

INTERIOR BOARD OF LAND APPEALS

King Broadcasting Co.

129 IBLA 265 (May 16, 1994)

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Appeal from a decision of the Bennett Hills, Idaho, Area Manager, Bureau of Land Management, designating appellant as a principal user of communication site right-of-way IDI 22678 and fixing rent.

Appeal dismissed.

1. Appeals: Jurisdiction--Rules of Practice: Appeals: Failure to Appeal--Rules of Practice: Appeals: Timely Filing

The Board of Land Appeals is without jurisdiction to review the merits of a decision that is not timely appealed. A decision to designate appellant as a principal user of a communication site right-of-way and to fix rent for this right-of-way is not reviewable absent a timely appeal.

APPEARANCES: Ronald J. Krotoszynski, Jr., Esq., Jonathan D. Blake, Esq., Washington, D.C., for appellant; Kenneth M. Seby, Esq., Office of the Field Solicitor, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

King Broadcasting Company has appealed from a decision of the Bennett Hills Area Manager, Bureau of Land Management (BLM), dated February 28, 1992, designating appellant as a principal user of communication site right-of-way IDI 22678 and fixing the rent for this right-of-way at \$2,000 per year. The decision stated that right-of-way IDI 22678 was incorrectly issued to appellant as a "subsequent user" in March 1986. This designation was incorrect, BLM explained, because appellant maintained facilities for a television station on the site and such facilities qualified appellant as a "principal user" of the right-of-way. This change of designation caused BLM to perform an appraisal of the right-of-way, and appellant's rent increased from \$25 per pentad to \$2,000 per year as a result.

Appellant's notice of appeal is dated March 25, 1993. This notice enclosed a rental check in the amount of \$2,000 for 1993 and asked that this payment and a \$2,000 payment for 1992 be returned. Appellant argues that BLM's rental increase was ultra vires because it violated a moratorium established by Congress in section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1992, P.L. 102-154, 105 Stat. 990, 1035 (1991). This moratorium states that no funds may be expended by BLM

to increase fees charged for communication site use of lands administered by BLM by more than 15 per centum per user in fiscal year 1992 over the levels in effect on January 1, 1989. This moratorium was extended for an additional year on October 5, 1992, by P.L. 102-381, 106 Stat. 1374, 1416 (1992), appellant states.

BLM has moved to dismiss the instant appeal as untimely filed. In support, the agency cites 43 CFR 4.411, which requires that a person wishing to appeal transmit a notice of appeal "in time for it to be filed in the office where it is required to be filed within 30 days after the date of service." Service occurred on March 2 and 3, 1992, BLM states, and the agency has submitted return receipt cards indicating service on these dates.

Appellant argues that the present case involves an annual fee that it will have to pay in perpetuity in order to maintain its communication site. In these circumstances, it argues, it would be both inequitable and unjust to deny internal administrative review of BLM's unlawful and invalid actions.

[1] BLM's motion to dismiss is granted. In the absence of a timely appeal, this Board has no jurisdiction to review the merits of a case. Humane Society of Southern Nevada, 119 IBLA 216, 218 (1991). Appellant failed to appeal BLM's decision of February 28, 1992, in a timely manner, having submitted its notice of appeal almost a year late. BLM did not issue a new decision in 1993, although it is clear that annual rent is required to be paid each year on or before the right-of-way anniversary date. Appellant's attempt to have this Board review the substance of this dispute overlooks the question of jurisdiction. No jurisdiction is present, and the appeal is defective for this reason.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Will A. Irwin
Administrative Judge

I concur:

David L. Hughes
Administrative Judge