

IVAN J. BROWER

IBLA 76-561

Decided September 27, 1977

Appeal from decision of Idaho State Office, Bureau of Land Management, denying a second extension of time to make final proof on desert land entry I-2624 and canceling entry.

Affirmed.

1. Desert Land Entry: Extension of Time

Application for second extension of time for submission of final proof on desert land entry is properly rejected where entryman is unable to show that failure to reclaim land in entry within statutory life of entry is because of unavoidable delay, without fault on part of entryman, in cultivation and construction of irrigation works.

APPEARANCES: Ivan J. Brower, Blackfoot, Idaho, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Ivan J. Brower appeals from a March 2, 1976, denial by the Idaho State Office, Bureau of Land Management (BLM), of a second extension of time in which to make final proof of reclamation of a 320-acre tract on which he held desert land entry I-2624. The decision also canceled his entry as of September 17, 1975.

Brower's entry was allowed by the BLM on March 17, 1970. The statute provides 4 years within which to submit final proof of reclamation. 43 U.S.C. § 329 (1970). Under certain conditions, extensions of time are allowed. 43 U.S.C. § 333 (1970) et seq; 43 CFR Subpart 2522. An extension was granted Brower on July 11, 1974, to expire on September 17, 1975. On September 16, 1975, Brower filed a request for a second extension, the denial of which gave rise to this appeal. A second extension is by statute a matter of discretion to be exercised by the Department. 43 U.S.C. § 334

(1970). The State Office decision held that Brower had not made the requisite showing of unavoidable delay and lack of fault.

The facts, issues and arguments of this case are similar to those of a related case, Pamela M. Brower, 26 IBLA 366 (1976). Ivan J. Brower's entry was one of four for which there was planned a joint irrigation system and for which reclamation efforts were cooperative. The other entries were held by Pamela M. Brower I-2426, Jerry W. Brower I-2425 and Connie C. Brower I-2424. In his October 15, 1975, letter to BLM, appellant stated that he had "been unable to get a well drilled. Volmers Well Drilling was * * * supposed to drill a well for Connie Brower and I hoped to have them drill my well while they were in the area; [h]owever, they never drilled the well for Connie Brower." The March 2, 1976, State Office decision includes the following finding:

Mr. Ken Volmer, owner of Volmer's Well Drilling at Aberdeen, Idaho was contacted. He advised that "Jerry Brower or one of the family" had contacted him in an attempt to get several wells drilled on the Brower's desert land entries. However, he refuted the contention of Ivan Brower that a well was supposed to be drilled for Connie Brower, and perhaps also him. Mr. Volmer advised that at the time of initial contact with the Browsers, he informed them that his company was completely tied up with the Teton Dam Project and would be unavailable to drill any wells for them.

Despite the fact that appellant had initially based his request for an extension primarily upon his reliance on the drilling of a well by Volmer, appellant did not refer to Volmer in his statement of reasons for appeal.

Appellant has indicated that the well was to be drilled by a contractor. In his notice of appeal appellant states that finances were not the reason the well had not been drilled. Appellant lost his leg sometime after 1968 and should be given every proper consideration by the Department. Nowhere, however, has appellant alleged what has been done since the July 11, 1974, extension to complete the well and the irrigation works.

[1] An application for an extension of time for the submission of final proof on a desert land entry is properly rejected where the entryman is unable to show that the failure to reclaim the land within the statutory life of the entry is because of unavoidable delay, without fault on the part of the entryman, in the cultivation and construction of irrigation works. Pamela M. Brower, supra. A second extension of time is properly denied to an entryman such as appellant who fails to make use of the first extension. Pamela M. Brower, 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.

Joseph W. Goss
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joan B. Thompson
Administrative Judge

