

CURTIS WHEELER, BILLY J. WHEELER

IBLA 72-176

Decided November 16, 1972

Appeal from decisions (U 16720 and U 16721) of the Utah Land Office, Bureau of Land Management, rejecting applications for homestead entry.

Affirmed.

Homesteads (Ordinary): Applications--Homesteads (Ordinary): Lands Subject to--Withdrawals and Reservations: Reclamation Withdrawals

A homestead application filed for lands which are withdrawn for reclamation purposes and segregated by a classification to retain the land for multiple-use management must be rejected.

APPEARANCES: Curtis Wheeler and Billy J. Wheeler, pro se.

OPINION BY MRS. LEWIS

Curtis Wheeler and Billy J. Wheeler have appealed from separate decisions of the Utah Land Office, Bureau of Land Management, dated November 2, 1971, which rejected their homestead applications 1/ because the lands are embraced in first form reclamation withdrawal of February 3, 1956, pursuant to the Act of June 17, 1902, § 3, 43 U.S.C. § 416 (1970).

The applications were rejected under 43 CFR 2091.1 which provides, in applicable part, that applications for withdrawn or reserved lands must be rejected and cannot be held pending possible future availability of the land or interests in land. This is a correct application of the regulation. Also see 43 CFR 2322.1-1 and Ralph J. Mellin, 6 IBLA 193 (1972), specifically pertaining to the mandatory rejection of applications for lands in first form reclamation withdrawals.

In appealing, the Wheelers state that the Bureau of Reclamation has agreed to relinquish section 6, T. 27 S., R. 23 E., S.L.M., Utah.

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1/ Curtis Wheeler's application (U-16720) describes the E 1/2 SW 1/4, W 1/2 SE 1/4 section 6, T. 27 S., R. 23 E., while Billy J. Wheeler's application (U-16721) is for the W 1/2 SW 1/4 section 5, E 1/2 SE 1/4 section 6, T. 27 S., R. 23 E., S.L.M., Utah.

They enclose with their appeals a letter to Curtis Wheeler dated November 1, 1971, from the Acting Regional Director, Bureau of Reclamation, Salt Lake City, Utah, in which he indicated that it would be contrary to the best interests of the United States to release any of the withdrawn lands in sections 4, 5, and 9, but that they are willing to initiate a revocation of withdrawal of the E 1/2 SW 1/4 and the SE 1/4 section 6, T. 27 S., R. 23 E., "upon receipt of satisfactory evidence that the withdrawal is the only obstacle to your acquisition of that 240 acres."

The Regional Director's letter was merely a conditional promise. There is an additional reason why the homestead applications must be rejected. Although not mentioned in the Land Office decision, the Utah State Director, in transmitting the appeal with the case record to this Board, advised that the lands were classified for multiple-use management, pursuant to the Act of September 19, 1964, 78 Stat. 986; 43 U.S.C. §§ 1411-1418 (1970). He enclosed a copy of the notice of classification which was published in the Federal Register on August 20, 1968, 33 F.R. 11786. The notice provides that publication thereof segregates the lands from appropriation under the agricultural land laws. See 43 U.S.C. § 1414 (1970). Therefore, even in the absence of the reclamation withdrawal, the homestead applications would still have to be rejected for this reason.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1 (1972), the decisions below are affirmed.

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Anne Poindexter Lewis, Member

We concur:

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Newton Frishberg, Chairman

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Joan B. Thompson, Member

