

GARY E. CARTER

IBLA 81-706

Decided July 15, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, rejecting desert land entry application I-17244.

1. Desert Land Entry: Applications -- Withdrawals and Reservations:
Effect of

BLM may properly reject a desert land entry application where the land applied for has been withdrawn by a public land order as part of the Snake River Birds of Prey National Conservation Area.

APPEARANCES: Gary E. Carter, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Gary E. Carter has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated May 5, 1981, rejecting his desert land entry application, I-17244, because the land had been withdrawn from desert land entry.

On January 5, 1981, appellant filed an application pursuant to the Act of March 3, 1877, as amended, 43 U.S.C. § 321 (1976), for 320 acres of land situated in the E 1/2 sec. 33, T. 3 S., R. 1 W., Boise meridian, Idaho. BLM rejected the application because the land had been withdrawn by Public Land Order (PLO) No. 5777 on November 26, 1980, as a part of the Snake River Birds of Prey National Conservation Area. See 45 FR 78688 (Nov. 26, 1980). The withdrawal order specifically withdrew the land "from entry, application, or selection under the Desert Land Act (43 U.S.C. [§ 321] * * * et seq.)." Id.

In his statement of reasons for appeal, appellant contends that the land is "far more valuable for agriculture than for a bird refuge." Appellant argues that the land, if used for agriculture, would offer the advantages of annual produce, increased county tax revenues, direct and indirect employment, and certain wildlife values. Moreover, he states the land is about 3 miles from the "bird of prey habitat" and, therefore, "of minor value thereto."

[1] Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1714 (1976), authorizes the Secretary of the Interior to make withdrawals. PLO 5777 was issued pursuant to that authority. It specifically withdrew the land from entry under the Act of March 3, 1877, supra. A desert land entry application for withdrawn lands must be rejected and will not be suspended pending restoration of the land. See Robert A. Adams, 57 IBLA 370 (1981), and cases cited therein. Under 43 CFR 2520.0-8(a) desert land entries may only be made on "unreserved" public land. Accordingly, BLM properly rejected appellant's application.

On appeal, appellant contends that the land has greater value for agriculture than as a bird of prey habitat. Regardless of the relative merits of appellant's argument, the Board does not have authority to weigh the conflicting interests involved. The withdrawal operates as an absolute bar to appropriation of the land under the desert land laws until the withdrawal is revoked and the land restored to entry. Cecilia J. Cuin, 36 IBLA 250 (1978).

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.

James L. Burski
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

