

RICHARD E. CRILL ET AL.

IBLA 75-269, etc.

Decided February 14, 1975

Appeal from a decision of the Idaho State Office, Bureau of Land Management, rejecting applications for homestead entry I-8816, I-8826, I-8829, I-8834, I-8841, I-8845, I-8851, I-8874 and I-8928.

Affirmed.

1. Applications and Entries: Generally -- Homesteads (Ordinary): Lands Subject to -- Reclamation Lands: Generally -- Withdrawals and Reservations: Reclamation Withdrawals

An application to make a homestead entry on land embraced in a first form reclamation withdrawal is properly rejected.

2. Homesteads (Ordinary): Generally -- Homesteads (Ordinary): Lands Subject to -- Homesteads (Ordinary): Settlement -- Reclamation Homesteads: Generally

No person shall be permitted to make homestead entry or settle upon lands reserved for irrigation purposes until the Secretary of the Interior establishes the unit of acreage per entry and publicly announces the availability of water for irrigation.

3. Delegation of Authority: Generally

The Bureau of Land Management has been delegated authority over the adjudication of reclamation homestead applications.

APPEARANCES: Richard E. Crill, Dwight Joseph Moore, William A. Helt, Roy E. Bean, Carol M. Qualman, Kenneth L. Capener, Jr., Lester V. Beiter, Edgar H. Edmondson, and Charles D. Capener, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Each appellant 1/ has separately appealed from a decision of the Idaho State Office, Bureau of Land Management, dated November 21, 1974, rejecting his individual application to make homestead entry on lands in secs. 21, 22, 23, 24 and 25, T. 1 S., R. 1 W., and sec. 31, T. 1 S., R. 1 E., B.M., Idaho. The applications were filed between August 16 and September 19, 1974. Since the issues presented were identical the cases were consolidated in the State Office.

The State Office decision recited that the lands embraced in each application for entry were withdrawn from public entry in a first form reclamation withdrawal by order dated January 28, 1952, for the Mountain Home Reclamation Project, and that under provisions of the applicable regulations, 43 CFR 2322.1 and 2091.1, no entry of such withdrawn land is permitted and any application for such entry must be rejected and cannot be held in suspense pending the land's restoration.

Additionally, the decision noted that:

[i]f it was either the intention or impression of any of the applicants that their applications were being filed under the Reclamation Act of June 17, 1902, supra, then they should be cognizant of the Act of June 25, 1910 * * *. The 1902 Act was amended by the 1910 Act, and Section 5 of the 1910 Act, as amended, provides that no entry shall be made and no entryman shall be permitted to go upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage per entry, and water is ready to be delivered for the land in such unit or some part thereof and such fact has been announced by the Secretary. In the cases at hand involving the withdrawal of the lands for the Mountain Home Reclamation Project, the Secretary has not established any

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unit acreages for entry, water is not ready for delivery to any of the lands and no public announcement has been made of the same.

(Emphasis supplied.)

On appeal, appellants are apparently arguing general error in the decision below, as well as a lack of jurisdiction within the Bureau of Land Management to adjudicate reclamation homestead applications.

[1] This Board has recently dealt with the general contentions raised on appeal. In Carl D. Qualman, 18 IBLA 83 (1974), it was held that a homestead application for lands in a first form reclamation withdrawal must be rejected and cannot be suspended pending restoration of the land. Id. at 85 and cases cited therein.

[2] Furthermore, it is noted that the appellants contend that the applications were intended to be reclamation homestead applications. The State Office correctly pointed out that land withdrawn as susceptible of irrigation is open to settlement and location only after approved farm unit plats have been filed in the appropriate BLM office, water is ready to be delivered to the land in said farm units, and such fact has been announced by an authorized officer. 43 U.S.C. § 436 (1970); 43 CFR 2515.0-3. See also 43 CFR 2322.1-4. Inasmuch as none of the above contingencies have occurred, rejection of a reclamation homestead application is mandated.

Appellants' argument that 43 U.S.C. § 436 does not apply to land withdrawn under 43 U.S.C. § 416 is disingenuous. It could scarcely be expected that section 416 would enumerate section 436 as within its purview since section 416 is § 3 of the Act of June 17, 1902, 32 Stat. 388, whereas section 436 is § 5 of the Act of June 25, 1910, 36 Stat. 836. The Act of June 25, 1910, supra, was amendatory of the Act of June 17, 1902, supra, and sec. 5 of the Act of June 25, 1910, is both inclusive and clear: "After June 25, 1910, no entry shall be made and no entryman shall be permitted to go upon lands reserved for irrigation purposes until * * *" performance of the acts, e.g., approval of farm unit plats, alluded to above.

[3] Finally, appellants apparently are under the misapprehension that the Bureau of Reclamation has adjudicatory authority over reclamation homestead applications. Such is not the case. The Bureau of Reclamation's program encompasses the construction and maintenance of physical works to provide water for irrigation and related

facilities. Authority over the adjudication of applications seeking title to withdrawn reclamation lands under homestead laws is reposed in the Bureau of Land Management. See Carl D. Qualman, supra.

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.

Douglas E. Henriques
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Joseph W. Goss
Administrative Judge

