

JOANNE F. WRIGHT ET AL.

IBLA 80-659

80-688

80-689

Decided August 18, 1980

Appeals from decisions of the Nevada State Office, Bureau of Land Management, rejecting various desert land entry applications. N 23492, etc.

Set aside and remanded.

1. Administrative Practice -- Desert Land Entry: Generally -- Desert Land Entry: Cultivation and Reclamation

Where the Bureau of land Management has rejected desert land entry applications because cultivation of the jojoba plant would not meet the requirements of the Desert Land Act, and where appellants submit extensive data and analysis in an attempt to rebut the BLM conclusion, the cases may be remanded to BLM for further consideration and development of the record.

APPEARANCES: Joanne F. Wright and Leo F. Wright, pro sese; Patrick A. Brownfield, pro se and for Nancy T. Brownfield; Bill C. Turner, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

This decision consolidates appeals by Joanne F. Wright, Leo F. Wright, Nancy T. Brownfield, Patrick A. Brownfield, and Bill C. Turner from decisions of the Nevada State Office, Bureau of Land Management (BLM), rejecting their desert land entry applications. 1/ In each

1/ The cases appealed are docketed as follows:

IBLA 80-659 Joanne F. Wright, N 23492

Leo F. Wright, N 23493

IBLA 80-688 Nancy T. Brownfield, N 22807

Patrick A. Brownfield, N 22808

IBLA 80-689 Bill C. Turner, N 23491

case, the rejection was based on the fact that the applicant intended to cultivate an arid land species of plant, known as the jojoba plant. BLM ruled that cultivation of jojoba would not meet the requirements of the regulations, 43 CFR Part 2520, for desert land entries for the following reasons:

(1) Arid land species technically could be grown without the benefit of irrigation; therefore, they would not meet this provision of the Desert Land Act (43 CFR 2520.0-8(a)(1)).

(2) Jojoba has not yet been successfully cultivated in the United States on a commercial scale; therefore, the economic feasibility of growing this species cannot be demonstrated (43 CFR 2520.0-8(d)(3)).

(3) Most arid land species are in a research and development phase, and the need of the plants and capability of a given tract of public land to support the cultivation cannot, as yet, be determined.

BLM appears to have based the rejections directly on BLM Instruction Memorandum No. 80-383, dated March 14, 1980, and entitled, "Public Inquiries on the Availability of Public Lands for the Cultivation of Arid Land Species." No factual data or analysis on the cultivation of the jojoba plant supporting the above conclusions is included in any of the case files.

In their statements of reasons, appellants Wright argue briefly that (1) jojoba does not grow in southern Nevada as a wild species; (2) jojoba has been successfully cultivated as an annual cash crop; and (3) the BLM decision is not supported by any evidence and is not related to the desert land entry regulations.

Appellants Brownfield have jointly submitted a statement of reasons to refute the BLM conclusions. Appellants make four principal arguments which are supported by a detailed factual discussion of the nature, use, and cultivation of the jojoba plant. The four arguments are:

(1) The Bureau of Land Management failed to obtain the most recent available facts in analyzing the applications in question.

(2) In interpreting the limited facts used in analyzing the referenced applications, the Bureau of Land Management drew erroneous inferences.

(3) The Bureau of Land Management erred in interpreting Federal Regulations.

(4) The decision of the Bureau is contrary to the intent of Congress in enacting the Desert Land Act.

Appellants argue that BLM's conclusions fail to reflect a large body of scientific literature and direct observation of growers of jojoba addressing the need for a water supply greater than that of the annual rainfall in the intended area of entry in order to make the plant bear fruit in commercial quantities. They contend that the literature on jojoba abounds with evidence of its commercial value and financial feasibility and that the biological and cultural requirements of jojoba have been extensively studied. These arguments are supported by detailed factual discussion rebutting BLM's conclusions as well as an extensive list of reference materials on the jojoba plant.

Appellants further assert that BLM erred in citing 43 CFR 2520.0-8(d)(3) for its second conclusion because that regulation is concerned with the contiguity and compactness of the proposed lands as a practical operating unit, not the economic feasibility of the crop.

Finally appellants argue that their applications comply with the requirements for desert land entry. They claim that the land proposed for entry is susceptible to irrigation and has the capability of producing an agricultural product which would return a fair reward for the cost of producing it. They urge that they have pursued water rights to the extent possible in Nevada prior to application approval and have demonstrated the economic feasibility of the crop to be cultivated. Appellants conclude by asserting that the growing of jojoba on reclaimed desert land is entirely consistent with public land management policy in the United States which seeks to protect the scenic, ecological, and environmental values of the land but recognizes the need for domestic sources of minerals, food, timber, and fiber from the public lands. See 43 U.S.C. § 1701 (1976).

Appellant Turner argues that the jojoba plant is not a native species of Nevada, could not be grown for commercial purposes without irrigation, and thus is an appropriate crop for cultivation on a desert land entry. He further contends that the BLM decision is arbitrary and capricious because it is not supported by facts in the record and he requests that a hearing be ordered. Finally, he asserts that there is available evidence to show the needs of the plant and evaluate land on which cultivation is proposed. Appellant has submitted detailed factual documentation to support his assertions.

[1] BLM has not reviewed or commented on the information submitted by appellants. Without expressing any opinion as to the accuracy or acceptability of the appellants' arguments, we will remand the cases to BLM for its further review. If, after such review, BLM again determines that the applications to make desert entry should not be

allowed, the record must provide a reasoned basis for such determination, and the conclusions set forth in appropriate decisions.

Nothing in this decision will preclude appropriate action on the applications on any matters not addressed in the prior decisions.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions below are set aside and the cases remanded to the State Director for Nevada for further consideration and action consistent with this opinion.

Joan B. Thompson
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Douglas E. Henriques
Administrative Judge

