

JOE J. PINSON ET AL.

IBLA 84-443, 84-444, 84-445,

84-446, 84-447, 84-448;

84-449

Decided December 10, 1984

Appeals from decisions of the Nevada State Office, Bureau of Land Management, rejecting desert land entry applications N 24679, N 24680, and N 28223 through N 28227.

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 the entry from underground water sources but fails to show at the time of filing the application that a right to appropriate underground water has been acquired or that appropriate steps have been taken, as far as then possible, toward the acquisition of such a right.

APPEARANCES: Gary R. Christiansen, Esq., Kalispell, Montana, for appellants.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Joe J. Pinson and Jada J. Parrish appeal from March 20, 1984, decisions of the Nevada State Office, Bureau of Land Management (BLM), rejecting desert

land entry applications N 24679 and N 24680. Sandra Pinson, Judd J. Pinson, Janice J. Pinson, Isabel H. Reyes, and Floyd D. Pinson appeal from March 21, 1984, decisions of the Nevada State Office, BLM, rejecting desert land entry applications N 28223 through N 28227. BLM separately rejected these applications because each appellant had not "proceeded as far as possible in acquiring a right to water for irrigation of [his or her] entry." BLM explained that information submitted with each application indicated a proposal to irrigate the entry from a well, but that the applicants failed to provide evidence that they had applied to the Nevada State Water Engineer for appropriation of underground water for irrigation purposes.

Each of these desert land entry applications was filed for 317- to 320-acre tracts situated in close proximity in Elko County, Nevada. ^{1/} All except application N 28225 (Janice J. Pinson) proposed to obtain water from common wells in a joint irrigation system. An explanation of the "community system" was attached to the application of each participating applicant. Application N 28225 included a proposal for a separate well.

These appeals have been consolidated by the Board because of the common factual context and the common issue presented. The statements of reasons in support of the appeals are virtually identical. Each appellant asserts:

That the Appellant[s], acting by and through Joe J. Pinson and Janice J. Pinson, have in fact complied with the provisions

^{1/} N 24679 and N 24680 were originally filed on May 29, 1979. Amended applications for N 24679 and N 24680 and original applications for N 28223 through N 28227 were received by BLM on Jan. 11, 1980, under a cover letter from Joe Pinson.

and intent of 43 CFR 2521.2(d) to the best of their knowledge and abilities and to the extent they were informed they needed to comply and, in fact, could comply. 2/

An affidavit of Joe J. Pinson and Janice J. Pinson accompanied each statement of reasons. They recited facts of several meetings and discussions with BLM officials and jointly testified that: "To the best of our knowledge, and relying upon our conferences with [BLM representatives], we felt that we could not proceed further either with our water development or application." They state that they were never informed that they could "complete and file any water rights papers until after approval of our Desert Land Applications." Accompanying the appeals was a copy of an "Application for Permit to Appropriate the Public Waters of the State of Nevada" executed by Joe J. Pinson on behalf of an association of the seven appellants named here, including Janice J. Pinson. 3/ Although the copy of the application does not disclose the date it was executed or the date it was filed with the Nevada State Water Engineer, it appears that the water permit application

2/ An applicant is not precluded from obtaining the assistance of a family member in making an application before the Department. See 43 CFR 1.2, 1.3. Further, persons making desert land entry applications may associate together in the construction of canals and ditches for irrigating and reclaiming the tracts for which they have applied. 43 U.S.C. § 327 (1982). However, it should be noted that the aggregate acreage which one person may obtain by desert land entry application is 320 acres. 43 U.S.C. § 321 (1982). No assignment may be made of an entry to an association or corporation and no assignment may be made to an individual except to the extent that individual is eligible to apply for the tract of land assigned. 43 U.S.C. § 324 (1982). Assignments or agreements to assign in contravention of this restriction made before patent may result in rejection of applications or even cancellation of patents. See Reed v. Morton, 480 F.2d 634 (9th Cir.), cert. denied, 414 U.S. 1064 (1973).

3/ The explanatory map presents a proposal to irrigate Janice J. Pinson's entry, N 28225, with water from the community system channeled to the subject lands through a ditch.

was not filed with the State until after issuance of the decisions under appeal. ^{4/}

[1] The Desert Land Act, 43 U.S.C. § 321 (1982), provides for the entry of desert lands 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 in original.) The pertinent regulation, 43 CFR 2521.2(d), provides that no desert land entry application will be allowed unless accompanied by evidence satisfactorily showing that the prospective entryman has acquired the right to 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, so far as then possible, appropriate steps leading to the acquisition of such a water right. Question 12b of the application form, Form 2520-1 (August 1977), asks whether the applicant has complied with this requirement and adds that if the answer is "yes," the applicant "must present as evidence and make a part of this application copies of any commitments [sic] you may have, which show the legal source of your proposed water supply." All seven appellants answered "yes" but failed to submit any evidence of water rights or applications therefor.

The Department has consistently held that a desert land entry application not accompanied by evidence showing both that the applicant has _____

^{4/} A telephone report in the case file discloses that as of Apr. 18, 1984, the water permit application had not been received by the Office of the State Water Engineer and that further discussion with that office indicated that all available irrigation water in the general area of the proposed desert land entries was allocated.

obtained a water right and that the right would provide a permanent and feasible source of sufficient water for irrigation is properly rejected. Elmer A. Kubler, 80 IBLA 283 (1984); Janice Pearson, 73 IBLA 220 (1983); Patricia K. Scher, 59 IBLA 276 (1981). Further, this Board has held that an application in Nevada is properly rejected where the applicant who proposes to irrigate the land by means of a well makes no showing that, at the time of filing of his application, he had taken any action necessary to initiate the right to appropriate underground water. Elmer A. Kubler, *supra*; James Neil Fletcher, 78 IBLA 330 (1984); James R. Hardcastle, 69 IBLA 341 (1982), and cases cited therein.

Appellants allege that they were unaware of the need to comply with this requirement and were misled by BLM regarding whether the submitted applications were complete. However, persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); 44 U.S.C. §§ 1507, 1510 (1982). It is expected that a party anticipating a benefit should be familiar with the relevant authority under which such benefit is to be conferred and with which he or she must comply. Further, reliance on erroneous opinion or information provided by BLM employees cannot relieve an applicant of a statutory or regulatory obligation, or of the consequences for failure to comply. *See* Harriet C. Shaftel, 79 IBLA 228 (1984); John L. Grassmeier, 77 IBLA 156, 159 (1983); 43 CFR 1810.3(c).

Since these desert land entry applications were not accompanied by the required evidence of a sufficient water right or appropriate efforts to acquire such right, they were properly rejected by BLM. Evidence tendered on appeal tending to show that an application for water rights was filed

after rejection of the application does not justify reversal of the decision. However, BLM's rejection is without prejudice to appellants' right to file another complete application with the evidence of his or her newly initiated efforts to obtain a sufficient water right. James Neil Fletcher, supra.

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.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

