

SUZANNE A. HALLIDAY

IBLA 77-572

Decided March 27, 1978

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting public sale application U 13503.

Affirmed as modified.

1. Administrative Procedure: Generally--Appeals--Rules of Practice: Appeals: Standing to Appeal

Under 43 CFR 4.410, any party to a case who is adversely affected by a decision of the Bureau of Land Management has a right of appeal to the Board of Land Appeals, even where the decision concerns legislation which has been repealed.

2. Applications and Entries: Cancellation--Applications and Entries: Valid Existing Rights--Federal Land Policy and Management Act of 1976: Repealers--Public Sales: Applications

BLM has discretion to reject public sale applications pursuant to R.S. 2455, repealed by the Federal Land Policy and Management Act of 1976, effective October 21, 1976, where the sale has not been held by this date. The filing of a public sale application creates no rights under sec. 701(a) of FLPMA which prevent BLM from exercising its discretion to dismiss the application.

APPEARANCES: Bruce K. Halliday, Esq., Monticello, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On January 13, 1971, Suzanne A. Halliday (appellant) filed a public sale application under R.S. 2455, 43 U.S.C. § 1171 (repealed)

1976) concerning 80 acres of land in San Juan County, Utah. The land was never classified for sale. By a letter decision dated June 28, 1977, the Utah State Office of the Bureau of Land Management (BLM), notified appellant that her application had been rejected because the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 et seq. ( Supp. 197) had repealed R.S. 2455, and because the sales provisions of FLPMA do not provide for the filing of such applications. This letter decision states, "Since the new law [FLPMA] specifically repealed R.S. 2455, no right of appeal can be provided to you." Nevertheless, appellant filed a request for reconsideration, which the Utah State Office treated as an appeal, and the case was transmitted to this Board.

[1] BLM's letter decision dated June 28, 1977, relates to the disposition of public lands of the United States. Under 43 CFR 4.1, this Board has the exclusive power to decide finally for the Department appeals from such decisions. Under 43 CFR 4.410, any party to a case who is adversely affected by a decision of BLM shall have a right of appeal to this Board. This regulation is mandatory and applies to all decisions by BLM, even those which concern legislation which has been repealed. United Park City Mines Co., 33 IBLA 358 (1977); Fancher Brothers, 33 IBLA 262 (1977). Accordingly, we hold that BLM erred by stating to the contrary.

[2] Appellant's application was clearly made under R.S. 2455: the first item on her application form is a checked-off box designated "Rev. Stat. 2455." R.S. 2455, supra, authorizing public sale of Federal lands, was repealed by FLPMA, effective October 21, 1976. 43 U.S.C. § 703(a) ( Supp. 197). It is a proper exercise of discretion under FLPMA for BLM to reject a public sale application pending as of October 21, 1976, where the sale had not been held by this date. United Park City Mines Co., supra. Appellant's application was accordingly properly rejected by BLM.

Appellant maintains that she has a vested right by virtue of being an adjoining land owner. This argument is without merit. Under section 701 of FLPMA, 90 Stat. 2786, 43 U.S.C. § 1701 note. ( Supp. 197), only valid existing leases, permits, patents, rights-of-way, or other land use rights are protected against its operation. It is settled that the filing of a public sale application by an adjoining land owner creates no rights against the United States in the land applied for unless and until the patent to the land is issued. 43 CFR 2711.7; Ferry v. Udall, 336 F.2d 706 (9th Cir. 1964), cert. denied, 381 U.S. 904 (1965); Willcoxson v. United States, 313 F.2d 884 (D.C. Cir. 1963), cert. denied, 373 U.S. 932 (1963); Glenn Fancher, supra. Accordingly, since the filing by appellant of her public sale application created no right falling within the valid existing right exception set out in section 701 of

FLPMA, supra, and the application is not otherwise protected by this section, BLM could properly exercise its discretion to reject it.

Appellant's other argument in her statement of reasons is not convincing. She suggests that the Government is estopped from rejecting her application on account of unreasonable delay in processing her application, because she relied to her detriment on the expectation that BLM would act promptly on it. The authority of the United States to enforce laws enacted by Congress is not vitiated or lost by the failure of its agents to act or on account of delays in the performance of their duties. 43 CFR 1810.3; Estate of Malcolm McKinnon, 31 IBLA 290 (1977); Virgil Lopez, 21 IBLA 33 (1975); Mark Systems, 5 IBLA 257, 261 (1972). Moreover, there is nothing in the record showing that the delay in processing appellant's application was unreasonable.

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 as modified herein.

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Edward W. Stuebing  
Administrative Judge

We concur.

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Douglas E. Henriques  
Administrative Judge

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Joan B. Thompson  
Administrative Judge

