

BILL K. YEARSLEY
MILALEE H. YEARSLEY

IBLA 81-875, 81-876

Decided September 13, 1982

Appeals from decisions of the Idaho State Office, Bureau of Land Management, rejecting applications I 17660 and I 17661 for desert land entry.

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 thereby segregated from desert land entry, which classification has not been terminated by either a reclassification or publication in the Federal Register of termination of classification, an application for desert land entry is properly denied.

APPEARANCES: Bill K. Yearsley and Milalee H. Yearsley, pro sese.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Bill K. Yearsley and Milalee H. Yearsley appeal from decisions dated June 19 and 22, 1981, whereby the Idaho State Office, Bureau of Land Management (BLM), rejected their individual applications, I 17660 and I 17661, to make desert land entry on the SW 1/4, W 1/2 SE 1/4 sec. 28; N 1/2 NW 1/4 sec. 33; and the W 1/2 sec. 27, respectively, in T. 9 N., R. 36 E., Boise meridian, Idaho. The decisions stated that the applied-for lands had been classified for retention for multiple use management by BLM Order I-2448 dated October 16, 1968, later published in the Federal Register at 34 FR 11429 (July 10, 1969), which classification was still in effect serving to segregate or close the lands to all applications for desert land entry.

The notice of classification affecting the applied for lands reads in pertinent part, as follows:

NOTICE OF CLASSIFICATION OF PUBLIC LANDS
FOR MULTIPLE USE MANAGEMENT

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, Parts 2410 and 2411, the public lands within the area described below * * * are hereby classified for multiple-use management. Publication of this notice has the effect (a) of segregating all of the public lands within the described area below from appropriation only 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 (43 U.S.C. 1171) and (b) of further segregating the lands described in paragraph 4 of this notice from the operation of the general mining laws (30 U.S.C. Ch. 2). Except as provided in (a) and (b) above, the lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws. * * * As used herein, "public lands" means any lands 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.

Sections 321-339 form Chapter 9 of Title 43, United States Code, and set forth the law relating to desert land entries. Thus, the notice of classification specifically segregated the subject land from appropriation by desert land entry. 43 CFR 2461.5.

Appellants contend in their statements of reasons for appeal that the lands applied for are not manageable by BLM because they are small parcels, surrounded by private lands, and they are not within existing grazing units. Further, appellants assert that the land has good access to underground water for irrigation and that the soil is suitable for cultivation.

[1] The regulation at 43 CFR 2461.5(a) implementing the Act of September 19, 1964, 43 U.S.C. §§ 1411-1418 (1976), sets forth the segregative effect of classification for retention in Federal ownership and 43 CFR 2461.5(c) describes how such segregative effect may be lifted:

(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.

Where the Secretary of the Interior, or his delegate, by appropriate notice in the Federal Register has classified certain lands for multiple use management and such lands are thereby segregated from desert land entry, and the classification has not been terminated by either a reclassification or publication in the Federal Register of notice of termination of the classification, it is proper for BLM to reject applications to make desert land entry. Melvin V. Frandsen, 43 IBLA 130 (1979); Paul M. Jenkins, 39 IBLA 141 (1979). 1/

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.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

James L. Burski
Administrative Judge

1/ BLM has indicated by letter dated June 22, 1981, that although the lands are currently classified for retention for multiple use management, the classification will be reviewed by BLM and that, if reclassified, the lands will be made available for disposition on an equal opportunity basis. See 43 CFR 2470.2(b).

