

LEWIS M. ESLICK

IBLA 76-154 Decided March 24, 1976

Appeal from a decision of the Idaho State Office, Bureau of Land Management, rejecting homestead application I-8818.

Affirmed.

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

An application to make 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 Lands: Generally

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

APPEARANCES: Lewis M. Eslick, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Lewis M. Eslick has appealed from a decision of the Idaho State Office, Bureau of Land Management, dated July 25, 1975, rejecting his application for homestead entry, I-8818, embracing the SW 1/4 sec. 21, T. 1 S., R. 1 W., B.M., Idaho. The application

was rejected for the reason that it wholly embraced land withdrawn from entry in a first form reclamation withdrawal for the Mountain Home Reclamation Project, established pursuant to the Act of June 17, 1902, 32 Stat. 388, 43 U.S.C. § 416 (1970), and all applications for entry thereon must be rejected. See 43 CFR 2322.1-1.

The decision of the State Office also noted that the applicant had submitted an affidavit with his application stating that his application had been filed pursuant to section 3 of the Reclamation Act of June 17, 1902, supra. Referring applicant to the Act of June 25, 1910, 36 Stat. 835, 43 U.S.C. § 436 (1970), the State Office noted that no entry can be made 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, citing 43 CFR 2515.0-3, 2322.1-4.

Appellant has questioned the authority of an employee of the Idaho State Office, Bureau of Land Management, to render a final administrative decision for the Department. We cannot understand why appellant thinks the decision of the State Office is final for the Department. In no way does the decision purport to be final; indeed, to the contrary, it allows the right of appeal to this Board, which does exercise delegated authority from the Secretary of the Interior to render a final administrative decision for the Department in matters relating to the public lands. See 43 CFR 4.1. Additionally, appellant appears to question the right of the BLM State Office to make any decision relative to his application adverse to his wishes. Regulation 43 CFR 1840.1 discusses appeal rights from decisions by any officer of BLM. Suffice it to say that the decision below was properly issued under the Department's procedures, and that the appellant timely availed himself of the appeals procedures of the Department. The fallacies in appellant's arguments are discussed infra.

[1, 2] The issues involved in this appeal have been examined in prior cases. See Richard E. Crill, 18 IBLA 428 (1975); Carl D. Qualman, 18 IBLA 83 (1974). In those cases the Board held that land within the Mountain Home Reclamation Project is not available for homestead entry and that a reclamation homestead entry could only be made following the establishment by the Secretary of the unit of acreage per entry and his announcement that water is ready to be delivered for the land in such unit. The appellant has failed to indicate in any manner that our previous decisions were in error.

Accordingly, 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:

Joseph W. Goss
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

