

GEORGE RODDA, JR.

IBLA 73-211

Decided September 25, 1973

Appeal from a California State Office, Bureau of Land Management, decision dismissing appellant's protest to the removal of certain lands from public sale and informing appellant that the classification of such lands for public sale had been revoked.

Affirmed.

Public Sales: Generally

When no bids are received at a public sale, the sale must be properly closed and one who claims to be a preference right applicant cannot claim any right to the land, as no rights vest until the issuance of a patent.

Public Sales: Generally

Until patent issues, the authorized officer may, under 43 CFR 2711.6, at any time determine that the sale should not be held, that the lands should not be sold, or that any and all bids should be rejected.

APPEARANCES: George Rodda, Jr., Corona Del Mar, California, pro se.

OPINION BY MR. GOSS

On October 8, 1962, William L. Curtiss filed a public sale application (R 02059) pursuant to 43 U.S.C. § 1171 (1970) for approximately 440 acres of land in sec. 6 and sec. 7, T. 5 N., R. 12 W., S.B.M., California. Such land was offered for sale on June 15, 1965, the appraised value being \$ 76,800. No bids were received, and the land was removed from the market and the sale closed.

By letter received in the Bakersfield District Office, Bureau of Land Management, on July 7, 1965, appellant asserted that he had personally appeared at the Riverside Office on June 15, 1965, to bid on the lands as a preference right purchaser; that he was advised not to "bid up" the land at auction; and that he was told that the land would be offered at public sale each Tuesday at 10:00 a.m. if no bid were made on June 15. <sup>1/</sup> He also stated that he was ready and willing to purchase the land despite his belief that the appraisal value was higher than he thought it should have been.

On July 27, 1965, the District Manager, Bakersfield District Office, informed appellant by letter that any further sale of the lands classified for public sale would be stayed pending a long range land use study of the area.

Appellant's letters received by the District Office on August 4 and August 17, 1965, were considered a protest against the action taken.

On October 30, 1972, the California State Office issued a decision dismissing appellant's protest and stating that the classification of the lands for public sale had been revoked by the Bakersfield District Office on February 9, 1971. The revocation was based on the suggestion of the Regional Planning Commission for Los Angeles County that the subject lands be retained in public ownership pending the completion of land use studies in the area.

On appeal appellant asserts that he was denied his right to the subject lands and that the reasons set forth in the revocation were merely invalid attempts to justify delays on the part of the Government.

Appellant is mistaken in his belief that he has any "right" to the subject land. His only right, as a preference right applicant, was to offer to purchase the lands after the close of bidding, if an acceptable bid had been made at the sale. In the present case

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<sup>1/</sup> Any such information was obviously erroneous under 43 CFR 2711.2 and 2711.3(a). Those sections require publication of the notice of sale for five consecutive weeks and specification of the time and place for submitting bids.

appellant did not bid at the June 15, 1965, public sale. No bids were received, and the sale was properly closed. No rights are created with respect to a public sale until an offer is accepted and acceptance is made by the issuance of a patent. Until patent issues, the authorized officer has the right at any time to determine that the sale should not be held, that the lands should not be sold, or that any and all bids should be rejected. 43 CFR 2711.6; see J. D. Carter, 3 IBLA 44 (1971). In fact, sales under 43 U.S.C. § 1171 (1970), are completely discretionary with the Secretary of the Interior and even in a case where a sale has been held and a purchaser declared, the Secretary is not precluded from changing a decision to sell on the basis of newly discovered facts. Willcoxson v. United States, 313 F.2d 884 (D.C. Cir. 1963); see Lewis v. Udall, 374 F.2d 180 (9th Cir. 1967).

The Bakersfield District Manager acted properly in closing the sale and staying any future sale pending the land use study. Since appellant's protest was directed toward such action by the District Manager, we find that the October 30, 1972, decision correctly dismissed such protest.

The Bakersfield District Manager, as the authorized officer, may act to revoke a classification pursuant to 43 CFR 2450.6(a). 2/

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.

Joseph W. Goss  
Member

We concur:

Newton Frishberg  
Chairman

Frederick Fishman  
Member

2/ The regulation states:

"(a) A final order of the Secretary shall continue in full force and effect so long as the lands remain subject to classification under the authorities cited in Subpart 2400 until an authorized officer revokes or modifies it. \* \* \*"

