

JERROLD R. COOLEY  
LUCY M. COOLEY

IBLA 77-37

Decided November 7, 1977

Appeal from decisions of Oregon State Office, Bureau of Land Management, rejecting application for right-of-way OR 14679.

Appeal dismissed in part; set aside and remanded in part.

1. Appeals--Rights-of-Way: Generally--Rules of Practice: Appeals: Dismissal--Rules of Practice: Appeals: Failure to Appeal--Rules of Practice: Appeals: Timely Filing

Where a right-of-way application has been rejected in part, an appeal therefrom should be dismissed if not filed within the period prescribed in 43 CFR 4.411.

2. Appeals--Rights-of-Way: Generally--Rules of Practice: Appeals: Generally

When a right-of-way applicant fails to submit corrected maps and payment of charges within a reasonable time after notice, which notice does not prescribe a specific time therefor, but on appeal applicant explains the reasons for delay, a rejection of the application may be set aside and the case remanded.

APPEARANCES: Earnest Langley, Esq., Witherspoon, Aikin & Langley, Hereford, Texas, for appellants.

OPINION BY ADMINISTRATIVE JUDGE GOSS

This is an appeal from two decisions of the Oregon State Office, Bureau of Land Management, rejecting appellants' application for rights-of-way for two pipelines to carry water for domestic and irrigation use. One pipeline would carry water from a spring and the

other would divert water from a stream. It is planned to cut the timber in the areas concerned. An environmental analysis report on the application was prepared by the BLM Area Manager, Glendale.

By decision dated June 9, 1976, the State Office rejected the application with respect to the pipeline from the spring and required the filing of amended maps and payment of charges with respect to the pipeline from the stream. When the maps and payment were not submitted by October 4, 1976, the pipeline application was rejected and the case closed. Appellants contend that new information is available with respect to the spring, and also argue that the June 9 decision was an interim decision.

[1] The June 9 decision was not an interim decision, but rather it expressly advised that an appeal could be taken to this Board. Appellants were provided with copies of the pertinent regulations and an appropriate form. Under 43 CFR 4.411, 1/ a notice of appeal must be filed within 30 days after service of the decision from which the appeal is to be taken. Appellants made no timely appeal from the June 9, 1976 decision. Under the regulations, the appeal from the decision should be dismissed. Lavonne E. Grewell, 23 IBLA 190 (1976).

[2] The State Office decision rejecting appellants' application with respect to the pipeline from the stream was predicated on appellants' apparent lack of interest in pursuing the application. On appeal, however, appellants have explained that the delay was to compile new evidence to submit to BLM in connection with the application for the spring right-of-way. Under the circumstances, it is

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1/ 43 CFR 4.411 provides as follows:

"(a) A person who wishes to appeal to the Board must file in the office of the officer who made the decision (not the Board) a notice that he wishes to appeal. The notice of appeal must give the serial number or other identification of the case and must be transmitted in time to be filed in the office where it is required to be filed within 30 days after the person taking the appeal is served with the decision from which he is appealing. The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make.

"(b) No extension of time will be granted for filing the notice of appeal. If a notice of appeal is filed after the grace period provided in § 4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the notice of appeal is filed during the grace period provided in § 4.401(a) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the appeal will be dismissed by the Board."

proper that appellants be accorded an additional 30 days from receipt hereof in which to submit the required map and payment.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal from the June 9, 1976, decision is dismissed; 2/ the October 6, 1976, decision is set aside and the case remanded for further action.

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Joseph W. Goss  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Joan B. Thompson  
Administrative Judge

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2/ Any further application, together with supporting new evidence, would be filed pursuant to the Federal Land Policy and Management Act, 43 U.S.C.A. §§ 1701 et seq. (West Supp. 1977).

