

JUAN N. MENCHACA

IBLA 74-25

Decided January 22, 1974

Appeal from rejection of application for the public sale of land. I-6453.

Affirmed.

Public Sales: Isolated Tracts--Words and Phrases

An "isolated or disconnected tract" of public land within the context of R.S. 2455; 43 U.S.C. § 1171 (1970), refers to an entire tract of public domain which is completely surrounded by land held in nonfederal ownership. The term does not include a portion of such a tract which is "isolated" by terrain features such as highways and cliffs.

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

Land included in a power site classification which has been withdrawn from entry under some or all of the public land laws remains so withdrawn until the revocation or modification of the withdrawal order; therefore public sale applications filed for the lands covered by the classification must be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: Juan N. Menchaca, pro se.

OPINION BY MR. STUEBING

Juan N. Menchaca applied to the Idaho State Office of the Bureau of Land Management to have a tract of federal land offered at public sale as "an isolated or disconnected tract" pursuant to R.S. 2455;

43 U.S.C. § 1171 (1970). Neither the applicant nor the Bureau has indicated that the greater portion of the subdivision is mountainous or too rough for cultivation so as to bring it within the purview of the second proviso of the Act.

The land description given in the application was inadequate, but the application was accompanied by a map from which the adjudicator deduced that the land applied for was the NE1/4 SE1/4 Section 21, T. 6 S., R. 13 E., B.M. By its decision of July 2, 1973, the State Office rejected the application for two reasons: (1) that the 40-acre tract so described is not isolated because adjacent federal lands comprise an additional 560 acres; and (2) that the subject tract is withdrawn from all forms of appropriation under the public land laws, including the public sale law, being within Power Site Classification No. 390, Federal Power Commission.

In his statement of reasons for appeal from this decision Mr. Mechaca indicates that he only wanted a "small corner" of the subdivision of "approximately 3 to 5 acres." He states that the remainder of the 40-acre subdivision is isolated from the portion that adjoins his land by a highway and by a rocky cliff, and would be of no use to him, and he asks if it is necessary to buy an entire subdivision, as he was told. He asserts that the portion he desires would be useful to him for grazing and that he could irrigate it with water from his own land, which would serve the public interest in light of the food shortage.

Appellant was correctly informed that fractional tracts of public land - comprising less than the smallest legal subdivision - are not offered at public sale under this statute. 43 CFR 2710.0-8.

Further, an "isolated or disconnected tract" of public land, within the context of the statute, refers to an entire tract of public domain which is completely surrounded by land held in nonfederal ownership. 43 CFR 2710.0-5(d). 1/ The term does not include a portion of such a tract which is "isolated" by terrain features such as highways and cliffs. In this case, even had the Bureau's state office been correct in interpreting the application as including the entire

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1/ The term "isolated or disconnected tract" may also refer to a tract of public land which is so effectively separated from other federal lands by some permanent withdrawal or reservation as to make its use with such lands impracticable. 43 CFR 2710.0-5. Such is not the case in this instance.

NE1/4 SE1/4, that subdivision is not isolated because it is part of a larger block of public land. John J. McNamara, A-28682 (August 1, 1961).

Moreover, as noted in the decision appealed from, the tract is withdrawn, being within Power Site Classification No. 390. 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 lands 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. S & S Land Cattle Co., 10 IBLA 40 (1973); Rowe M. Bolton, 5 IBLA 226 (1972).

Therefore, 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.

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Edward W. Stuebing, Member

We concur:

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Joan B. Thompson, Member

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Douglas E. Henriques, Member

