MELVIN V. FRANDSEN
MARY C. FRANDSEN

IBLA 79-329 Decided September 26, 1979

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting petition-applications U 42504 and U 42505 for desert land entry.

Affirmed.

1. Applications and Entries: Generally -- Classification and Multiple Use Act of 1964 -- Desert Land Entry: Applications -- Desert Land Entry: Classification -- Desert Land Entry: Lands Subject to -- Public Lands: Classification

Where the Secretary by appropriate notice in the Federal Register has classified certain lands for multiple use management and such lands are segregated from desert land entry, and the classification has not been terminated by either a reclassification or publication in the Federal Register of termination of classification, BLM properly denied petition-application for desert land entry.

APPEARANCES: Melvin V. Frandsen and Mary C. Frandsen, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Melvin V. Frandsen and Mrs. Mary C. Frandsen appeal from the decision of March 12, 1979, whereby the Utah State Office, Bureau of Land Management (BLM), rejected their individual applications, U 42504 and U 42505, to make desert land entry on S 1/2 sec. 28, and N 1/2 sec. 28, respectively, in T. 11 S., R. 8 W., Salt Lake meridian, Juab County, Utah. The decision stated that Notice of Classification of Public Lands for Multiple Use Management, U 4342, 33 FR 5110 (Mar. 28, 1964), was made pursuant to the Act of September 19, 1964, 43 U.S.C. §§ 1411-1418, and the regulations in 43 CFR parts 2410 and 2411, and segregated the land therein described from disposal under the Desert Land Act, 43 U.S.C. § 321 (1976).

The notice reads in pertinent part, as follows:

NOTICE OF CLASSIFICATION OF PUBLIC LANDS
FOR MULTIPLE USE MANAGEMENT

1. Pursuant to the Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. 1411-18), and to the regulations in Title 43 CFR, Parts 2410 and 2411, the public lands within the area described below, together with any lands therein that may become public lands in the future, are classified for multiple-use management. Publication of this notice segregates the described lands from appropriation under the agricultural land laws (43 U.S.C., Parts 7 and 9; 25 U.S.C. sec. 334), and from sales under section 2455 of the Revised Statutes as amended (43 U.S.C. 1171). The lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws, except as noted below. As used herein, "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a federal use or purpose.

2. The public lands affected are those administered by the Bureau of Land Management within . . . Juab County, Utah: . . . .

Sections 321-339 form Chapter 9 of Title 43, United States Code, and set forth the law relating to desert land entries. Thus, the notice of classification specifically segregated the subject land from appropriation by desert land entry.

Appellants' reasons for appeal focus on their dissatisfaction with BLM's alleged use of criteria for a general area rather than site-specific conditions to ascertain the feasibility of reclassification of the subject land as suitable for desert land entry. They assert that water well permits are available to the land from the Utah State Engineer and that groundwater is in adequate quantity for proper irrigation of the subject lands by a sprinkler system. They assert that the subject land is not less than 90 percent suitable for irrigated agriculture under the Soil Conservation Service land classification system. They charge that BLM has not made any meaningful attempt to evaluate the land they seek and to reclassify it for desert land entry.

Appellants are really applying for reclassification of the subject lands for entry under the desert land laws. As was pointed out in the BLM decision:

The regulations in 43 CFR 2461.5 set forth the segregative effect of such a classification:

> (c) The segregative effect of a classification for retention will terminate in one of the following ways:
>
> (1) Reclassification of the lands for some form of disposal;
>
> (2) Publication in the FEDERAL REGISTER of a notice of termination of the classification;
>
> (3) An Act of Congress;
>
> (4) Expiration of the classification.

The lands in question have not been removed from the classification by either a reclassification or a termination notice published in the FEDERAL REGISTER under the above regulation. Therefore, the lands are still segregated from appropriation under the Desert Land Act and are not available for desert-land entry. * * * [I]n 1974 the Bureau of Land Management, the Soil Conservation Service, and the Geological Survey made an analysis of the soils and water on the lands embraced on the subject petition-applications and other lands in the vicinity. As a result of these analyses in November 1974, it was determined that the multiple use management classification was still proper and there was no justification for reclassifying the lands as suitable for agricultural use. The petitioner-applicants have not furnished any information with the petition-applications here under consideration to change this determination.

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* * * Even if the classification were changed, that action would be given public notice and review. If the lands were made available for disposal, it would be on an equal opportunity basis. There is no way that these petition-applications could afford you any priority of consideration.

[1] Where the Secretary of the Interior, or his delegate, by appropriate notice in the Federal Register has classified certain lands for multiple use management and such lands are thereby segregated from desert land entry, and the classification has not been terminated by either a reclassification or publication in the Federal

Register of termination of the classification, it is proper for BLM to reject petition-applications to make desert land entry. Paul M. Jenkins, 39 IBLA 141 (1979).

Therefore, 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 affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Joseph W. Goss
Administrative Judge