

LEROY MARTIN

IBLA 70-541

Decided December 17, 1971

Administrative Practice -- Applications and Entries: Generally -- Trespass: Generally

Where an assertion is made that unauthorized uses of public lands are being made, such an assertion, even if true, cannot vest in an applicant any right not authorized by law.

Desert Land Entry: Lands Subject To -- Withdrawals and Reservations: Power Sites

Public lands which are withdrawn by a power site classification are not subject to appropriation under the desert land laws.

Desert Land Entry: Generally -- Hearings -- Rules of Practice: Hearings

A hearing will not be granted in connection with a desert land entry application where the applicant fails to allege facts which, if proven, would entitle him to favorable consideration of his application.

IBLA 70-541 : Utah 9103

LEROY MARTIN : Desert land application
: rejected

: Affirmed

DECISION

LeRoy Martin has appealed to the Secretary of the Interior from a decision of the Manager, Utah land office, Bureau of Land Management, dated April 14, 1970, rejecting his application under the Desert Land Act, as amended, 43 U.S.C. § 321 (1970).

The appellant's application was rejected for the stated reason that the land applied for was withdrawn from entry by Power Site Reserve 122.

In his decision the manager pointed out that approval of the application is prevented by 43 CFR 2013.1(c) (1970). This regulation, renumbered 43 CFR 2091.1 (1971), reads as follows:

Except where regulations provide otherwise, all applications must be accepted for filing. However, applications which are accepted for filing must be rejected and cannot be held pending possible future availability of the land or interests in land, when approval of the application is prevented by:

(a) Withdrawal or reservation of the lands;

...

....

(e) The fact that for any reason the land has not been made subject, or restored, to the operation of the public land laws.

It is settled law that a desert land application embracing land in a power site withdrawal must be rejected. Dores D. McGhee, A-27590 (May 22, 1958); cf. Donald E. Miller, 2 IBLA 309 (1971).

Appellant asserts that various unauthorized uses are being made of the power site lands, e.g. farming, recreation, rest area and Indian occupancy. This assertion, even if true, and if such uses are unauthorized by law, does not vest any right in appellant. Cf. United States v. City and County of San Francisco, 310 U.S. 16, 31, 32 (1940); Utah Power and Light Co. v. United States, 243 U.S. 389, 408, 409 (1917).

In essence, the appellant is suggesting that the lands in issue are not needed for power site purposes. Assuming, arguendo, that his suggestion is correct, the lands are still not subject to appropriation until the land has been restored to entry, sec. 24, Federal Power Act, 16 U.S.C. § 818 (1970). See Weyerhaeuser Timber Company, 62 I.D. 305 (1955).

The appellant has requested a hearing. He does not deny that the land is withdrawn, but alleges the above-discussed facts which are pertinent not to the application for entry but to the revocation of the withdrawal. As explained by the manager to appellant in a letter dated December 1, 1969, an earlier petition for the lifting of the power site classification, including the land herein concerned, was filed by the San Juan County Water Conservancy District, and is under consideration by the Bureau of Land Management. A hearing will not be granted where the applicant fails to allege facts which, if proven, would entitle him to favorable consideration of his application. Carl A. Bracale, Jr., A-31149 (April 20, 1970). In the circumstances of this case before us, no useful purpose would be served by a hearing and the request therefor is denied.

For these reasons, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the decision appealed from is affirmed.

Frederick Fishman, Member

We concur:

Joan B. Thompson, Member

Anne Poindexter Lewis, Member

