

RAYMOND E. SITTA

IBLA 72-50

Decided August 8, 1972

Appeal from a Bureau of Land Management decision, C-1613, holding the first year's desert land proof unacceptable.

Remanded.

Desert Land Entry: Annual Proof: Desert Land Entry Cancellation

When a first year desert land proof was rejected because of unacceptable expenditures and the entry is now in its third year, the entryman will be required to file second year proof; alternatively, he may file third year proof or apply for a patent.

Administrative Procedure: Hearings

A desert land entry may not be canceled for defects not appearing on the face of the record without giving the entryman notice and an opportunity to be heard.

APPEARANCES: Raymond E. Sitta, pro se.

OPINION BY MR. FRISHBERG

The Colorado state office, BLM, rejected the appellant's first year's annual proof because of unacceptable expenditures. On appeal the appellant stated that the appropriate work and expenditures would be made within six weeks. More than one year has since elapsed and the entry is now in its third year.

The desert land laws require an entryman to cultivate and reclaim the land and to convey water thereon for irrigation; an annual expenditure of \$1 per acre must be made for each of the first three years and final proof may be submitted at any time prior to the expiration of the entry (four years from the date of entry) whenever the requisite \$3 per acre has been expended and reclamation completed. 43 U.S.C. § 328

(1970); 43 CFR Subpart 2520. While the regulations set forth the statutory requirements, 43 CFR 2521.5(c) describes "expenditures not acceptable". But when a dispute arises concerning the acceptability of asserted expenditures which on the face of the proof are acceptable, the entryman is entitled to notice and an opportunity for hearing before the entry may be canceled. ^{1/}

The appellant indicated that satisfactory first year proof would be accomplished within six weeks from the filing of his appeal. However, as the entry is in the third entry year he is properly required to file second year proof; this may cover both the first and second year and must be filed in the Colorado state office within 60 days after notice by that office upon penalty of cancellation of the entry. 43 CFR 2521.5. However, if he so elects, he may instead file third year or final proof if the total requisite expenditures and reclamation have been completed.

In reviewing this case we note certain apparent discrepancies which, while not related to the issues on appeal, bear further investigation. In his application Raymond Sitta listed his address as Route 2, Doyleville, Colorado, and his occupation as "Ranching and Farming". He did not make any notation in block 3 B in response to the question, "Of what state are you a bona fide resident?", although all the many other questions on the 8-page form were care!

^{1/} The annual proof asserted an expenditure of \$1000 in the "First clearing or breaking of acres." Since the entry consists of 120 acres, the requirement of an expenditure of \$1.00 per acre would appear to be satisfied monetarily. However, 43 CFR 2521.5(c)(2) provides in part that "Expenditures for the clearing of land will not receive credit in cases where the vegetation or brush claimed to have been cleared away has not actually been removed by the roots."

The decision appealed from is based upon a report of field examination asserting that the land had been tandum disced, which failed to remove the sagebrush by the roots.

Since the basis of rejection of the annual proof was not a defect on its face, but rather an asserted defect shown by a report of field examination, it was not proper to reject the proof without affording the entryman an opportunity for a hearing. Cf. Ruby M. Connor, A-30962 (April 29, 1969); Elodymae Zwang et al., A-30201 (February 3, 1965); George R. Murphy, A-30448 (July 22, 1966).

fully answered. It was improper to allow this entry until that question was satisfactorily resolved. The desert land laws provide that no person may enter thereunder unless he is a resident citizen of the state in which the land lies (except in Nevada), and that an entry may be canceled and the moneys paid may be forfeited for illegal inception. 43 U.S.C. §§ 325, 329 (1970). It now appears that Sitta is a doctor of medicine, actively engaged in practice at the Farmington Clinic, Farmington, New Mexico. The letterhead of the clinic bears his name.

Appellant's statements that he has not been to "the ranch" since 1969 and that the ranch has been under lease to one J. Kleystueber suggest that the ranch in Doyleville, Colorado, may not be his legal residence, and that he may not have been a Colorado citizen when the entry was allowed. See Calvin L. Howard, 6 IBLA 285 (1972). When filing the necessary annual or final proof, the appellant will be required to establish that he was a bona fide resident citizen of Colorado when entry was made. This proof will be subject to verification by the Bureau, failing which the Bureau will take appropriate steps to effect cancellation of the entry.

Therefore, 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 case record is remanded for appropriate processing.

Newton Frishberg
Chairman

We concur:

Edward W. Stuebing
Member

Anne Poindexter Lewis
Member

