

JOSEPH BURDEN

IBLA 71-108

Decided December 30, 1971

Recreation and Public Purposes Act -- Rules of Practice: Protests

Where land riparian to the Snake River has been classified for disposal to a county for recreational purposes under the Recreation and Public Purposes Act, the protest of an adjoining land owner asserting a belief he may own the land, and objecting that he will be deprived of use of the land and that there will be a possible adverse future effect on his privately-owned lands when the county acquires the tract, is properly dismissed where there is no showing he has any legal claim to the land which must be recognized by the federal government.

4 IBLA 197

JOSEPH BURDEN : Protest dismissed
: Affirmed

DECISION

Joseph Burden appeals from a November 6, 1970, decision of the acting manager of the Idaho land office, Bureau of Land Management, dismissing his protest against the sale of lots 17 and 20, sec. 18, T. 9 S., R. 16 E., Boise Meridian, Idaho, to Twin Falls County, Idaho, under the authority of the Recreation and Public Purposes Act, 43 U.S.C. § 869 (1970).

The lots are contiguous and together comprise 17.51 acres. They are riparian to the Snake River. The county proposes to use them as a park since the site constitutes one of the few tracts in the area where access to the land may be made from the river. High cliffs make river access difficult or impossible elsewhere.

Burden timely protested the proposed sale to the county after publication of notices of the county's application, Idaho 2360. He filed two protests as two notices were published, the first having an erroneous land description. The notices advised any person asserting a claim to the lands or having bona fide objections to the proposed sale to file their objections in the land office within 30 days from the date of first publication. 1/

In his protests, Burden alleged that except for the river side of the lots, he owns land completely surrounding them. He stated that it is his belief "that according to certain surveys of the land specified in the application, he may be the owner of a part or parts of the land proposed to be sold." He also asserted that the only land access to the lots is through his lands and the county would have to

1/ We note that the language in the notices was broader than that prescribed by 43 CFR 2741.5(a) which refers only to allowing "all persons claiming the land adversely" to file their objections.

condemn a right-of-way. If this were done, he asserted, his lands would be divided and their solidarity and usefulness for livestock raising would be destroyed. He also asserted that persons desiring to use the lots for recreational purposes would trespass through his lands causing substantial injury. He states he uses the lots for agricultural purposes, including grazing livestock, and these activities would be adversely affected by the proposed transfer.

In rejecting the protest, the land office indicated that the records show the lots to be federal lands and that Burden has no vested right to them. It indicated that the highest and best use for the land is for recreational use and that the county could remedy access problems through condemnation, if need be.

In this appeal, Burden essentially claims that the value of his surrounding land will be adversely affected by the proposed sale, and that the sale is contrary to the spirit and intent of the Recreation and Public Purposes Act. Although in his protests he expressed his belief that certain surveys showed that he may be the owner of a part or parts of the lots, appellant did not furnish copies of such surveys or any other information to substantiate any legal rights or claim in him to the land which must be recognized by the United States. In his appeal he has not disputed the Bureau's finding, in effect, that the lots are federal lands to which he has no vested rights. In the absence of information which would negate that finding, or, at least, would show that he might have some claim under the Color of Title Act, 43 U.S.C. § 1068 (1970), which he has not asserted, his protest is not sustainable on any ground that he has any recognizable legal claim to the land.

Without such an interest in the claim and because the land has been classified for disposal under the Recreation and Public Purposes Act, the fact appellant may not be able to use the land as he has done, apparently without authorization, is not a reason to bar the sale. As this Department has said,

Deprivation of future ability to use land to which an appellant has no legal right is not a basis for rejecting a recreation and public purposes application. (Dr. Willard H. Howard, A-29283 (June 3, 1963) (Syllabus)).

Likewise, any possible adverse future effect on his privately-owned lands when the county acquires the tract is not a sufficient reason to bar the sale. The access problem will be a matter for appellant and the county to resolve between them, once the sale is consummated.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Joan B. Thompson, Member

We concur:

Martin Ritvo, Member

Frederick Fishman, Member

