

ROBERT A. ADAMS

IBLA 81-262

Decided September 8, 1981

Appeal from decision of California State Office, Bureau of Land Management, rejecting application to make desert land entry. CA 8964.

Affirmed.

1. Desert Land Entry: Applications -- Desert Land Entry: Lands Subject to -- Reclamation Lands -- Withdrawals and Reservations: Reclamation Withdrawals

A desert land application filed for lands which are withdrawn for reclamation purposes at the time of the filing of the application must be rejected. It cannot be suspended pending the lifting of the withdrawal. Even where the purpose of the withdrawal cannot be met, the withdrawal is nevertheless effective to bar the disposal of the land.

APPEARANCES: Robert A. Adams, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Robert A. Adams appeals the December 17, 1980, decision of the California State Office, Bureau of Land Management (BLM), which rejected his desert land application CA 8964 to enter the E 1/2 SE 1/4 sec. 32, W 1/2 SW 1/4 sec. 33, T. 16 S., R. 19 E., San Bernardino meridian, Imperial County, California, under the provisions of the Act of March 3, 1877, as amended, 43 U.S.C. §§ 321-323 (1976), because the land was withdrawn April 9, 1909, under the first form, for reclamation in connection with the Yuma project. The decision quoted 43 CFR 2322.1-1:

After lands have been withdrawn under the first form they cannot be entered, selected, or located in any manner so long as they remain so withdrawn, and all applications

for such entries, selections, or locations presented after the date of such withdrawal should be rejected and denied. Any withdrawal otherwise valid shall not be affected by failure to note same on tract book or otherwise follow unusual procedure.

Appellant argues that the land status maps of BLM showed the land to be open to application when he filed his application, and his conclusion allegedly was verified by a BLM employee. Appellant contends the withdrawal for reclamation was required by law to be renewed every 7 years, an action which has not been taken by the Government as to this withdrawal, so that he, as a disabled veteran honorably discharged from the United States Marine Corps, is entitled to make the desert land entry he seeks.

[1] Section 3 of the General Reclamation Act of June 17, 1902, 43 U.S.C. § 416 (1970), provided for the withdrawal by the Secretary of the Interior of lands from all disposition other than as provided for by the Act. <sup>1/</sup> Lands withdrawn under the first form were those that may possibly be needed for construction and maintenance of irrigation works. Withdrawals under the second form were for lands not supposed to be needed in actual construction and maintenance of irrigation works but which may possibly be irrigated from such lands.

Repeal of the authority of the Secretary of the Interior to withdraw lands for reclamation did not eliminate the existing reclamation withdrawals. Section 1704(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), P.L. 94-579, October 21, 1976. Section 204(1) of FLPMA, 43 U.S.C. § 1714 (1976), provides that the Secretary shall, within a 15-year period after October 21, 1976, review all withdrawals existing on that date, and determine whether and for how long the existing withdrawals should be continued. However, until action has been taken to terminate a withdrawal it remains in effect. The master title plat for T. 16 S., R. 19 E., San Bernardino meridian, is noted that the entire township was included in the Secretary's order of April 9, 1909, Yuma reclamation project. That notation was on the plat on the date that the subject application was filed.

Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application for entry until the record has been changed to reflect that the land is no longer so segregated. This rule applies even where the notation was posted to the records in error, or where the segregative use is void, voidable, or has terminated. Stephen Kenyon, 51 IBLA 368 (1980).

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<sup>1/</sup> The withdrawal authority of the Secretary under 43 U.S.C. § 416 (1976), was repealed by section 704(a) of FLPMA.

Even if the notation of the reclamation withdrawal was misconstrued by appellant or by a BLM employee, it will avail appellant nothing. As 43 CFR 1810.3(c) states: "Reliance upon information or opinion of any officer, agent or employee or on records maintained by land offices cannot operate to vest any right not authorized by law."

Lands which are withdrawn are not subject to appropriation under the desert land laws. Ralph J. Mellin, 6 IBLA 193 (1972); Leroy Martin, 4 IBLA 160 (1971). A desert land application for withdrawn lands must be rejected as such lands are not subject to disposal under the public land laws. Timothy O. Witt, A-25664 (April 1, 1949). An application for withdrawn lands must be rejected and may not be suspended pending restoration of the land. See 43 CFR 2091.1. 2/

Appellant has argued that the lands are not suitable for the reclamation purposes for which the withdrawal was made. Assuming, arguendo, that the assertions are correct, it would not help appellant. Even where it is impossible to accomplish the purpose of withdrawal, the withdrawal is nevertheless effective to preclude the disposal of the land. Robert N. Ford, 4 IBLA 321 (1972).

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:

Bruce R. Harris  
Administrative Judge

Gail M. Frazier  
Administrative Judge

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2/ We do not know of any requirement, as asserted by appellant, that reclamation withdrawals be renewed every 7 years.

