

ALBERT N. SMITH ET AL.

IBLA 84-207

Decided June 20, 1985

Appeal from decisions of the Nevada State Office, Bureau of Land Management, rejecting desert land entry applications N-24124, N-24191, N-24193, N-24194, N-24197, N-24198, N-24200, and N-24201.

Affirmed.

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

A desert land entry application is properly rejected where the applicant fails to provide evidence of 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.

APPEARANCES: Paul W. Smith and Joan P. Smith, Ruby Valley, Nevada, pro sese.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Paul W. Smith and Joan P. Smith have appealed from eight decisions of the Nevada State Office, Bureau of Land Management (BLM), dated November 16 and 17, 1983, rejecting desert land entry applications filed by Joan P. Smith (N-24124), Albert N. Smith (N-24191, N-24193, and N-24194), and Amelia S. Smith (N-24197, N-24198, N-24200, and N-24201). In each case, the applications were rejected because they were not accompanied by any evidence the applicant had proceeded as far as possible to appropriate water for the purpose of irrigating the entry.

On December 19, 1983, a notice of appeal and statement of reasons for appeal were filed by Paul W. Smith and Joan P. Smith, as officers of Smith Bros. OX Ranch. In the notice and statement appellants aver they are "officers of Smith Bros. OX Ranch and a family group owning lands which are immediately adjacent to the desert land tracts that [they] applied for jointly \* \* \*." Appellants state that they "did make application to the State of Nevada Water Resource. However, due to the hundreds of applications at that time, it was some time before the Water Resource acknowledged our applications." In that the questions of fact and law are identical in all material respects and the notice of appeal and statement of reasons has presented appellants' reasons for appeal addressed to the decisions as a group, rather than individually, we are able to address this opinion to all decisions appealed from.

[1] The desert land entry applications were filed on April 4 (N-24124), and April 9, 1979 (N-24191, N-24193, N-24194, N-24197, N-24198, N-24200, and N-24201), pursuant to the Desert Land Act, 43 U.S.C. § 321 (1982). That Act 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." The pertinent regulation, 43 CFR 2521.2(d), provides that no desert land application will be allowed unless accompanied by evidence satisfactorily showing either 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 he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right.

In answering question 12(b) of the application to enter, each appellant responded "no" to the query whether he or she had 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. The case files contain no evidence that an application to obtain water rights was filed prior to BLM's decisions of November 1983, other than the statement on appeal above quoted.

In Stanley C. Cheledinas, A-27985 (Aug. 3, 1959), the Department rejected an application similar to appellants' because the applicant, seeking to irrigate his entry from underground water sources by well, failed to show at the time of filing his application that he had acquired a right from the State to appropriate underground water or that he had taken steps, as far as then possible, to initiate such a right. Accord, Lee A. Fite, 82 IBLA 1 (1984); Elmer A. Kubler, 80 IBLA 283 (1984); James Neil Fletcher, 78 IBLA 330 (1984).

In their statement of reasons, appellants allege that applications have been filed for underground water with the State of Nevada. Although such applications may prove helpful for any future desert land entry applications appellants may file, rejection of the above-listed applications was proper when rendered. James Neil Fletcher, supra at 332. Such rejection, however, is not prejudicial to appellants' right to file new applications with evidence of their newly initiated efforts to obtain a sufficient water right.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the State Office are affirmed.

R. W. Mullen  
Administrative Judge

We concur:

Will A. Irwin    Wm. Philip Horton  
Administrative Judge

Chief Administrative Judge

