

ROBERT D. HUGHES

IBLA 76-13

Decided September 26, 1975

Denial of petition for restoration of withdrawn lands to mineral entry, C 21347.

Affirmed.

1. Withdrawals and Reservations: Revocation and Restoration

The Secretary of the Interior is without authority to withdraw or reserve lands or to revoke withdrawals and reservations affecting land under the administrative jurisdiction of any executive department or agency of the Government other than the Department of the Interior without the prior approval or concurrence, so far as the order affects such land, of the head of the department or agency concerned.

2. Rules of Practice: Appeals: Generally

A petition for revocation of a withdrawal must be denied where the holding agency does not consent, and Bureau of Land Management should inform the applicant that further correspondence relative to his petition should be addressed to the holding agency.

APPEARANCES: Robert D. Hughes, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Robert D. Hughes filed a petition in the Colorado State Office, Bureau of Land Management (BLM), for restoration to mineral entry of certain lands within the Arapaho National Forest. At an earlier time, at the request of the Forest Service, the lands were withdrawn

by Public Land Order 1825 of March 26, 1959. The PLO closed the lands to mineral entry and received them under the jurisdiction of the Forest Service for administrative and recreational purposes. In connection with the petition filed in this case, the Forest Service reported that the land is in present active use for the purposes for which withdrawn, and advised that it does not consent to restoration pursuant to the petition filed. It recommended that the petition for partial revocation of the Public Land Order not be approved. Acting on such report, BLM, by decision of May 29, 1975, denied the petition for restoration.

The President is vested with authority to withdraw or reserve lands of the public domain and other lands owned or controlled by the United States, in the continental United States or Alaska, for public purposes, including the authority to modify or revoke withdrawals and reservations of such lands. 43 U.S.C. § 141 (1970). Executive Order No. 10355 of May 26, 1952 (appears as note to 43 U.S.C. § 141), delegates that authority to the Secretary of the interior, limited, however, as prescribed therein. Pertinent to the appeal before us, section 1(c) provides as follows:

(c) No order affecting land under the administrative jurisdiction of any executive department or agency of the Government other than the Department of the Interior shall be issued by the Secretary of the Interior under the authority of this order without the prior approval or concurrence, so far as the order affects such land, of the head of the department or agency concerned, or of such officer of the department or agency concerned as the head thereof may designate for such purpose: Provided, that such officer is required to be appointed by the President by and with the advice and consent of the Senate.

Although the Secretary of the Interior is by Executive Order No. 10355 authorized to exercise the power of the President to withdraw and reserve public domain and other lands owned or controlled by the United States, including the authority to modify or revoke past or future withdrawals or reservations, such power cannot be exercised over lands in a national forest without the approval or concurrence of the Secretary of Agriculture as required by section 1(c) of the Executive Order. Solicitor's Opinion M-36659, 70 I.D. 429 (1963).

[1, 2] A duly authorized delegate of the Secretary denied approval to the petition for restoration because the lands involved are actively used for the purposes for which withdrawn, i.e., for cabin site and other recreational purposes. Where, as in the instant

case, the petition must be denied the BLM "Adjudication Officer will notify the petitioner by letter that the holding agency did not consent to the revocation, giving such reasons as had been advanced by the holding agency and pointing out that any further correspondence on the matter should be addressed to the holding agency." BLM Manual 2371.13B1. Appellant should have been so notified by BLM.

For the reasons outlined, it is not necessary to consider further appellant's motives for appeal.

Therefore, pursuant to the authority delegated by the Secretary of the Interior to the Board of Land Appeals, 43 CFR 4.1, the dismissal of the petition for restoration of land to mineral entry is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Martin Ritvo
Administrative Judge

