

FINEAS G. HUGHBANKS

IBLA 86-355

Decided May 13, 1987

Appeal from a decision of the Idaho State Office, Bureau of Land Management, cancelling desert land entry I-19421.

Affirmed.

1. Desert Land Entry: Annual Proof: Desert Land Entry: Cancellation

A desert land entry is properly cancelled when the entryman fails to submit annual proof showing the requisite improvement of the entry during the first year of the life of the entry.

APPEARANCES: Fineas G. Hughbanks, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Fineas G. Hughbanks appeals from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated January 13, 1986, cancelling desert land entry I-19421 for failure to submit annual proof for the desert land entry as required by the Desert Land Act, 43 U.S.C. § 328 (1982) and 43 CFR 2521.5.

On February 22, 1983, appellant filed his desert land entry application pursuant to the Desert Land Act, 43 U.S.C. § 321 (1982), for 40 acres located in the SW 1/4 NE 1/4, sec. 6, T. 14 N., R. 22 E., Boise Meridian, Idaho.

On October 29, 1984, BLM sent appellant a Notice of Allowance for his entry and enclosed regulation circular No. 2291. BLM advised appellant:

You should keep in mind the requirement for doing annual improvement work (see pages 5-6 of circular). This must be done in order to keep your entry in good standing. You will not be sent advance requests for submitting annual proof, but you will be notified if you are in default. Forms for filing annual proof statements are available from this office on request.

By decision dated October 31, 1985, BLM notified appellant that the first annual proof for his desert land entry had not been made. BLM allowed appellant 60 days from the date of receipt of its decision in which to submit proof or suffer cancellation of his entry. Appellant did not submit the required proof within the time allowed and BLM cancelled the entry by its January 13, 1986, decision.

In his statement of reasons, appellant explains that due to hardship resulting from the poor agricultural climate, he has taken a job in Gooding in an attempt to raise finances necessary to proceed with development of the land in question. He asserts that he did spend considerable time the previous fall clearing trees and brush from the parcel. He contends that he had good intentions of proceeding with the development of the land, but because of the poor cattle market was unable to proceed with well drilling. Appellant notes that this parcel is very important to his ranch because it is the only access from the ranch to public roads.

The Desert Land Act, 43 U.S.C. § 328 (1982), specifies the following expenditures and cultivation requirements for annual proof:

No land shall be patented to any person under sections 321 to 323, 325, and 327 to 329 of this title unless he or his assignors shall have expended in the necessary irrigation, reclamation, and cultivation thereof, by means of main canals and branch ditches, and in permanent improvements upon the land, and in the purchase of water rights for the irrigation of the same, at least \$ 3 per acre of whole tract reclaimed and patented in the manner following: Within one year after making entry for such tract of desert land as aforesaid the party so entering shall expend not less than \$ 1 per acre for the purposes aforesaid; and he shall in like manner expend the sum of \$ 1 per acre during the second and also during the third year thereafter, until the full sum of \$ 3 per acre is so expended. Said party shall file during each year with the officer designated by the Secretary of the Interior proof, by the affidavits of two or more credible witnesses, that the full sum of \$ 1 per acre has been expended in such necessary improvements during such year, and the manner in which expended, and at the expiration of the third year a map or plan showing the character and extent of such improvements. If any party who has made such application shall fail during any year to file the testimony aforesaid the lands shall revert to the United States, and the 25 cents advanced payment shall be forfeited to the United States, and the entry shall be cancelled.

See also 43 CFR 2521.5.

Appellant does not dispute the fact that he failed to file the first year annual proof, but alleges financial difficulties and poor climatic conditions as reasons for not filing. The statute provides specifically that failure to file the annual proof during any year shall cause the forfeiture of the advance payment, cancellation of the entry, and reversion

of the land to the United States. 43 U.S.C. § 328 (1982); Umberto Sarno, A-29220 (Mar. 11, 1963).

Department regulation 43 CFR 2521.5(d) provides that where the claimant is in default in respect to filing his annual proof, BLM will notify him and allow him 60 days in which to submit such proof. If the proof is not furnished as required, the entry will be cancelled. BLM complied with this requirement by its October 31, 1985, decision advising appellant that he had 60 days from the date of receipt of its decision in which to submit proof or suffer cancellation of his entry. Appellant failed to submit the annual proof within the time allowed and BLM properly cancelled the entry.

The Secretary of the Interior has no discretionary authority to extend the time within which a desert land entryman must make his annual expenditures and file his annual proof. Failure to timely comply will result in cancellation of the entry. Ira Jack Tharp, A-29630 (Oct. 3, 1963); Maynard W. Wilson, A-28680 (Sept. 11, 1961).

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.

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R. W. Mullen  
Administrative Judge

We concur:

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Kathryn A. Lynn  
Administrative Judge  
Alternate Member

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Bruce R. Harris  
Administrative Judge