

Editor's note: Reconsideration denied by order dated March 3, 1975

EDITH O. FISHER

IBLA 74-222

Decided September 25, 1974

Appeal from decision of Idaho State Office, Bureau of Land Management, rejecting in part desert land application I-7129.

Affirmed.

1. Desert Land Entry: Lands Subject to--Withdrawals and Reservations--
Withdrawals: Reclamation Withdrawals

Under 43 CFR 2091.1, 2322.1 and 2520.0-8, an application for desert land entry which covers land withdrawn for reclamation purposes must be rejected pro tanto and will not be held in suspense pending restoration of the land from withdrawal.

APPEARANCES: Edith O. Fisher, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Edith O. Fisher appeals from a decision of the Idaho State Office which rejected, in part, her desert land entry application, I-7129. The reason for the partial rejection was that a portion of the lands for which she applied had been withdrawn from all forms of appropriation, including the desert land laws, by Public Land Order 2588 dated January 15, 1962, 27 F.R. 628.

Appellant's petition-application was filed under 43 U.S.C. § 321 (1970) on August 24, 1973 for the following land:

T. 4 S., R. 5 E., Boise meridian, Idaho, sec. 19, lots 6 and 7, and sec. 30, lots 2, 3 and NW 1/4.

In its decision, the State Office explained that all of the described lands in Section 30 are withdrawn for the U.S. Bureau of Reclamation in connection with the Mountain Home Division of the Snake River Reclamation Project. The State Office properly rejected these lands

citing 43 CFR 2091.1. 1/ Under this regulation, the portion of an application for lands that are reserved or withdrawn must be rejected and that portion of the application cannot be retained pending future availability of the lands. The State Office also advised appellant that her application could be given further consideration as to the remaining 35.93 acres, if she desired to proceed with the application for the reduced acreage.

On appeal, Mrs. Fisher requests that the Bureau wait twelve months before deciding whether the land in question should be withdrawn. She reasons that there is a food shortage which will necessitate placing more land into production; the land is irrigable and good for pinto beans and alfalfa, and her house would occupy the area difficult to irrigate. 2/

Apparently, appellant does not understand that the withdrawal is already in effect. Such a withdrawal prevents the further acquisition of private rights in the land. See United States v. Heirs of John D. Stack, A-28157 (March 28, 1960). Lands cannot be entered under a desert land entry so long as they remain under a withdrawal for reclamation purposes. 43 CFR 2322.1 and 2520.0-8. 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. Rowe M. Bolton, 5 IBLA 226 (1972); Grace Kinsela, 74 I.D. 386 (1967). An application for a desert land entry which covers land withdrawn must be rejected and will not be held in suspense pending restoration of the land from withdrawal. Rose M. Jolley, 13 IBLA 78 (1973).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Joseph W. Goss
Administrative Judge

1/ The regulation was incorrectly cited in the State Office decision as 2029.1. Section 2091.1 provides in part:

"§ 2091.1. Rejection of applications.

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; * * *."

2/ Appellant has also requested amendment of her application to include additional land. She has been informed by the State Office as to the requirements for submitting an amended application.

We concur:

Frederick Fishman
Administrative Judge

Edward W. Stuebing
Administrative Judge

