

HOWARD R. AND LAVAUN B. ADAMS
KATHRYN CLARK, RESPONDENT

IBLA 72-312

Decided June 26, 1972

Appeal from a decision of the Idaho state office, Bureau of Land Management (BLM), allowing a senior desert land application I 1804, and rejecting junior desert land applications I 1866 and 1867.

Affirmed.

Desert Land Entry: Generally: Applications

A junior applicant's petition for desert land entry is properly rejected when the senior application is allowed.

APPEARANCES: Mr. and Mrs. Howard B. Adams, pro se. Kathryn Clark, pro se.

OPINION BY MR. FRISHBERG

On January 28, 1972, the Idaho state office, BLM, issued a notice of allowance to Kathryn Clark covering lands for which she had made application to enter under the desert land laws, 43 U.S.C. § 321 et seq. (1970), 43 CFR Part 2520. After allowance of entry to Kathryn Clark the BLM rejected the Adamses' desert land applications I-1867 to 1868 because they were junior in time to that which was allowed, the junior applications each covering portions of the same lands embraced in the Clark entry. The Adamses' applications covering other additional lands were rejected for reasons not pertinent to this decision. The Adamses have appealed from the rejection of their applications insofar as they cover lands in the Clark entry. They assert that the decision below is in error because the application by Kathryn Clark was for speculation and resale, not for her own use, and because she is not an Idaho resident who is qualified to make a desert land entry in Idaho.

The appellants, in effect, seek to have the Clark entry cancelled in order that their applications may become senior and thus permit them to enter the lands under the desert land laws. The allegations

of the appellants, if true, would be sufficient to effect a cancellation of entry 1804. But it has long been held by this Department that an entry may be cancelled only if the entryman is afforded a hearing pursuant to the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* (1970); United States v. O'Leary, 63 I.D. 341 (1956). This means that the entry may not be cancelled for reasons not appearing of record without a contest proceeding which may be initiated in accordance with the rules of practice pertaining to contest and protest proceedings, 43 CFR 4.450 through 4.452-9. In this connection we invite the appellant's attention to 43 CFR 4.450-1, permitting a preference right of entry in accordance with 43 U.S.C. § 329 (1970) to one who has successfully contested an entry for any reason not appearing in the records of the BLM. If the appellants in a contest proceeding procure the cancellation of entry 1804, they would be afforded a preference right of entry, all else being regular.

It follows that the appellants may, if they desire, initiate a contest proceeding against the Clark entry. Accordingly, the appellants will be afforded a period of 60 days from the receipt of this decision in which to initiate a contest proceeding, failing in which the decision allowing entry for I-1804 will be allowed to stand.

Therefore, pursuant to the authority delegated to the Board of Land Appeals, 211 DM 13.5, the decision appealed from is affirmed.

Newton Frishberg, Chairman

We concur:

Joseph M. Goss, Member

Edward W. Stuebing, Member

