

KEITH P. GUNDERSON

IBLA 90-338

Decided July 12, 1993

Appeal from a decision of the Medicine Lodge, Idaho, Resource Area Manager, Bureau of Land Management, rejecting desert land entry application I-27613.

Affirmed.

1. Desert Land Entry: Applications--Desert Land Entry: Classification--Desert Land Entry: Lands Subject To--Public Lands: Classification

BLM properly rejected a desert land entry application for lands that were classified unsuitable for agricultural development by a final order of the Secretary of the Interior.

APPEARANCES: Keith P. Gunderson, Hamer, Idaho, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Keith P. Gunderson has appealed from an April 11, 1990, decision by the Medicine Lodge, Idaho, Resource Area Manager, Bureau of Land Management (BLM), rejecting his desert land entry application for the NE¼ of sec. 34, T. 6 N., R. 35 E., Boise Meridian, Jefferson County, Idaho. BLM rejected the application because the E½ of sec. 34 was "classified non-suitable for desert land entry on April 19, 1967."

Gunderson acknowledges that the April 19, 1967, classification decision by the Idaho State Director was correct when made, but nonetheless argues that the "23 year-old classification" is no longer realistic because "irrigation methods have changed" (Statement of reasons (SOR) at 1, 2). He argues that BLM "has reclassified adjoining lands and accepted Desert Land Entry Application[s]. The adjoining lands are now very productive farm lands." Id. at 1. He requests that the land be reclassified. The record on appeal shows that the W½ of sec. 34, subject to desert land entry I-016954, was classified "non-suitable for agricultural development" by the 1967 classification decision. Other adjoining lands so classified were the E½ of sec. 34 (at that time embraced by desert land entry application I-016974) and the E½ of sec. 33 (embraced by desert land entry I-016953). An abandoned patented entry embraced portions of secs. 2 and 3, T. 5 N., R. 35 E., Boise Meridian, adjoining sec. 34 on the south. The status of lands adjoining the NE¼ of sec. 34 on the north or east is not reported in the record before us.

[1] After 30 days had passed following issuance of the 1967 classification decision by the State Director, under operation of classification regulation 43 CFR 2450.5(b) it became a final classification order of the Secretary of the Interior. When lands have been classified under a final order of the Secretary as unsuitable for desert land entry, a desert land entry application may not be allowed, pursuant to provision of 43 CFR 2450.6(a), and a decision by BLM rejecting an application for such lands must therefore be affirmed by this Board.

The arguments raised by Gunderson on appeal are directed to the foundation for the 1967 classification decision and are therefore beyond the review authority of this Board. See 43 CFR 4.410(a)(1) and 2450.5(d). Because we may not review a desert land entry classification decision, we are unable to consider Gunderson's arguments on their merits. See Duella M. Adams, 70 IBLA 63 (1983). As was the case in Duella M. Adams, supra, it appears that Gunderson unsuccessfully sought to file a petition for classification of the lands he sought to enter pursuant to 43 CFR Subpart 2450. See Id. at 64, n.2. If that is in fact the case, consideration may be given by BLM to whether procedures established for petition and application for classification should be followed by BLM when this case file is returned. Nonetheless, this Board may not participate in proceedings conducted under 43 CFR Subpart 2450 and cannot exercise review authority over BLM classification decision making.

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.

Franklin D. Arness
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge