

ROWE M. BOLTON

IBLA 72-177

Decided March 22, 1972

Appeal from decision (I-4563) by the Idaho state office, Bureau of Land Management, rejecting public sale application.

Affirmed.

Public Sales: Applications--Public Sales: Sales Under Special Statutes--Withdrawals and Reservations: Effect of--Withdrawals and Reservations: Power Sites

An application filed pursuant to the Act of September 26, 1968 (82 Stat. 870, 43 U.S.C. § 1431-1435 (1970)), for public sale of land included in a power site reserve is properly rejected as the land affected by the withdrawal is not subject to appropriation or disposal until the withdrawal is revoked and the land restored to entry.

Withdrawals and Reservations: Effect of

Lands which have been withdrawn from entry under some or all of the public land laws remain so withdrawn until the revocation or modification of the withdrawal order, and it is immaterial whether the lands are presently being, or have ever been, used for the purpose for which they were withdrawn.

APPEARANCES: Rowe M. Bolton, pro se.

OPINION BY MRS. LEWIS

Rowe M. Bolton has appealed from a decision of October 21, 1971, by the Idaho state office, Bureau of Land Management, which rejected his public sale application I-4563 filed September 24, 1971, pursuant to the Act of September 26, 1968 (82 Stat. 870, 43 U.S.C. § 1431-1435 (1970)), 1/ because the land was withdrawn as a part of Power Site Reserve No. 120 by Executive Order of July 2, 1910, and was, therefore, not open to application.

1/ The Act expired on September 26, 1971, except that sales for which application had been made prior to that date may be completed after the date. 43 U.S.C. § 1435 (1970).

The application is for a portion of Lot 4, sec. 1, T. 8 S., R. 30 E., B.M. Idaho. The lot contains 37.80 acres, the southeasterly boundary of which borders on the Snake River. The portion applied for, containing approximately 5.71 acres, is triangular in shape and is located in the northwest corner of the lot. Bolton states in his application:

Fences enclose this parcel with adjacent privately owned fields. Sagebrush has been removed and planted to grass and alfalfa with necessary ditches to flood irrigate same.

Bolton alleges in his appeal that the parcel in question lies 1/4 of a mile west of the river and slopes away from the river while the remainder of lot 4 slopes towards the river, which, he contends, would decrease its value as a power site, and that the land is within four miles of a power site placed in use since the 1910 order, contending that this would indicate that the withdrawal should be reconsidered. He also states that he owns land lying much closer to the river and bordering lot 4 that he would trade for the parcel in question.

In view of applicable precedents, appellant's arguments are not persuasive. Thus, until such time as the withdrawal is revoked and there has been a restoration to entry, the land affected by the withdrawal is not subject to appropriation or disposal. Donald E. Miller, 2 IBLA 309, 314 (1971) and cases cited. Even though the land has not been used and may not be used for the purpose for which it was withdrawn, it is the legal effect of a withdrawal that is determinative of the question of the availability of land for entry and the actual use to which the land has been put is immaterial. David W. Harper, et al., 74 I.D. 141, 149 (1967). In Harper, the Department said (syllabus):

Lands which have been withdrawn from entry under some or all of the public land laws remain so withdrawn until the revocation or modification of the order of withdrawal, and it is immaterial whether the lands are presently being, or have ever been, used for the purpose for which they were withdrawn.

Accordingly, the application was properly rejected.

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 below is affirmed.

Anne Poindexter Lewis, Member

We concur:

Martin Ritvo, Member

Joseph W. Goss, Member

