

JAMES AND GLORIA ELDORADO

IBLA 83-503

Decided July 2, 1984

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting desert land entry application, N-34733.

Affirmed.

1. Patents of Public Lands: Effect

The effect of the issuance of a legal patent is to transfer legal title from the United States and remove the land from jurisdiction of the Department of the Interior. Applications for land, title to which has passed from the United States by issuance of a legal patent, must be rejected.

APPEARANCES: James and Gloria Eldorado, pro sese.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

James and Gloria Eldorado appeal from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated March 16, 1983, rejecting their desert land entry application, N-34733. The BLM decision states that the land for which appellants had applied had been transferred out of Federal ownership and therefore is not subject to application under the Desert Land Act, 43 U.S.C. §§ 321-339 (1982).

On appeal, appellants assert that the land was under Federal ownership at the time of the application. They contend that consideration of the application was delayed in anticipation of the transfer of the land from Federal to State ownership.

Initially, we would note that mere delay in adjudication of their desert land application would not serve to vest any rights in appellants. In any event, however, appellants are simply mistaken in their factual assumptions. The record shows that appellants' desert land entry application was received and date stamped by BLM on November 4, 1981. The land requested included the NW 1/4 SE 1/4 SE 1/4, W 1/2 NE 1/4 SE 1/4 SE 1/4, W 1/2 SW 1/4, NE 1/4 SE 1/4 sec. 20, T. 21 S., R. 60 E., Mount Diablo meridian, containing a total of 20 acres. The record clearly shows that four patents for the same lands had

issued in 1959 and 1960, at least 20 years prior to their application. 1/ Appellants have not asserted that the patents involved herein were improperly issued.

[1] In a case in which Federal officers have acted within the scope of their authority, a patent for land once issued passes beyond the control of the executive branch of the Government. United States v. State of Washington, 233 F.2d 811 (9th Cir. 1956). The effect of the issuance of a land patent is to transfer the legal title from the United States. Robert Dole Marston, 51 IBLA 115 (1980); Federal American Partners, 37 IBLA 330 (1978); State of Alaska, 35 IBLA 140 (1978). It is obvious that the Department must reject an application for a desert land entry where the land sought has already passed from United States ownership.

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

Wm. Philip Horton

Chief Administrative Judge

Franklin D. Arness  
Administrative Judge

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1/ The patents containing 5 acres each are all within sec. 20, T. 21 S., R. 60 E., Mount Diablo meridian. Patent 1194541, issued Apr. 9, 1959, is described as the W 1/2 NW 1/4 SE 1/4 SE 1/4. Patent 1203103, issued Jan. 12, 1960, is described as the W 1/2 NE 1/4 SE 1/4 SE 1/4. Patent 1203104 issued Jan. 12, 1960, is described as the E 1/2 NW 1/4 SE 1/4 SE 1/4. Patent 1203132, also issued on Jan. 12, 1960, is described as the W 1/2 SW 1/4 NE 1/4 SE 1/4.

