

LES

IBLA 76-248

Decided April 14, 1976

Appeal from decision of Colorado State Office, Bureau of Land Management, rejecting application to make stock-raising homestead entry, C-22620.

Affirmed.

1. Stock-Raising Homesteads -- Taylor Grazing Act: Generally

An application to make a stock-raising homestead entry is properly rejected because the homesteading provisions of the Stock-Raising Homestead Act were impliedly repealed by the Taylor Grazing Act of June 28, 1934.

APPEARANCES: Les, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appellant Les 1/ filed application to make homestead entry on a tract of national resource land consisting of 520 acres in Boulder County, Colorado, pursuant to the Stock-Raising Homestead Act of December 29, 1916, 43 U.S.C. § 291 et seq. (1970). 2/ The Colorado State Office, Bureau of Land Management, rejected the application by decision of August 1, 1975, citing Samuel Joyner, A-28558 (November 15, 1960), which held that the Department had no authority to consider such an application since the Stock-Raising Homestead Act was impliedly repealed by the Taylor Grazing Act, 43 U.S.C. § 315 et seq. (1970).

1/ Appellant has deposed that his full legal name is "Les."

2/ The application was submitted on BLM Form 2510-1 (June 1972), entitled "Homestead Entry application, 43 U.S.C. 161, et seq." Only the Stock-Raising Act permitted entry of tracts exceeding 320 acres in extent.

[1] In his statement of reasons, appellant asserts that the Taylor Grazing Act does not impliedly repeal the Stock-Raising Homestead Act, but redirects old land policies into new land policies, giving the Department of the Interior authority to classify public lands for various purposes. He also requested a hearing for development of facts incidental to his case.

Appellant is correct in his belief that the Taylor Grazing Act gives the Secretary of the Interior authority to classify public lands, but he fails to consider the full effect of the Taylor Grazing Act on the Stock-Raising Homestead Act. In George J. Propp, the Assistant Secretary stated that:

* * * [o]n the basis of both scientific findings and executive experience the Congress in order to conserve the public domain and promote its highest use has adopted new land policies, implementing them in the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269), amended by the act of June 26, 1936 (49 Stat. 1976), and thus in effect repealing the stock-raising homestead law, with which they are inconsistent.

56 I.D. 347 at 350 (1938).

Executive Order No. 6910 of November 26, 1934, withdrew all vacant, unreserved and unappropriated public land in the State of Colorado, inter alia, from settlement, location, sale or entry, for classification and determination of the most useful purpose to which the land may be put in consideration of the provisions of the Taylor Grazing Act.

Section 7 of the Taylor Grazing Act, 43 U.S.C. § 315f (1970), provides that lands affected by the Act shall not be subject to disposition, settlement, or occupation until they have been classified and opened to entry. Public lands of the United States are not open to entry for homesteading unless and until they have been classified as more valuable or suitable for the production of agricultural crops than for the production of native grasses and forage plants. Section 7 further specifically provides that homestead entries thereafter shall not be allowed for tracts exceeding 320 acres in extent. As entries under the Stock-Raising Homestead Act were allowable only on lands theretofore designated by the Secretary of the Interior as "stock-raising lands," the homesteading provisions of the Stock-Raising Act were impliedly repealed by the provisions of the Taylor Grazing Act. As the subject application was for 520 acres and for land which had not been classified as suitable for the production of agricultural crops, the State Office correctly rejected it.

In this connection we point out that the authority conferred by section 7 of the Taylor Grazing Act upon the Secretary to classify public land is discretionary, not mandatory, whether he undertakes classification upon his own initiative or upon application by an interested party. J. C. Aldrich, 59 I.D. 176 (1946).

Our review of the entire record in this case has led us to conclude that no meaningful purpose can be served by granting a hearing. Accordingly, the request of appellant for a hearing is denied.

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

Anne Poindexter Lewis
Administrative Judge

