

JOHN DILLINGHAM ET AL.

IBLA 83-424, et al.

Decided May 24, 1983

Appeals from decisions of Nevada State Office, Bureau of Land Management, rejecting applications under the Small Tract Act, and offering direct sale of the tracts for the current fair market value. Nev. 023377, etc.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Repealers -- Small Tract Act

The Small Tract Act, 43 U.S.C. § 682a (1976) was repealed by sec. 702 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976.

2. Applications and Entries: Vested Rights -- Small Tract Act

The mere filing of a small tract application does not create in the applicant any right or interest in the land. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1976), cannot acquire any right or interest in the land by virtue of administrative delay in processing the application. When the current fair market value of the land has been determined in accordance with accepted procedures, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error.

3. Appraisals

Appraisals of fair market value made in accordance with accepted procedures will not be disturbed in the absence of positive, substantial evidence that the appraisal is in error.

APPEARANCES: John N. Dillingham, pro se; Mrs. Ruby Dillingham, pro se; Raymond Ratinoff, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

In 1954 and 1955, many individuals filed applications in the Reno, Nevada, land office, under the Small Tract Act, 43 U.S.C. § 682a (1976), for tracts of 2-1/2 or 5 acres in sec. 15 and sec. 22, T. 20 S., R. 60 E., Mount Diablo meridian, Clark County, Nevada, adjacent to the city of Las Vegas.

On May 10, 1962, Bureau of Land Management (BLM) issued a decision, rejecting the small tract applications in, inter alia, sec. 15 and sec. 22, T. 20 S., R. 60 E., stating that conflicts with unpatented mining claims had delayed adjudication of the small tract applications, that contest proceedings against the mining claims were ongoing, but BLM was unable to predict when the proceedings would be concluded, so each small tract applicant was offered an alternate site in sec. 20, T. 22 S., R. 60 E., for which a purchase price was indicated. The applicants were allowed 60 days to tender the indicated purchase price or to appeal. The decision was modified by decision of June 8, 1962, wherein the applicants were given 60 days to choose one of three alternatives: To have the original application remain pending, to pay the purchase price for the indicated alternate tract, or to withdraw the purchase money, if already submitted, and have the original application reinstated.

On May 1, 1964, BLM renewed the opportunity for the small tract applicants to obtain an alternate tract through a drawing procedure. Those who declined to participate had their original small tract applications remain on file, although suspended until the conflict with the unpatented mining claims was resolved.

On May 4, 1971, BLM advised the small tract applicants that the mining claims had been declared null and void by the Department following the contest proceedings, but the claimants had advised they would seek judicial review.

On April 27, 1972, the Las Vegas District Office, BLM, advised the small tract applicants that under NEPA an environmental analysis was required, which would further delay action on the small tract applications.

By letter of July 15, 1974, BLM advised the small tract applicants that the environmental analysis required by NEPA was completed, and a reappraisal was under way, but until a final decision was issued by the court, no action could be taken on any of the small tract applications.

By letter of August 7, 1981, BLM advised the small tract applicants that the mining claims were finally determined to be void when the Supreme Court denied a petition for certiorari. Each applicant would be advised of the purchase price for his small tract when the appraisal is completed, probably in October 1982.

By notice of June 14, 1982, BLM listed some 137 parcels of land which had been filed upon under the Small Tract Act and gave 45 days for submission of comments from interested parties. Each applicant was advised that he

would be informed of the current fair market value purchase price when the appraisal was completed, and would then be allowed 30 days to exercise his option to purchase, submitting at least 20 percent of the purchase price when he exercised his option, and submitting the remainder of the purchase price within 30 days thereafter.

Letter decisions of November 23, 1982, rejected the original small tract applications, stating the Small Tract Act was repealed by section 702 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2789. Accompanying the decision was a letter informing each affected applicant that the small tract he or she had applied for was encumbered with a conflict and a period of 60 days was allowed to select an alternate parcel from an enclosed list. Notice of the selection had to be made in writing and be accompanied by payment of 20 percent of the purchase price indicated on the list. The 80 percent balance is due 30 days thereafter. From these letter decisions, the subject appeals were taken. 1/

Appellants contend that FLPMA did not repeal the Small Tract Act, but only foreclosed the further filing of applications for small tracts. As their small tract applications had been on file with BLM for more than 25 years, they have a vested interest to receive the small tract for which each one filed. They suggest that BLM held the land in trust for them pending disposition of the conflicting mineral interests. Appellants argue that the "pink slips" (receipts for filing fee and advance rental) issued to each of them by BLM represent a binding contract. They assert they had been permitted to have their small tract applications remain pending until the conflicting mining claims were removed, and then to purchase the land at the fair market value. They contend the current appraisals are not fair market value, but highly inflated as evidenced by the lack of bidding at two recent sales of small tracts by BLM in the Las Vegas area. Finally, they suggest that BLM has done everything in its power to deprive the small tract applicants of the lands they filed on by setting such high appraisal prices.

[1] Looking at the first argument, section 702 of FLPMA, styled "Repeal of laws relating to homesteading and small tracts," reads as follows: "Effective and after the date of approval of this Act, the following statutes or parts of statutes are repealed \* \* \*." Included among the laws repealed by this section are the Act of June 1, 1938, 52 Stat. 609 (the original Small Tract Act), the Act of July 14, 1945, 59 Stat. 467, and the Act of June 8, 1954, 68 Stat. 239 (both amendatory acts to the original Small Tract Act). Contrary to appellants' belief, the Small Tract Act was effectively repealed October 21, 1976, by FLPMA.

[2, 3] The argument that the "pink slip" (receipt) issued by BLM represents a binding contract has no merit. The Department has long held that an applicant for land under the Small Tract Act cannot acquire any right or interest in the land by the filing of an application, nor may any such right or interest be acquired because of a delay in the processing of the application. The filing of an application entitles the applicant only to have the application considered. When the current fair market value has been determined in accordance with accepted procedures, the appraisal will not be disturbed

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1/ See appendix.

in the absence of positive substantial evidence that it is in error. Abraham Epstein, 24 IBLA 195 (1976); George D. Jackson, 20 IBLA 253 (1975); Glenn T. Nelson, 16 IBLA 105 (1974); Jack T. Lofstrom, A-30699 (Mar. 23, 1967); Cecil W. Hinshaw, A-30006 (July 23, 1964).

The small tracts at issue were appraised by qualified appraisers, who used the market data approach, and whose results are fully supported by recent sales of similar parcels of land in sec. 3, sec. 4, sec. 9, sec. 10, and sec. 28, T. 20 S., R. 60 E., in close proximity to the subject tracts in sec. 15. Appellants have not submitted any positive substantial evidence that the appraisals are in error. Accordingly, the appraisals will not be disturbed.

The complaint that BLM did not move with expedition in clearing the area of the conflicting mining claims cannot be accepted. It must be pointed out that BLM cannot summarily declare unpatented mining claims on public land null and void. The process to eliminate unpatented mining claims, located on public lands open to such location, is time consuming. If, upon examination of the claims, the Government's mineral examiner believes the claims are not supported by discovery of a valuable mineral deposit, he will recommend a contest against the claims, alleging, inter alia, the lack of discovery of a valuable mineral deposit. If the mining claimant timely responds, denying the charges, the matter then goes to a hearing, scheduled at the convenience of the Administrative Law Judge to whom it is assigned. Following the hearing, a decision is prepared, based on evidence and testimony received at the hearing. If the decision is adverse to the mining claimant, right of appeal to the Secretary of the Interior is allowed, for whom the Interior Board of Land Appeals (IBLA) has delegated authority and responsibility for appeals relating to public lands and minerals. Following the IBLA decision, the claimant may seek judicial review of the proceedings, through the whole gamut of the Federal courts, district court for the jurisdiction where the claims are located, or the district court for the District of Columbia, the court of appeals for the circuit in which the district court is situated, and finally the United States Supreme Court.

In the instant cases, the BLM contest complaint was issued March 18, 1960; following a response from the claimants the hearing was held in April 1965, and the decision of hearing officer was issued August 15, 1968. Being adverse to the claimants, an appeal was taken. The IBLA decision, United States v. McCall, 2 IBLA 64, 78 I.D. 71 (1971), was issued March 22, 1971, affirming the hearing officer. Thereafter, the claimants sought judicial review. The United States District Court for Nevada affirmed the IBLA decision on June 15, 1976, and denied reconsideration August 17, 1977. On appeal, the Ninth Circuit affirmed in McCall v. Boyles, 624 F.2d 192 (July 10, 1980). Then on March 23, 1981, the United States Supreme Court denied a petition for certiorari, McCall v. Watt, 101 S. Ct. 1700. At that time, and only at that time, were the unpatented mining claims truly declared null and void. The time consumed by the various appeals cannot be attributed to lack of expedition by BLM.

Realizing that the appellate procedures could run on for many years, BLM did offer appellants and other small tract applicants alternate tracts, but the appellants declined to take advantage of the offer.

Having thus relied upon their original small tract applications, appellants must now recognize that the Small Tract Act was repealed by FLPMA in 1976, that the lands sought are encumbered by right of ways or are under the 100-year flood level, and that sales of public land are now governed by section 203 of FLPMA, 43 U.S.C. § 1713 (1976), and for land in Clark County, Nevada, by P.L. 96-586, 94 Stat. 3381, December 23, 1980. These statutes, especially FLPMA, require sale of public lands at not less than the current fair market price.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

Gail M. Frazier  
Administrative Judge

**Editor's note: the original text of the appendix was printed sideways on the sheet -- the left 1/2 is printed first and the right 1/2 is printed below the left 1/2.**

APPENDIX

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IBLA Docket	<u>BLM Serial</u>	<u>Appellant</u>
83-424	Nev 023377	John Dillingham
83-425	Nev 023533	Mrs. Gilbert S. Dillingham
83-453	Nev 030620	Raymond Ratinoff

**right 1/2**

<u>Land Description</u> <u>T. 20 S., R. 60 E.</u>	<u>Date of</u> <u>Application</u>
15: SW 1/4 NW 1/4 NE 1/4 NE 1/4	April 9, 1954
15: NW 1/4 NW 1/4 SE 1/4 NE 1/4	April 15, 1954
22: NE 1/4 NE 1/4 SE 1/4 SW 1/4	December 27, 1954

