

PAUL M. JENKINS

IBLA 78-517

Decided January 29, 1979

Appeal from decision of Utah State Office, Bureau of Land Management, denying desert land entry petition-application.

Affirmed.

1. Applications and Entries: Generally--Classification and Multiple Use Act of 1964--Desert Land Entry: Applications--Desert Land Entry: Classification--Desert Land Entry: Lands Subject to--Public Lands: Classification

Where the Secretary by appropriate notice in the Federal Register has classified certain lands for multiple use management and such lands are segregated from desert land entry, and the classification has not been terminated by either a reclassification or publication in Federal Register of termination of classification, BLM properly denied petition-application for desert land entry.

APPEARANCES: Paul M. Jenkins, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Paul M. Jenkins appeals from a decision of the Utah State Office, Bureau of Land Management (BLM), dated June 1, 1978, rejecting his desert land entry petition-application filed May 15, 1978, under the Desert Land Act, 43 U.S.C. § 321 et seq. (1976).

BLM rejected the petition-application because the land in question is classified for "multiple-use management" pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. §§ 1411-1418 (1976), and is therefore segregated from appropriation under the agricultural land laws. The land for which appellant applied is the N 1/2 sec. 11, T. 43 S., R. 8 W., Salt Lake meridian, Utah, which was included in the Notice of Classification of Public Lands for Multiple-Use Management (U 5699) published in the Federal Register

on November 3, 1970 (35 FR 16943-16945). The notice states in pertinent part as follows:

1. Pursuant to the Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. 1411-18), and to the regulations in Title 43 CFR, Group 2400, the public lands within the area described in paragraph 3 below are hereby classified for multiple-use management. Publication of this notice has the effect of segregating the described lands from appropriation under the agricultural land laws (43 U.S.C., Parts 7 and 9; 25 U.S.C., Sec. 334), and from sales under Section 2455 of the Revised Statutes as amended (43 U.S.C. 1171). The lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws, except as noted in paragraph 5 below. As used herein, "public lands" means any land withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose. [Emphasis supplied.]

43 U.S.C. Chapter 9 sets forth the law regulating "Desert-Land Entries." Therefore the above-quoted notice in the Federal Register specifically segregated the described lands from appropriation under the agricultural land law providing for desert land entry, under which appellant applied.

In his statement of reasons appellant makes four main arguments: (1) The land was improperly classified in that the State Director did not take into account the fact that each parcel of land is a unique ecological entity, but simply drew lines on an office map. (2) This parcel of land could not possibly qualify for multiple use management because there is practically no usable forage for animal life and little plant life to qualify it for recreation or watershed lands. (3) Congress did not intend that the Classification and Multiple-Use Act of 1964 should subvert rights offered by prior legislation, or that the Act permanently segregate lands from agricultural entry. Appellant charges that BLM had no information on underground water sources when it classified the lands without regard to existing land laws and that such classification was in defiance of the U.S. Constitution and Congress. (4) Residents of Kane County are being "strangled" by an arbitrary Federal landlord which stifles the initiative of those willing to put forth the energy and resources needed to improve a small part of America.

[1] Appellant in effect is applying for reclassification of the lands in issue so that a desert land entry may be allowed. From the above discussion it is clear that the Secretary by appropriate notice in the Federal Register classified this land for multiple use

purposes and segregated it from desert land entry. 43 CFR 2461.5 sets forth the segregative effect of such a classification:

(c) The segregative effect of a classification for retention will terminate in one of the following ways:

- (1) Reclassification of the lands for some form of disposal;
- (2) Publication in the FEDERAL REGISTER of a notice of termination of the classification;
- (3) An Act of Congress;
- (4) Expiration of the classification.

The lands in question have not been removed from the classification by either a reclassification or a termination notice published in the Federal Register under the above regulation. Therefore, the lands are still segregated from appropriation under the agricultural land laws and are not available for desert land entry. So, we find that BLM was correct in denying appellant's petition-application.

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.

---

Anne Poindexter Lewis  
Administrative Judge

We concur.

---

Douglas E. Henriques  
Administrative Judge

---

Joan B. Thompson  
Administrative Judge

