

S & S LAND & CATTLE CO.

IBLA 72-363

Decided February 26, 1973

Appeal from a decision of the Idaho State Office rejecting in part a public sale application (I 4879).

Affirmed.

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

Land included in a power site classification which has been withdrawn from entry under some or all of the public land laws remains so withdrawn until the revocation or modification of the withdrawal order; therefore, public sale applications filed for the land covered by the classification must be rejected, and it is impermissible under 43 CFR 2091-1 to hold the application in suspense until the land may become available.

APPEARANCES: Michael B. Sweet, Esq., Ryan and Sweet, Weiser, Idaho, for appellant.

OPINION BY MR. STUEBING

The S & S Land & Cattle Company has appealed from a decision dated March 28, 1972, by the Idaho State Office, Bureau of Land Management, which rejected in part appellant's application to have five parcels of public land ordered onto the market and sold at public auction under R.S. § 2455, as amended, 43 U.S.C. § 1171 (1970). The application was rejected as to one parcel, the S 1/2 of the NE 1/4, and W 1/2 of the SE 1/4, sec. 28, T. 12 N., R. 4 W., B.M., Idaho. The rejection was based on a determination that the parcel had been withdrawn in Powersite Classification No. 455 by Public Land Order 3793, 30 F.R. 10894 (1965), and therefore was unavailable for disposal under the various public land laws. In its statement of reasons, appellant does not attack the State Office's partial rejection of its application. Instead, appellant

asks first, in a Petition for Restoration filed under 43 CFR 2344.3, that the parcel in question be returned to the application of public land laws, and next, that its application for public sale be accepted and the land put up for sale.

Land which has been withdrawn from entry under some or all of the public land laws remains so withdrawn until revocation or modification of the order of withdrawal, and therefore public sale applications filed for land covered by a withdrawal order must be rejected. See Rowe M. Bolton, 5 IBLA 226 (1972). In addition, it has been the Department's long-standing policy as to applications for interests in public land to reject all applications for land which is not available for the requested disposition at the time they are filed and not to hold the applications in suspense until the land may become available. J. G. Hatheway, et al., 68 I.D. 48 (1961).

Moreover, in furtherance of this policy, the Secretary of the Interior has promulgated regulations forbidding retention of applications pending possible future availability of the land. 43 CFR 2091.1 states:

Except where regulations provide otherwise, all applications must be accepted for filing. However, applications which are accepted for filing must be rejected and cannot be held pending possible future availability of the land or interests in land, when approval of the application is prevented by:

(a) Withdrawal or reservation of the lands;

\* \* \* \* \*

(d) Classification under appropriate law;

(e) The fact that for any reason the land has not been made subject, or restored, to the operation of the public land laws.

Moreover, favorable action upon a petition for restoration will not give the petitioner any preference right or right to preferential treatment if or when the lands are finally restored. 43 CFR 2344.3(b).

Accordingly, 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.

Edward W. Stuebing, Member

We concur:

Newton Frishberg, Chairman

Joseph W. Goss, Member.

