

Editor's note: Reconsideration denied by order dated Aug. 25, 1983

H. ALLEN SELLERS

IBLA 81-821

Decided March 23, 1982

Appeal from decision of the Idaho State Office, Bureau of Land Management, rejecting application to purchase lands under the Omitted Lands Act. I-17480.

Affirmed.

1. Public Sales: Applications -- Public Sales: Sales Under Special Statutes

An application to purchase public land under the Omitted Lands Act of May 31, 1962, P.L. 87-469, 76 Stat. 89, is properly rejected where the land has not been offered for public sale based on a finding that retention of the land is in the public interest.

APPEARANCES: H. Allen Sellers, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is taken from a decision dated June 11, 1981, by the Idaho State Office, Bureau of Land Management, which rejected appellant's application to purchase land near the Snake River described as the portion of lot 13, sec. 22, T. 5 N., R. 38 E., Boise meridian, that lies between the county road and the Union Pacific Railroad tracts. Appellant owns land adjoining the tract applied for. The decision states:

The subject strip of land was not offered for sale under the Omitted Lands Act because it did not meet the criteria for disposal under that Act.

At the time that other lands in this township were offered for sale under the Omitted Lands Act, it was determined that it would not be in the best public interest to dispose of this and certain other omitted lands to private interests. The reasons for retention in public ownership were that the lands contained little or no improvements; and due to their location, topography, and natural undisturbed character, provided good wildlife habitat; and offered excellent recreation potential.

Because the lands were not offered for sale under the Omitted Lands Act, this application is necessarily rejected. The rejection is without prejudice, however, to your investigating the possibility of purchase of the land under Section 203 of the Federal Land Policy and Management Act (Act of October 21, 1976).

[1/]

BLM's decision is based on a land report dated September 17, 1970, compiled by a realty specialist. In his report, the specialist analyzed a total of 779.16 acres of omitted lands within T. 5 N., R. 38 E., Boise meridian. He recommended that 151.10 acres be offered for sale and that it would be in the best public interest to retain 628.06 acres in public ownership. The lands sought by appellant were among those recommended for retention in public ownership. 2/ On December 9, 1970, BLM issued a notice of offer of lands for sale under the Omitted Lands Act of May 31, 1962, P.L. 87-469, 76 Stat. 89. This notice described the 151.10 acres recommended for sale in the land report.

In his statement of reasons, appellant asserts that years ago he was assessed county taxes on the land applied for. Appellant also contends that the land is too small for such purposes as recreation or wildlife potential.

The Omitted Lands Act authorizes the Secretary in his discretion

[t]o sell at not less than their fair market value, as determined by the Secretary by appraisal, taking into consideration any reservations specified by the Secretary pursuant to sections 3 and 4 of this Act, any of those lands in the State of Idaho, in the vicinity of the Snake River or any of its tributaries which have been, or may be, found upon survey to be omitted public lands of the United States, which lands are not within the boundaries of a national forest or other Federal reservation and are not lawfully appropriated by a qualified settler or entryman

1/ Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1713 (1976), permits the Secretary to sell tracts of public land meeting the following criteria:

"(1) such tract because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency; or

(2) such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or

(3) disposal of such tract will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership."

2/ The land report noted that the highway in sec. 22, adjacent to the tract appellant is seeking, provides the only access to these lands which are "highly desirable for a recreation area."

claiming under the public land laws, or are not used and occupied by Indians claiming by reason of aboriginal rights or are not used and occupied by Indians who are eligible for an allotment under the laws pertaining to allotments on the public domain.

Before any lands may be sold under the Act, a notice that the lands will be offered for sale must be published in the Federal Register and in at least one Idaho newspaper. 43 CFR 2546.1.

Appellant's argument concerning the characteristics of the land in question is not persuasive. Whether lands are to be offered for sale under the Omitted Lands Act is a matter wholly committed to the discretion of the Secretary. Jay O. Wadsworth, 2 IBLA 230 (1971). In the Wadsworth case, the application was rejected because BLM found that the lots sought provided wildlife habitat and recreational potential. There the Board stated that the decision by BLM to reject the application would not be reversed in the absence of substantial and persuasive evidence that the decision was erroneous. In the present case, as there is no indication that the lands sought have been offered for sale, nor any persuasive evidence that the decision was erroneous, we find that appellant's application was properly rejected.

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

