

INTERIOR BOARD OF LAND APPEALS

Jesse B. Knopp

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Appeal from a decision of the Oregon State Office, Bureau of Land Management, dismissing a protest to a proposed land exchange. WAOR 48183.

Affirmed.

1. Exchanges of Land: Generally--Private Exchanges: Public Interest

Sec. 206(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716(a) (1988), authorizes the Secretary of the Interior to exchange public lands, or an interest therein, if the public interest will be well served by such exchange. A protest against an exchange is properly dismissed where the record shows that BLM fully considered in an environmental assessment and an addendum thereto the impact of the exchange of certain of the public lands on the grazing operation of the protestant, who held a grazing lease for such lands, and determined that any detrimental effect on the protestant's operation was outweighed by the public interest in completing the exchange.

APPEARANCES: William J. Plonske, Esq., Moses Lake, Washington, for appellant; Betty M. McCarthy, Acting Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Portland, Oregon, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

On November 9, 1992, the Spokane District Manager, Spokane District Office, Bureau of Land Management (BLM), had a Notice of Realty Action published in the Federal Register (57 FR 53335) regarding proposed land exchange WAOR 48183. Therein, the District Manager notified the public that certain identified public lands, totalling 1886.04 acres in 15 separate tracts, had been determined to be suitable for exchange, pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1716 (1988), for 640 acres of private land, identified as sec. 27, T. 5 N., R. 18 E., Willamette Meridian, within BLM's Rock reek Management Area. BLM offered the public 45 days from that date within which to file any comments or objections to the exchange, which was

supported by environmental assessment (EA) OR 134-02-12. Within that time period, Jesse B. Knopp filed a protest to the transfer of two of the tracts of public land identified for exchange. Those two, Tracts 9 and 12, were the subject of a Federal grazing lease held by Knopp. 1/

In his protest, Knopp explained that the grazing lease had been part of his ranch for more than 50 years. He stated that Tract 9 is bordered by his deeded land on three sides and that Tract 12 is completely surrounded by his deeded land. He asserted that all his range land including Tracts 9 and 12 had been enrolled since 1989 in a long term range improvement program with the Soil Conservation Service (SCS) involving the development of a livestock watering system and cross fencing to implement a rotational grazing plan. A letter, dated December 11, 1992, to BLM from the Area Range Conservationist, SCS, explained Knopp's improvement program and stated that if Knopp had grazing access after the exchange there would be no negative impact to his operations, but, if not, the exchange "could jeopardize the integrity of both the LTA [long term agreement] and [Knopp's] planned grazing system." Knopp contended that loss of control of either parcel would materially affect the operation of his ranch.

In response to Knopp's protest and several others, BLM prepared an addendum to its EA. On May 28, 1993, the Oregon State Director, BLM, issued identical decisions to the protestants dismissing their protests and affirming the District Manager's decision to proceed with the exchange.

Knopp filed a timely appeal asserting that BLM violated FLPMA by failing "to fully consider the impact of the exchange of parcels 9 and 12 upon petitioner's adjoining land in terms of access across petitioner's land, loss of grazing land, disruption of planned improvements and increased costs due to required additional fencing" (Statement of Reasons (SOR) at 3). He also contends that "the Department abused its discretion in finding that the exchange will not have any significant effects on the environment" (SOR at 4). He claims an environmental impact statement is required. Finally, appellant argues that the decision to approve the exchange fails to comply with the applicable "regional management plan" (SOR at 5).

In response, BLM charges that it did fully consider the impact of the exchange on Knopp's adjoining lands, that there are no significant impacts to the quality of the human environment from proceeding with the exchange, and that the exchange is consistent with the Spokane Resource Management Plan (RMP), the applicable land use plan. 2/

1/ Each tract contains 160 acres. Tract 9 is described as the SE $\frac{1}{4}$ sec. 12, T. 24 N., R. 28 E., Willamette Meridian, and Tract 12 is the SW $\frac{1}{4}$ sec. 20, T. 24 N., R. 29 E., Willamette Meridian.

2/ Knopp also asserted his standing to appeal BLM's decision. BLM did not disagree with that assertion.

[1] Section 206(a) of FLPMA, as amended, 43 U.S.C. § 1716(a) (1988), authorizes the Secretary of the Interior to dispose of a tract of public land by exchange where he "determines that the public interest will be well served by making that exchange."

In determining whether an exchange is in the public interest, section 206(a) of FLPMA states that the Secretary "shall give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife." Id. Furthermore, it provides that the Secretary shall find that "the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands or interests and the public objectives they could serve if acquired." Id.

In the EA on page 2, BLM explained the public benefits of proceeding with the exchange:

The exchange would primarily benefit existing Bureau of Land Management (BLM) programs in wildlife, rare plants, and recreation, but will also benefit access, watershed and range programs, and eliminate about 25 miles of Federal property lines, many of them unmarked interior subdivision boundaries. The exchange will consolidate existing public land in the Rock Creek management area into a more manageable block, while disposing of numerous isolated tracts of public lands which do not possess important resource values, and are not within a BLM management emphasis area.

Accordingly, BLM concluded that the proposed land exchange was consistent with the regulations implementing section 206 of FLPMA and was in the public interest.

Essentially, what Knopp is arguing is that BLM could not have fully considered the impacts of the exchange on his ranching operation, because if it had, it would not have denied his protest and proceeded with the exchange. Based on our review of the record, however, we conclude that BLM did fully consider those impacts. First, it is not clear that transferring these lands from Federal ownership will preclude use by Knopp. ^{3/} Second,

^{3/} BLM stated in the addendum to the EA on page 3:

"[I]t is possible that Knopp would be able to work out an agreement with the new landowner to continue to use this tract of land [Tract 12], or to have access across it. Some type of agreement is highly likely, because this tract has no legal access and is surrounded on all four sides by Knopp private land. Therefore, the new landowner would not be able to even reach the land absent some type of an agreement with Knopp."

even if all use is precluded, the public benefits of the exchange outweigh any potential economic hardship to Knopp.

In the addendum to its EA, BLM admitted that it had not adequately addressed in the EA "the inconvenience and cost caused to Knopp's grazing operations due to the way the subject public lands fit together with his deeded private lands" (Addendum at 1). However, on page 2-3 of the addendum it proceeded to discuss the factors raised by Knopp and on objections April 15, 1993, the District Manager adopted the recommendation that the proposed action, as described in the EA, be left unchanged. The rationale for not changing the proposed action was that the impacts discussed in the addendum were not considered to be significant. BLM stated: "The exchange will be consistent with the provisions of FLPMA, since Federal land management will be enhanced, and the public values of the private lands to be acquired outweigh those of the public lands that will be traded" (Addendum at 4). In addition, in its answer on page 2 BLM summarized its consideration of the impacts. Knopp has not pointed to any impacts unaddressed by BLM.

Knopp also contends that BLM should have prepared an environmental impact statement because of significant impacts to the environment. However, Knopp's arguments are not related to impacts to the environment. Instead, those arguments relate to potential increased costs to Knopp in completing his proposed grazing improvements.

The record shows that BLM analyzed the environmental impacts of the exchange and concluded that they would not be significant. Knopp has failed to show any error in that conclusion.

Finally, Knopp contends that BLM ignored the "regional management plan" in proceeding with the exchange. Contrary to that assertion, which is unaccompanied by any specific example of how BLM may have violated such a plan, the record shows that BLM complied with the applicable plan, the Spokane RMP, as amended, June 1992. According to that plan, "[t]he highest land tenure adjustment priority would be placed on consolidation of public lands through land exchanges and purchases into, between and within the ten management areas * * * identified in this RMP Amendment" (Attachment 1 to BLM Answer, a copy of page 14 of the 1992 amended RMP). On page 15 of the Spokane RMP Record of Decision, date May 1987, BLM announced the management area prescription for the Rock Creek Management Area to implement the Land Tenure Adjustment and Access Program. That prescription was "[c]onduct land exchange to acquire crucial habitat areas and to enhance recreational

fn. 3 (continued)

In his SOR, Knopp challenges BLM's use of the term "highly likely," stating: "But on what evidence?" Clearly, that evidence is as stated in the addendum and in BLM's answer that Knopp's land completely surrounds Tract 12 and makes it impossible for the new landowner to gain access to the parcel absent some type of agreement or easement from Knopp.

management opportunities." The present exchange is consistent with that prescription. Moreover, as BLM explained in its answer: "The subject public lands are located outside of the management areas identified for retention and management in the RMP and are scattered and isolated tracts which the RMP identifies to be disposed of by exchange if no unique or important resource values have been identified, following site-specific environmental analysis. See Attachment 2, page 49 of the original 1985 RMP." Knopp has failed to show any violation of the applicable management plan. ^{4/}

Accordingly, 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.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

^{4/} In an order dated Aug. 12, 1993, we took under advisement a request for hearing filed by Knopp. This Board has discretionary authority under 43 CFR 4.415 to refer any case to an Administrative Law Judge for a hearing on a material issue of fact. John H. Peterson, 125 IBLA 267 (1993). After review of the record in this case, it is clear that no material issue of fact exists. The request for hearing is denied.