

RONALD L. SWAFFORD

IBLA 83-169

Decided January 31, 1984

Appeal from decision of Salmon District Office, Idaho, Bureau of Land Management, rejecting application for a permit to use public land. ID-040-P3-01.

Affirmed.

1. Applications and Entries: Generally

Where the Secretary of the Interior, or his delegate, by appropriate notice has classified certain lands for retention, an application for a permit to use land so classified is properly rejected.

APPEARANCES: Ronald L. Swafford, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

On September 30, 1982, Ronald L. Swafford filed an application with the Bureau of Land Management (BLM), for a permit to allow his continued farming, and livestock grazing and production on land adjacent to the Salmon River and described as lot 4, sec. 18, T. 17 N., R. 21 E., Boise meridian, containing 1.3 acres, and to install a sprinkler irrigation system thereon. Swafford also informally requested that BLM offer the same tract at public sale. A cover letter attached to his application, describing the identical land, requested the necessary papers to apply for purchase of unintentional trespass land adjoining McKim Creek Ranch on Shep Point. This application and letter prompted BLM's decision of October 7, 1982, containing the following language.

The application is rejected for the following reasons:

1. It is the Bureau's policy to retain and manage public land unless, through the planning process, it is revealed that these lands have site or location values making them highly suitable for the applied for use. This parcel was not identified as having any unique values for agriculture.

2. Permits are only issued as an interim measure pending a decision to sell the tract or terminate the use. Since the tract does not meet the sale criteria, there is no reason to enter into the interim measure. The agricultural use will be terminated.

With its decision BLM issued a letter indicating its intent to retain the lands on Shep Point in Federal ownership as recommended by the Ellis-Pahsimeroi management plan. 1/

On November 3, 1983, appellant filed a timely notice of appeal from BLM's decision to reject his application to purchase real property. In his statement of reasons on appeal, appellant contends (1) the BLM decision is arbitrary, capricious, an abuse of discretion, and erroneous as a matter of law; (2) the land applied for is isolated, unmanaged, and has no public value; (3) the land is without access by road, foot, or vehicle, and cannot be used for any purpose; (4) the land appears to have been omitted from the patent to his predecessor by mistake; and (5) appellant and his predecessors have used the parcel for nearly 50 years for agricultural and livestock purposes and for its access to water.

The land applied for has been the subject of a BLM classification decision in response to sale application I-4288 filed under the Public Sale Act of 1968, 43 U.S.C. § 1431 (1976), by Elmer J. Hutchinson, an earlier owner of the property now occupied by the appellant. That decision, dated November 1, 1978, classified the subject lands as not suitable for public sale. This classification action by BLM is still in effect.

[1] The regulation at 43 CFR 2461.5(a) sets forth the segregative effect of a classification for retention. Section 2461.5(c) states the following:

(c) The segregative effect of a classification for retention will terminate in one of the following ways:

- (1) Reclassification of the lands for some form of disposal;
- (2) Publication in the Federal Register of a notice of termination of the classification;
- (3) An Act of Congress;
- (4) Expiration of the classification.

Where the Secretary of the Interior or his delegate, by appropriate notice has classified certain lands for retention and that classification has not been disturbed by any of the forementioned actions, an application to purchase such property is properly rejected. See Bill K. Yearsley, 67 IBLA 97 (1982). Likewise, the application for a permit to use the land in this case was properly rejected, since permitting would only be an interim step pending a sale and sale is precluded by the classification.

1/ A public sale land report in the case record, dated Aug. 18, 1978, states at page 7: "Parcel 7 [land in question] is an isolated lot located on the Salmon River. It is a relatively flat area that is suitable for floaters to pull out and spend the night on. It also falls within the Wild and Scenic Rivers Act potential recreational river category." The report also states at page 4 that the river "exhibits the basic criteria of a recreational river and should be protected * * * until it can be studied and a suitability determination made," for possible inclusion into the National Wild and Scenic River System, 16 U.S.C. § 1271 (1976).

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:

Bruce R. Harris
Administrative Judge

Edward W. Stuebing
Administrative Judge

