

MINUTE ITEM

26. SALE OF VACANT SCHOOL LAND, APPLICATION NO. 11514, LOS ANGELES LAND DISTRICT, INYO COUNTY, ADRIENNE C. BURKE - S.W.O. 7420.

In presenting Calendar Item 45 attached, the Executive Officer recommended that the Commission reject from the pending purchase application of the sole bidder, Mrs. Adrienne C. Burke, the NW $\frac{1}{4}$ of Section 36, T. 6 S., R. 36 E., M.D.M., and authorize the withdrawal of this land from the vacant State school land lists pending clarification of the title status.

Mr. Francis C. Whelan, Attorney, appeared on behalf of the applicant, and suggested that his client be allowed to handle the issuance of any necessary right-of-way easements to clear the land title. The staff recommended that the legal matters be cleared by the State Lands Division before proceeding with consideration of the sale. In reply to a question from the Executive Officer, Mr. Whelan stated that it would be acceptable if the Commission postponed action on the application to give time for the granting of all easements and rights of whatever type requested by present occupants of the subject land before completing the sale of the remaining land to the applicant.

UPON MOTION DULY MADE, SECONDED, AND UNANIMOUSLY CARRIED, A RESOLUTION WAS ADOPTED DEFERRING ACTION UNTIL THE NEXT MEETING OF THE COMMISSION ON THE APPLICATION OF MRS. ADRIENNE C. BURKE, NO. 11514, LOS ANGELES LAND DISTRICT, TO PURCHASE 480 ACRES OF VACANT STATE SCHOOL LAND IN INYO COUNTY.

Attachment

Calendar Item 45 (4 pages)

CALENDAR ITEM

45.

SALE OF VACANT SCHOOL LAND, APPLICATION NO. 11514, LOS ANGELES LAND DISTRICT, INYO COUNTY, ADRIENNE C. BURKE - S.W.O. 7420.

On October 5, 1959, an offer was received from Adrienne C. Burke of Playa del Rey, California, to purchase the NW $\frac{1}{4}$ and E $\frac{1}{2}$ of Section 36, T. 6 S., R. 36 E., M.D.M., containing 480 acres in Inyo County. The applicant made the required minimum offer of \$2 per acre, or a total of \$960.

A staff appraisal completed in December of 1959 shows that the land is not suitable for cultivation without artificial irrigation and establishes its value at \$10 per acre, or a total of \$4,800. The appraisal also indicates the existence of numerous encroachments upon the NW $\frac{1}{4}$ of said section which appear to be in the nature of trespasses, many of which have been in existence for several years. These encroachments on the NW $\frac{1}{4}$ of said section are listed as follows:

1. Maintenance station of the State Division of Highways, including buildings and a well as a source of water supply.
2. State highway right-of-way (Route No. 63) running in a northeasterly direction through the NW $\frac{1}{4}$ of the subject section.
3. Open ditch line and four-inch underground pipeline, used by the Deep Springs College in transporting water from a source of supply, located northwesterly of the State-owned parcel and extending to a point southerly thereof.
4. Electric power line running in a north-south direction through said NW $\frac{1}{4}$, owned by the California Electric Power Company of San Bernardino, California.
5. Telephone line and appurtenances running generally in a north-south direction through said NW $\frac{1}{4}$, owned by the California Interstate Telephone Company.

Occupation of the State land by permit, lease or agreement has never been requested by any of the above listed, nor has the State Lands Commission or its predecessors granted any right for the use of the said land, prior to filing of the purchase application.

The application to purchase was processed normally through publication to receive bids, during which period discussions were held with most of the interested parties involved in an attempt to resolve amicably the conflicts to the end that clarification of the various encroachments could be had which would permit the sale of the land under the pending application. No bids were received pursuant to publication.

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Applications for rights-of-way for the encroachments above listed have now been received by the State Lands Division from all interested parties. In addition, a protest to the sale of the land has been filed by the Trustees of Deep Springs College. However, it is not clear whether the protest is applicable to the entire 480 acres or to only the NW $\frac{1}{4}$ of said Section 36, the latter of which is traversed by the aforesaid open ditch line and underground pipeline utilized by the Trustees of Deep Springs College. The State Division of Highways likewise has filed a protest to the sale, by the Commission, of the NW $\frac{1}{4}$ only of said Section 36, a portion of which is occupied by the Division of Highways maintenance station and State highway right-of-way.

As the result of meetings held with representatives of the State Division of Highways of the Deep Springs School, and of the applicant for the purchase of said land by members of the Commission's staff, the applicant to purchase, Mrs. Adrienne Burke, through her attorney, by letter dated March 25, 1960, has advised that she is willing to except from the sale of the 480 acres involved the 5 acres or less upon which the maintenance station of the State Division of Highways is located. She will also grant to the Trustees of Deep Springs College a ditch-line easement of the same width as the present ditch (approximately 4 feet) for the purpose of transporting across the property (NW $\frac{1}{4}$) any water to which the school may be entitled, upon the condition that she have the right to cross such ditch with any road or roads she may desire, such roads not to interfere with the flowage, if any, in the ditch. She is also willing to give pole-line easements to the two utilities (California Electric Power Co. and California Interstate Telephone Co.), covering such pole lines as are presently in existence. It will be noted that the foregoing omits two existing uses, namely, the State highway right-of-way and the four-inch underground pipeline utilized by Deep Springs College. The aforesaid letter further indicates that Mrs. Burke is willing to enter into agreements which would be binding upon her at such time as title to the land vests in her.

Notwithstanding these offers by the applicant to purchase, the various parties utilizing the State land are reluctant to enter into agreements with the prospective purchaser, particularly due to the many legal ramifications involved, and have indicated their desire to deal directly with the State to perfect their uses of the land and have filed appropriate applications for such uses, with the State Lands Commission.

On various occasions the Attorney General's office has advised that an application to purchase such as has been filed by Adrienne Burke constitutes an offer to purchase only, and is in no way binding upon the Commission. Therefore, the applicant has gained no equitable or legal rights under her pending application. Furthermore, Section 7301 of the Public Resources Code provides that State school lands may be sold by the Commission in accordance with rules and regulations prescribed by it. Section 1907(a) of Title 2, Division 3, of the California Administrative Code (rules and regulations of the Commission) provides that "Whenever it appears that such action is in the public interest the commission may reject any application or bid or refuse to approve any work or to execute any lease or other instrument."

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Section 6210.2 of the Public Resources Code provides that "The Commission may withdraw from sale any of the public lands belonging to the State and may restore any or all public lands so withdrawn, or other public lands, for sale."

Section 6223 of the Public Resources Code provides that applications to lease or purchase shall be given the priority of time of filing. Since the purchase application predates all other applications on file, the Commission could not proceed with processing the lease applications and with issuance of leases thereunder until such time as the pending purchase application is disposed of.

The Commission's appraisal staff has undertaken a review of the original appraisal to determine the effect, if any, on the value of the $E\frac{1}{2}$ of said Section 36 if the $NW\frac{1}{4}$ thereof was not sold under the pending application. Upon a cursory review, it might be argued that if the $NW\frac{1}{4}$ of said section were deleted from the pending purchase application, the value of the $E\frac{1}{2}$ should be reduced by reason of severing the $E\frac{1}{2}$ from public access (the State highway right-of-way) running through the $NW\frac{1}{4}$. A supplemental appraisal report prepared by the staff indicates that there would be no reduction in the value of the $E\frac{1}{2}$ (\$10 per acre) as a result of the State retaining title to the $NW\frac{1}{4}$ for the reason that an appropriate right-of-way over the $NW\frac{1}{4}$, leading from the State highway right-of-way to the $E\frac{1}{2}$ of said section, could be granted by the Commission, and the staff would so recommend. There presently exists a traveled, dirt roadway over the $NW\frac{1}{4}$ which provides access to the $E\frac{1}{2}$ of said section from the existing State highway. By reason of the land in this portion of the section being uniformly level, an access road could also easily be established along the northerly line of the $NW\frac{1}{4}$. Irrespective of the route selected, the maximum distance would involve approximately one-quarter mile of right-of-way. Under the rates established by the State Lands Commission, an easement for a roadway 40 to 50 feet in width could be granted by the Commission upon the filing of a proper application, for a maximum term of 49 years, the total fee for which would be less than \$140. This is an insignificant figure, and in addition relatively little or no construction costs would be involved. It is therefore the opinion of the staff that the value of the $E\frac{1}{2}$ alone is \$10 per acre, which is the appraised and advertised price under Mrs. Burke's application.

The foregoing is summarized as follows:

1. All of the encroachments on the State-owned land traverse the $NW\frac{1}{4}$ only of Section 36, T. 6 S., R. 36 E., M.D.M.
2. All of the parties occupying the $NW\frac{1}{4}$ have indicated their reluctance to enter into agreements for the perfection of their uses of the land with an applicant who, at the time of entering into any such agreements, has no interest therein.
3. Applications for rights-of-way have been filed with the State Lands Commission by all parties occupying the State-owned land.

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4. It is the opinion of the staff that no change in value would occur to the E $\frac{1}{2}$ of said Section 36 by reason of the State retaining title to the NW $\frac{1}{4}$.
5. Upon filing of an appropriate application for a right-of-way by a purchaser of the E $\frac{1}{2}$, the Commission could and the staff would favorably recommend the granting of an access easement, for a nominal sum, over the State land in the NW $\frac{1}{4}$ of said Section 36 leading from the existing State highway to the E $\frac{1}{2}$ of said section.
6. It is considered to be in the public interest for the State Lands Commission to clarify the rights and uses of the land under its jurisdiction prior to proceeding with any sale thereof.

IT IS RECOMMENDED THAT THE COMMISSION REJECT FROM THE APPLICATION (NO. 11514, S.W.O. 7420) OF ADRIENNE C. BURKE THE NW $\frac{1}{4}$ OF SECTION 36, T. 6 S., R. 36 E., M.D.M., AND WITHDRAW SAID PARCEL FROM SALE UNTIL EXISTING USES AND INTERESTS OF ALL PARTIES HAVE BEEN CLARIFIED OR PERFECTED, AND FIND THAT THE E $\frac{1}{2}$ OF SAID SECTION 36 IS NOT SUITABLE FOR CULTIVATION WITHOUT ARTIFICIAL IRRIGATION AND AUTHORIZE THE SALE OF SAID E $\frac{1}{2}$ OF SECTION 36 TO THE SOLE APPLICANT, ADRIENNE C. BURKE, AT THE APPRAISED CASH PRICE OF \$3,200, SUBJECT TO ALL STATUTORY AND CONSTITUTIONAL RESERVATIONS. IT IS FURTHER RECOMMENDED THAT, AT SUCH TIME AS THE NW $\frac{1}{4}$ OF SAID SECTION 36 IS RESTORED TO THE AVAILABLE PUBLIC LAND LIST, MRS. ADRIENNE BURKE BE ACCORDED THE RIGHT OF FILING THE FIRST APPLICATION TO PURCHASE. IN THE EVENT THE APPLICANT, ADRIENNE BURKE, DOES NOT DESIRE TO PURCHASE THE E $\frac{1}{2}$ OF SAID SECTION 36 ON THE BASIS SET FORTH ABOVE, IT IS RECOMMENDED THAT HER APPLICATION BE REJECTED AND CANCELLED AND ALL DEPOSITS REFUNDED, LESS THE FILING FEE OF \$5.00.