

ROBERT M. FORD

IBLA 70-635

Decided February 11, 1972

Appeal from decision (I 3541) by assistant manager, operations, Idaho land office, Bureau of Land Management, rejecting in part application for desert land entry.

Affirmed.

Desert Land Entry: Applications -- Desert Land Entry: Lands Subject to -- Withdrawals and Reservations: Stock-Driveway Withdrawals

A desert land application filed for lands which are withdrawn for stock-driveway purposes at the time of the filing of the application must be rejected. It cannot be suspended pending the lifting of the withdrawal. Even where the purpose of a withdrawal cannot be met, the withdrawal is nevertheless effective to bar the disposal of the land.

APPEARANCES: Robert M. Ford, pro se.

OPINION BY MR. FISHMAN

Robert M. Ford has appealed from a decision dated May 14, 1970, by the assistant manager, operations, Idaho land office, Bureau of Land Management, which rejected 240 acres of the 320 acres embraced in appellant's desert land application because the rejected lands are withdrawn by Secretarial Order of July 30, 1918, as a part of stock-driveway 29.

Lands which are withdrawn are not subject to appropriation under the desert land laws. See Leroy Martin, 4 IBLA 160 (1971). A desert land application for lands withdrawn for a stock-driveway must be rejected since such lands are not subject either to classification under the Taylor Grazing Act, § 7, 43 U.S.C. § 315(f) (1970), nor to disposal under the public land laws. Timothy O. Witt, A-25664 (April 1, 1949). An application for withdrawn lands must be rejected and it will not be suspended pending restoration of the land. Edwin L. Doheny et al., A-26868, A-26897 (July 13, 1954); W. C. Dalzell, A-26346 (March 28, 1952).

The appellant asserts that the land has never been used as a stock-driveway. Assuming, arguendo, that the assertion is correct, it does not help the appellant. Even where it is impossible to accomplish the purpose of a withdrawal, the withdrawal is nevertheless effective to preclude the disposal of the land. Consolidated Mines and Smelting Co., Ltd., A-27019 (July 28, 1954). See Ernest R. Brassell, A-28096 (October 29, 1959).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the assistant manager is affirmed.

Frederick Fishman, Member

We concur:

Anne Poindexter Lewis, Member

Douglas E. Henriques, Member

