

DALE CHRISTIANSEN

IBLA 83-976

Decided July 23, 1984

Appeal from decision of Nevada State Office, Bureau of Land Management, rejecting desert land entry application N-30435.

Affirmed.

1. Desert Land Entry: Applications -- Desert Land Entry: Water right

A desert land entry application is properly rejected where the applicant proposes to irrigate his entry from underground water sources, but fails to show at the time of filing his application that he has acquired a right from the State to appropriate underground water or that he has taken appropriate steps, as far as then possible, looking to the acquisition of such a right.

APPEARANCES: Dale Christiansen, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Dale Christiansen has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated August 10, 1983, rejecting his desert land entry application N-30435.

On July 24, 1980, appellant filed a desert land entry application for 320 acres of land situated in the N 1/2 sec. 22, T. 16 S., R. 56 E., Mount Diablo meridian, Clark County, Nevada, pursuant to section 1 of the Act of March 3, 1877, as amended, 43 U.S.C. § 321 (1982). In his application, appellant stated that he intended to plant 304 acres of alfalfa, which would yield 5 tons per acre, and that water would be obtained from a "well." Appellant proposed to drill a well to a depth of 110 feet, at a diameter of 16 inches, and to use a 300-horsepower turbine pressure pump. Appellant estimated the total cost of the well, pump, sprinkler system, leveling, ditches and canals, and other installations at \$124,500. However, appellant, in responding to question 12b on the application form (Form 2520-1 (August 1977)), indicated that he had not "proceeded as far as possible toward acquiring by appropriation, purchase, or contract, a right to the permanent use of sufficient water to irrigate and reclaim permanently all of the irrigable portions of each of the legal subdivisions applied for."

In its August 1983 decision, BLM rejected appellant's desert land entry application because the application had not been accompanied by "evidence that the applicant has taken action to initiate the right to appropriate water for irrigation purposes," in accordance with 43 CFR 2521.2(d). In particular, BLM stated: "The information you submitted with your desert land application indicated that you propose to irrigate your entry from a well. However, it was not accompanied by any evidence that shows you have applied to the Nevada State Water Engineer for appropriation of underground water for irrigation purposes."

In his statement of reasons for appeal, appellant contends that he should be allowed time to fulfill the "water requirement." He notes that in 1980 he sent a personal money order to the Nevada Water Commission for \$35 in order to "cover the water aspect" for his desert land entry but that the money order has never been cashed. Appellant submits a copy of a money order, dated June 24, 1980, made out to the Nevada Water Commission.

[1] Section 1 of the Act of March 3, 1877, *supra*, provides for the entry of desert lands of the United States for the purpose of reclaiming them "by conducting water upon the same * * * Provided, however, that the right to the use of water by the person so conducting the same * * * shall depend upon bona fide prior appropriation." (Emphasis added.) Similarly, the implementing regulation, 43 CFR 2521.2(d), provides in relevant part:

No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right, or, in States where no permit or right to appropriate water is granted until the land embraced within the application is classified as suitable for desert-land entry or the entry is allowed, a showing that the applicant is otherwise qualified under State law to secure such permit or right. [Emphasis added.]

As we said in Patricia K. Scher, 59 IBLA 276, 278 (1981), "[e]vidence of water rights, i.e., the 'right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought,' is a vital prerequisite to approval of a desert land entry application. See, e.g., Dixie L. Bjornestad, 27 IBLA 201 (1976); Arthur J. Dunford, A-29307 (Mar. 26, 1963)."

In the present case, appellant failed to provide, at the time of filing his application, evidence either that he had already acquired by appropriation, purchase or contract or was taking steps, "as far as then possible," to acquire appropriate water rights, as required by 43 CFR 2521.2(d). In fact, he stated in his application that he had not proceeded as far as possible toward acquiring such water rights.

Where evidence has been submitted, 43 CFR 2521.2(d) provides that "[t]he authorized officer will examine the evidence submitted * * * and

either reject defective applications or require additional evidence." We believe that a similar course is proper where an applicant fails to submit any evidence, *i.e.*, BLM may either reject an application or require evidence of a water right. In James R. Hardcastle, 69 IBLA 341 (1982), the Board affirmed a BLM decision rejecting a desert land entry application where the applicant had failed to respond within 30 days as required in an earlier decision holding the application for rejection subject in part to submission of evidence of a water right. ^{1/} However, we believe that rejection was appropriate in the present case where over 3 years had elapsed since the filing of appellant's application, and he did not submit some evidence of compliance with 43 CFR 2521.2(d). Appellant is deemed to have known of the regulatory requirement. See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

In any case, as we said in James R. Hardcastle, *supra* at 342:

An application to make desert land entry in Nevada is properly rejected where the applicant, who proposes to irrigate the land by means of a well, makes no showing whatsoever that, at the time of filing of his application, he had taken any action to initiate the right to appropriate underground water. Vernon Casper Hall, A-28511 (Mar. 14, 1961).

In Hall, the Deputy Solicitor concluded that evidence that an application had been made to the State Engineer's office to obtain a water permit would comply with the regulatory requirement. However, the appellant in Hall had argued that Nevada would not issue a water permit until a desert land entry was allowed. If that is the case, the current regulation provides that an applicant need only demonstrate that he is "otherwise qualified under State law to secure such permit." 43 CFR 2521.2(d). Appellant did not make such a showing. See Elmer A. Kubler, 80 IBLA 283 (1984).

On appeal, appellant states that he sent money to the Nevada Water Commission, presumably to obtain a water permit. However, appellant does not provide any evidence that an application for a water permit was made, other than a copy of an uncashed personal money order. Moreover, appellant has not indicated that he has ever sought to follow up or to inquire further about his purported application for a water permit. In any case, in view of the fact that appellant's application was not accompanied by any evidence in compliance with 43 CFR 2521.2(d) and the length of time since appellant's application was filed, we conclude that BLM properly rejected appellant's desert land entry application. That rejection is without prejudice to appellant's right to file a new complete application. See Lee A. Fite, 82 IBLA 1 (1984).

^{1/} In Hardcastle we cited a number of older Departmental decisions where BLM had simply rejected a desert land entry application which was not accompanied by the relevant evidence. However, the regulation that was applied in those cases, 43 CFR 232.13 (1961), provided that: "All applications not accompanied by the evidence above indicated will be rejected."

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.

Gail M. Frazier
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge

