on the application form reads as follows:

"Will the lands produce an agricultural crop of any kind in an amount reasonably remunerative above cost of production without artificial irrigation?"

Appellants checked the box marked "No."

The essence of the decision of August 6, 1974, is a denial of appellants' protest directed to their not being afforded priority of filing, based upon the State Office's determination that until appellants' applications were completed on July 22, 1974, they did not gain any priority over intervening complete applications filed before that date.

[1] It is clear that if the State Office rejects appellants' applications, they would have a right of appeal. It is not inconceivable that at that time the junior applicants (in terms of chronological dates of filing) may have withdrawn their applications or have become disqualified to receive desert land entries. In the present posture, the cases are not ripe for decision by this office. At such time as the State Office acts 3/ on any of the applications by rejecting them or allowing them, any proper appeals from such actions would afford a sufficient predicate for our consideration.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are set aside and the cases remanded for appropriate action.

Frederick Fishman  
Administrative Judge

We concur:

Martin Ritvo  
Administrative Judge

Joseph W. Goss  
Administrative Judge

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3/ It would have been appropriate for the State Office to withhold action on the protests and act on them simultaneously with action on the applications by rejecting or allowing them.

One additional matter which should be considered in the decision is whether appellants' plans meet the requirements of 43 U.S.C. § 327 (1970) with respect to those areas of the applied for entries which are not shown to be irrigated directly by the two circular sprinkler systems.

