

ANNA R. WILLIAMS
FRANCES L. ROYLANCE

IBLA 87-757, 87-758

Decided March 28, 1989

Appeals from decisions of the Bureau of Land Management, House Range Resource Area, Fillmore, Utah, accepting final proof for desert land entry U-51874 and U-51888 in part and cancelling each entry in part.

Affirmed in part, set aside in part, and remanded.

1. Desert Land Entry: Extension of Time

An application for an extension of time to make final proof, as authorized by the Act of March 28, 1908, 43 U.S.C. | 333 (1982), is not properly rejected solely because it was made during the course of the final proof meeting at the conclusion of the entry.

APPEARANCES: Anna R. Williams, Garrison, Utah, pro se; Frances L. Roylance, Springville, Utah, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Anna R. Williams and Frances L. Roylance have appealed from separate decisions of the House Range Resource Area, Fillmore, Utah, Bureau of Land Management (BLM), dated July 21, 1987, accepting in part the final proof filed by each for her desert land entry and cancelling in part each entry. Lands sought by appellants are located in Ts. 15-16 S., R. 19 W., Salt Lake Meridian, and were entered pursuant to the Act of March 3, 1877, 43 U.S.C. | 321 (1982). Williams' entry was allowed on April 20, 1983, and Roylance's entry on May 23, 1983.

In U-51874, BLM accepted Williams' final proof for 80 acres of the 313.99 acres that she entered, but cancelled her entry as to the balance. The BLM decision stated that on June 25, 1987, a final proof meeting was held with the entryman and two witnesses to receive final proof regarding the entry. At this meeting BLM found, and Williams does not dispute, that the tracts in U-51874 were to be irrigated by two central pivot sprinklers, neither of which was functional because lateral pipelines connecting the sprinklers to the main water line had not been constructed.

The BLM decision also noted that Williams sought an extension of time to complete her final proof requirements. This request was made during the final proof meeting, according to BLM's staff report, and reduced to writing on June 30, 1987. The decision acknowledged that the regulations authorize extensions of time to make final proof under certain circumstances, but implicitly denied Williams' request by holding that the regulations do not provide for extensions of time after the final proof meeting had been held.

In U-51888, BLM accepted final proof for 80 of the 200 acres that Roylance entered, but cancelled the entry for the balance of these lands. The Roylance decision was similar in all material respects to the Williams decision, reciting the entryman's failure to connect the lateral pipelines to the main water line and noting that the entryman had sought an extension of time to complete final proof. The record reveals that one of the central pivot sprinklers proposed for the Williams lands would also be used for the Roylance lands, as these entries are adjacent to one another.

Like the BLM decisions, the statements of reasons filed by appellants are virtually identical. Williams states:

I had ordered the Sprinkling Systems several months before my final proof date. Even though I called every week explaining the urgency of delivery, I could not get it delivered until four days before my final proof date, through no fault of my own.

I now have the sprinkling system here on the farm with all the other materials for installation on the Desert Entry, and with an extension I could have it completed in a short time.

Appellants have not raised objection to that portion of the decision accepting final proof filed by them, and the decision is affirmed to the extent of such acceptance.

Section 1 of the Act of March 3, 1877, as amended, 43 U.S.C. | 321 (1982), authorizes any citizen of the United States to file a declaration under oath that he intends to reclaim a tract of desert land not exceeding one-half section by conducting water thereon. At any time within the period of three years after filing this declaration, the Secretary shall issue a patent to the entryman upon the entryman's making satisfactory proof of the reclamation of the lands and his payment of a fee. Id. The entryman shall be allowed an additional period of time to furnish proof, not to exceed three years, upon filing a corroborated affidavit showing that he has in good faith complied with the law, but that because of some unavoidable delay in the construction of the irrigating works intended to convey water to the lands, he is, without fault on his part, unable to make proof of the reclamation and cultivation of the lands. 43 U.S.C. | 333 (1982).

The regulations referred to in BLM's decisions are found at 43 CFR Subpart 2522. Regulation 43 CFR 2522.3 provides that, under the provisions of the Act of March 28, 1908, 43 U.S.C. | 333 (1982), the 4-year period to make final proof may be extended at BLM's discretion, if, by reason of some unavoidable delay in the construction of the irrigating works intended to

convey water to the land, the entryman is unable to make proof of reclamation and cultivation required within the 4 years.

An application for extension under this Act will not be granted unless it be clearly shown that the failure to reclaim and cultivate the land within the regular period of 4 years was due to no fault on the part of the entryman but to some unavoidable delay in the construction of the irrigation works for which he was not responsible and could not have readily foreseen.

Regulation 43 CFR 2522.4(b) provides that an entryman who has complied with the law as to annual expenditures and proof thereof and who desires to make application for an extension of time under the provisions of the Act of March 28, 1908, should file a statement with BLM setting forth fully the facts showing how and why he has been prevented from making final proof of reclamation and cultivation within the regular period. This statement must be corroborated by two witnesses who have personal knowledge of the facts.

[1] We have set out the relevant statute and regulations at some length to show that each is silent as to when an extension of time to make final proof may be timely sought. Thus, BLM may state correctly that the regulations do not provide for an extension of time after the final proof meeting has been held, but it is equally correct that the regulations do not prohibit the grant of an extension based upon a filing made at the time of or after the final proof meeting. BLM's implicit premise seems to be that a request for extension should be filed within the initial 4-year period of the entry, rather than at the final proof meeting, because the purpose of such meeting is to make proof of the reclamation, cultivation, and improvement of the land. 43 CFR 2521.6(d). While this premise is logical, we note at least two occasions in the case law which contradict this reasoning.

In Hoobler v. Treffry, 39 L.D. 557 (1911), the Assistant Secretary held that the Commissioner of the General Land Office properly granted to Treffry an extension of time to make final proof, even though the record revealed that Treffry's application for extension was filed beyond the initial 4-year period of the entry. Treffry was the assignee of an entryman whose entry had been allowed on November 20, 1905. After the initial 4-year period of the entry had run, Treffry filed an application for extension on December 2, 1909, under the Act of March 28, 1908. Despite the fact that a contest of Treffry's entry had been initiated on January 15, 1910, the Commissioner held that Treffry had alleged sufficient facts to qualify for a 3-year extension.

The benefit accorded by the Act of March 28, 1908, the Assistant Secretary held, appears to be more than a mere privilege resting in the discretion of the Commissioner to allow or deny. The Act itself specifically grants an extension upon certain facts being shown to exist, and the discretion given therein to the Commissioner properly relates to the period and not to the act or fact of extension. 39 L.D. at 560. See also Stickelman v. United States, 563 F.2d 413, 415 (9th Cir. 1977) "(The Secretary's only obvious discretion under [the Act of March 28, 1908] applies to the length of the extension to be granted)."

Thereafter, in Ruby M. Connor, A-30962 (April 29, 1969), BLM granted at least two extensions of time to make final proof despite the fact that on each occasion the entryman was tardy in requesting an extension. Connor was the assignee of an entry that had been allowed on June 8, 1925; more than forty years later, final proof had not yet been filed.

Because of this conflict, we will set aside the BLM decisions of July 21, 1987, to the extent that they deny the extension of time sought by appellants and cancel their entries, and remand the casefiles to the House Range Resource Area Manager in order that he may determine the merits of the extension requests made by Williams and Roylance. Williams and Roylance are hereby granted 30 days from the date of receipt of this decision to file supplemental statements in support of an extension of time with the Area Manager. As set forth at 43 CFR 2522.4(b), these statements must be corroborated by two witnesses who have personal knowledge of the facts.

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 House Range Resource Area Manager are affirmed in part, set aside in part, and remanded for action consistent with this opinion.

R. W. Mullen
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge