

**UNITED STATES COURT OF APPEALS**

**DEC 4 1997**

**TENTH CIRCUIT**

**PATRICK FISHER**  
Clerk

LARRY S. CARLISLE and CARRIE  
A. CARLISLE,

Plaintiffs - Appellants,

v.

DEPARTMENT OF INTERIOR,  
United States Secretary of the  
Department of the Interior; BUREAU  
OF LAND MANAGEMENT; and  
UNITED STATES CONGRESS, 1976  
Congress, namely the Federal Land  
Policy and Management Act of 1976,

Defendants - Appellees.

No. 97-2111  
(D. Ct. No. CIV-96-1371-MV)  
(D. N. Mex.)

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**ORDER AND JUDGMENT\***

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Before TACHA, BALDOCK, and LUCERO, Circuit Judges.

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After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

This appeal is from an order of the district court dismissing appellants' action for failure to show cause why service was not effected in the district court in compliance with Rule 4(i) of the Federal Rules of Civil Procedure.

The district court records are clear that summonses were not issued and that defendants did not waive service of summons. On appeal here, appellants seek permission to file the brief on appeal out of time. To the extent that the brief filed with the court on July 11, 1997, constitutes the brief in this case, the motion to file the brief out of time is granted. In all of the filings before the district court and this court appellants have failed to show that service was effected in compliance with Rule 4(i) of the Federal Rules of Civil Procedure. We therefore affirm the order of the district court dismissing this action without prejudice.

AFFIRMED.

ENTERED FOR THE COURT,

Deanell Reece Tacha  
Circuit Judge