

ELKO COUNTY BOARD OF COUNTY SUPERVISORS

IBLA 76-710

Decided March 23, 1977

Appeals from Nevada State Office, Bureau of Land Management, decisions affecting recreation and public purpose applications, including rejection of two applications.

Four appeals dismissed; decisions rejecting applications affirmed.

1. Rules of Practice: Appeals: Dismissal

Where an appellant withdraws an appeal, the appeal must be dismissed.

2. Rules of Practice: Appeals: Dismissal

Where a decision by a Bureau of Land Management official is interlocutory in nature and the appellant fails to show any reason why the decision is in error, or should not be implemented, a purported appeal from such a decision must be dismissed.

3. Indian Water and Power Resources: Irrigation Projects-- Indians: Generally--Recreation and Public Purposes Act --Withdrawals and Reservations: Temporary Withdrawals

A recreation and public purposes application must be rejected for lands temporarily withdrawn for an irrigation project to benefit Indians. Such a withdrawal is effective until specifically revoked, even though it is made on a temporary basis and has been in effect for more than 50 years.

APPEARANCES: John C. Carpenter, Chairman, Elko County Commissioners, for appellant; Ralph F. Keen, Acting Director, Office of Trust Responsibilities, Bureau of Indian Affairs.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

The Elko County Board of County Supervisors filed six applications under the Recreation and Public Purposes Act, 43 U.S.C. § 869 *et seq.* (1970). These were affected by various decisions by the Nevada State Office, Bureau of Land Management (BLM), from which the County appealed. A decision of June 25, 1976, rejected applications N-13078, 13080, and 13082 because of land status. A decision of July 1, 1976, rejected application N-13083 in part, also because of land status. By a letter dated July 1, 1976, appellant was informed that applications N-13079, 13081 and 13083 (as to the lands not rejected) were found to lack adequate plans of development demonstrating that "the proposed use of the land involves an established or definitely proposed project."

[1] By letters dated August 3 and 16, 1976, the appellant withdrew its appeals as to applications N-13083 and 13080. The withdrawal of an appeal requires dismissal of these appeals as being moot.

[2] Applications N-13079 and 13081 are listed in the caption of a document dated August 19, 1976, entitled "Argument in Support of Appeal of Elko County Board of County Commissioners in Opposition to Rejection of Recreation and Public Purpose Applications N-13078, N-13079, N-13081 and N-13082." However, appellant has made no argument regarding the BLM determination that applications N-13079 and 13081 were not supported by adequate plans of development. The BLM determination was interlocutory in nature and permitted appellant to file further information. For this reason, and also because appellant has failed to show any reason why the BLM decisions concerning N-13079 and 13081 are in error or should not be implemented, the purported appeals concerning those applications must be dismissed.

[3] There remains for consideration only the appeal concerning the rejection of applications N-13078 and 13082. By decision of June 25, 1976, those applications were rejected because all the lands in the applications, except for a 40-acre parcel in N-13082 which is privately owned, were withdrawn for the Duck Valley Irrigation Project and are under the jurisdiction of the Bureau of Indian Affairs. The decision pointed out that regulation 43 CFR 2740.0-8 (erroneously cited as 43 CFR 1740.0-8) specifically excepts "Indian lands and lands set aside or held for use by or for the benefit of Indians" from disposition under the Recreation and Public Purposes Act.

The lands involved in these two applications are within sections 4, 6 and 9, T. 43 N., R. 55 E., MD Mer., Nevada, and sections 17, 19, 20, 28, 29, 30, 31 and 33, T. 44 N., R. 55 E., MD Mer., Nevada. The particular subdivisions within these sections were withdrawn by Secretarial Order dated June 9, 1916, Executive Order 6853 of September 22, 1934, or Public Land Order 2075, dated March 30, 1960. The withdrawals are all for the purpose of the Duck Valley Irrigation project for the use of Indians in connection with the Wildhorse Reservoir Site.

Appellant's contentions concerning the effect of the withdrawal all go to the 1916 Secretarial "temporary withdrawal." Appellant mentions that the 1934 Executive Order and 1960 Public Land Order do not include land described in the 1916 Order. Appellant contends that the 1916 Order was temporary and made on condition that investigations would be made, that apparently no investigation has been made, and no permanent withdrawal order has issued. It contends there is no evidence the Secretary of the Interior had authority to withdraw the land and, in any event, there is not a sufficient legal foundation for rejection of the applications.

Upon notice from this office that the appeal concerned lands under the jurisdiction of the Bureau of Indian Affairs, that agency responded by submitting a history of the irrigation project, the withdrawal orders, and a statement indicating that the irrigation project has been completed and the importance of the project for the economy of the Duck Valley Reservation. It also refers to the Act of June 17, 1902, 32 Stat. 388 (see section 3 of the Act, 43 U.S.C. § 476 (1970)), as specific statutory authority for the Secretary's withdrawal of the land for irrigation purposes. In any event, see United States v. Midwest Oil Co., 236 U.S. 459 (1914).

In view of the history of the irrigation project, appellant's contentions concerning the withdrawn lands must be considered specious. That subsequent Executive and Public Land Orders did not include land withdrawn in 1916 does not take away from the validity of the earlier withdrawal. Indeed, the fact that additional lands were withdrawn and added to the project supports the on-going effect of the 1916 withdrawal. Apart from the very cogent practical considerations that the purposes of the withdrawal have been and are continuing to be served by the project in behalf of the Indians, there is a determinative legal issue regarding the effect of such so-called "temporary withdrawals."

It has long been a fundamental principle of public land law that a withdrawal remains in effect until it is revoked, even if the withdrawal was characterized as being "temporary." John R. Shelburne, 8 IBLA 115 (1972); Grace Kinsela, 74 I.D. 386 (1967),

and cases cited therein. Regardless of whether or not the purpose of such a temporary withdrawal is being met, the fact that a withdrawal is made on a temporary basis does not make it less valid nor does it "invest it with a self-limiting life which will expire before affirmative action is taken to terminate it." Grace Kinsela, supra at 387. BLM was required to reject these applications because of the withdrawal and the mandate of 43 CFR 2740.08, specifically referring to lands set aside for the benefit of Indians.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeals involving N-13083, 13080, 13079 and 13081 are dismissed for the reasons earlier stated, and the decision of the Bureau of Land Management rejecting applications N-13078 and 13082 is affirmed.

Joan B. Thompson

Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Newton Frishberg
Chief Administrative Judge

