

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting an application for a desert land entry, N-031350.

Set aside and remanded.

1. Desert Land Entry: Generally -- Rules of Practice: Appeals: Generally

Where, on appeal from a decision rejecting a desert land entry application because the applicant has failed to show that appropriate steps have been taken to acquire a water right, the applicant subsequently clarifies his intent such that a sufficient water right might be available, the decision rejecting the application will be set aside and the case file will be remanded to permit reconsideration of the application.

APPEARANCES: Silvita S. Rouseau, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

By decision dated August 24, 1983, the Nevada State Office, Bureau of Land Management (BLM), held for rejection desert land entry application N-031350 of Silvita S. Rouseau. BLM rejected the application because of the failure to submit with the application evidence that the applicant had proceeded as far as possible to appropriate water for the purpose of irrigating her entry. BLM noted that information submitted with appellant's desert land application indicated that the entry would be irrigated with water obtained from the Las Vegas Valley Water District, but that appellant had provided no evidence showing that the Water District was committed to furnish appellant water for irrigation purposes. BLM pointed out that a letter dated March 19, 1981, from the Las Vegas Valley Water District to BLM had informed BLM that the Water District had no specific authority to furnish either ground water or surface water through its facilities as a permanent source of agricultural irrigation. Thus, consistent with this representation, the Las Vegas Valley Water District could not serve as the source of water for irrigation as contemplated in the application.

Appellant's original application, filed on November 14, 1980, had sought to enter 52.67 acres of land, for which it was estimated that a total of 5 acre feet of water per acre would be needed. In response to question 10(d)

relating to the source of water, appellant had merely indicated "City." In response to question 12(b) concerning whether the applicant had proceeded as far as possible to acquire permanent use of sufficient water, appellant checked the "yes" box and stated "water from Las Vegas Valley Water District." There seems little question that based on the application as it then existed BLM's decision was correct. See, e.g., Elmer A. Kubler, 80 IBLA 283 (1984); Patricia K. Scher, 59 IBLA 276 (1981).

However, when appellant filed her notice of appeal she resubmitted her application with certain amendments added in ink. These additions indicate that she has a well on her property (adjacent to the tract which she seeks to enter) which was completed on December 6, 1960, and that the depth of static water is 300 feet. Thus, while it is uncertain whether it was always appellant's intent, it is now clear that she intends to irrigate the land from a developed well on her own land.

We recognize that some of the confusion engendered by the case was directly the result of appellant's failure to sufficiently describe her plan of irrigation in her original application. Moreover, we note that it is by no means certain that appellant will be able to show a permanent use of water sufficient to irrigate the lands as required by 43 CFR 2521.2(d). The Nevada State Engineer has noted that "since March 24, 1955, all permits to appropriate water within the designated area of Las Vegas Valley have been issued as temporary permits, subject to revocation when they can be served by a water district or municipality" (Report of State Engineer, dated February 26, 1980, at 3-4). Thus, quite apart from any question of water sufficiency and her appropriative rights to water, there could be a question whether appellant's "temporary permit" is sufficient under the applicable regulations. See 43 CFR 2521.2(d). However, we believe that administrative economy is best served by setting aside the decision below and remanding the matter to the State Office, so that it might reconsider its rejection of the application in light of appellant's assertions on appeal.

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 set aside and the case files are remanded for further action consistent herewith.

James L. Burski
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

R. W. Mullen
Administrative Judge

