

INTERIOR BOARD OF LAND APPEALS

George E. Younghans and LaRene M. Younghans

135 IBLA 251 (undated)

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GEORGE YOUNGHANS
LARENE M. YOUNGHANS

IBLA 93-652

Decided

Appeal from decision of the Area Manager, Tonopah Resource Area, Tonopah Nevada, denying an application for direct public sale. N-55407.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Sales--National Historic Preservation Act: Generally--Public Sales: Generally

A decision to deny an application for sale of a parcel of public lands under sec. 203 of FLPMA will be affirmed where it is based upon a cultural resources report which determined that a site within the parcel is considered eligible for inclusion in the National Register of Historic Places.

APPEARANCES: George E. Younghans and LaRene M. Younghans, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

George E. Younghans and LaRene M. Younghans have appealed from the May 17, 1993, decision of the Area Manager, Tonopah (Nevada) Resource Area, Bureau of Land Management (BLM), denying their application to purchase a 10-acre parcel of land filed pursuant to section 203 of the Federal Land Policy Management Act of 1976 (FLPMA), 43 U.S.C. § 1713 (1994). BLM denied the application (N-55407) because a site located within the parcel qualifies for inclusion in the National Register of Historic Places (NRHP).

The parcel is located at the junction of the Amargosa River Valley and Oasis Valley, 8 miles north of Beatty, Nevada (Rafferty's Report at 1) and is adjacent to the Younghans' privately owned lands. 1/ In their application filed January 8, 1992, the Younghans explained that they have mining claims on the land (Tank No. 17 and Tank No. 18) and would be willing to give them up when they receive patent to the land.

1/ The Younghans stated that they would like to purchase land depicted on an attached map. BLM subsequently described the land for them as 10 acres situated in the SE¹/₄ SW¹/₄ SE¹/₄, sec. 28, T. 10 S., R. 47 E., Mount Diablo Meridian, Nevada.

On January 29, 1992, BLM explained in a letter that the processing of a sale of public land requires the compilation of a number of environmental reports, including a cultural resources inventory. Because of its workload and limited staffing, BLM suggested that, if the Younghans wished to expedite the process, they might want to consider contracting the cultural resources inventory. BLM also noted that the parcel lies within the Springdale Grazing Allotment under lease to the Younghans and advised them that their grazing privileges for the 10-acre tract would be canceled once the land was sold, citing 43 CFR 4110.4-2.

Acting on BLM's advice, the Younghans contracted with Kevin Rafferty, Ph.D., Archaeological Research of Southern Nevada, for a cultural resources inventory of the parcel, who prepared a report in March 1992. Rafferty stated that section 106 of the National Historic Preservation Act of 1966 (NHPA), 43 U.S.C. § 470f (1994), requires that a Federal agency take into consideration the effects of any undertaking upon historic properties on lands under its jurisdiction. Rafferty asserted that the transfer of the lands in question from BLM to the Younghans constitutes such an undertaking, and therefore identified the lands as an Area of Potential Effect.

Pursuant to his view of the mandate of the NHPA, Rafferty undertook an on-ground Class III (intensive) survey of the parcel. In the course of that survey, he recorded a single archaeological site (26NY7996/CR-NV-64-6289). Rafferty explained that the site, a large "base camp" measuring 174 meters north to south by 140 meters east to west within the parcel, extends south onto private land owned by the Younghans.

Having discussed the four major concentrations of artifacts within the site and two probes of the area, Rafferty next set forth the criteria he used to evaluate the eligibility of a site for nomination to the NRHP, which he found at 36 CFR 60.4:

The quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and associations, and

(a) that are associated with events that have made a significant contribution to the broad patterns of our history; or

fn. 1 (continued)

"A Cultural Resource Inventory of a Ten Acre Parcel Near Beatty, Nye County, Nevada," ARSN Report 4-20-1, BLM Report 6-1445(P), prepared by Kevin Rafferty, Ph.D., Archaeological Research of Southern Nevada, in March 1992 will be referred to as "Rafferty's Report."

- (b) that are associated with the lives of persons significant in our past; or
- (c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- (d) that have yielded, or may be likely to yield, information important in prehistory or history."

See Rafferty's Report at 12.

Rafferty indicated that the data was adequately significant to make the site likely to be nominated:

There are tens of thousands of artifacts on the site in significant densities per square meter of site. There is sufficient variability of data, quantity of data, and research potential to justify making the site eligible for the NRHP under Criterion (d). The fact that the site extends further to the south from the project parcel indicates that even more significant data may exist on-site. The site has the potential to answer questions regarding chronology, cultural affiliation, prehistoric and ethnohistoric subsistence patterns, and perhaps questions concerning prehistoric and ethnohistoric patterns of raw lithic resource procurement given the presence of non-local obsidian and jasper on the site. * * * Given the precious lack of significant and detailed research from the Beatty area this site could go a long way towards filling in glaring holes in our knowledge of the region.

(Rafferty's Report at 12-13.)

Rafferty noted that the site has undergone severe damage due to mining activity (Rafferty's Report at 12). He indicates that the Youngmans expressed a desire to own the parcel to prevent future mining entry that would further despoil the site and water sources located in the immediate area. He pointed out that Mrs. Youngmans is a member of the Nevada Archaeological Association and appears to have a legitimate interest in archaeological and environmental preservation, particularly in this current situation. Rafferty suggested that BLM might consider whether the site is better off in the hands of a private landowner with protective restrictions.

In his Contract Cultural Resources Report, BLM's Tonopah Resource Area archaeologist reviewed Rafferty's Report and recommended it for approval.

He concluded that this site is considered eligible for inclusion in the NRHP under 36 CFR 60.4(d), noting that the site appears to contain data that could contribute to a greater understanding of local and regional prehistory, and past environmental conditions. He recommended that the 10-acre parcel be declared unsuitable for disposal because of potential adverse effects to the site resulting from passage of the land into private hands. Because of cultural and other environmental concerns, he stated that the Tonopah Resource Area office would declare this acreage unsuitable for disposal, thereby eliminating any adverse effect to the site. Rafferty's Contract Cultural Resources Report was approved by the Area Manager on April 14, 1993.

Based on this report, BLM issued its decision denying the Youngmans' application to purchase the parcel. BLM stated that the parcel contained a large historical site within the parcel that qualifies for inclusion in the NRHP. BLM informed the Youngmans that, due to the existence of this site, it had concluded that the parcel should remain in public ownership.

In their statement of reasons, the Youngmans assert that they could better protect the parcel from trespassers and artifact hunters than BLM. They explain that they have been urging BLM to clean up the parcel since May 1990. According to the Youngmans, the site has been used for an unauthorized mill site for which the operator has not filed with BLM. The Youngmans contend that the mill site claimants used mercury to process tailings, contaminating the ground, graded part of the area, established living quarters with no sanitary provisions, dug a sump, and used the area for a general dump. They state that the site has been used as a party area, and that artifact hunters come almost every weekend. The Youngmans assert that after complaining to BLM about the mill site operator, he removed some of the junk, a few cars, trucks, and campers. They state that BLM made arrangements to have the contaminated soil removed. They relate that after the site was abandoned by the operator, they filed milling claims on the site, took down the shack and hauled 22 pick-up truck loads of garbage to the Beatty dump for BLM. The Youngmans attached a letter filed with BLM on May 21, 1990, in which they recounted contacts made with BLM informing it of the conditions on the property and the presence of Indian artifacts.

[1] Section 203 of FLPMA, 43 U.S.C. § 1713 (1994), authorizes the sale of a tract of public land, with certain exceptions, if the Secretary determines that the sale of such tract meets specific criteria. The implementing regulations for section 203 sales are found at 43 CFR Part 2710. Under 43 CFR 2711.1-1(c), requests for sales of public lands may be made to the district office of BLM for the district in which the public lands are located and shall specifically identify the tract being requested and the reason for proposing sale of the specific tract. Direct sales may be utilized when the authorized officer determines that a competitive sale is not appropriate and the public interest would best be served by a direct sale. 43 CFR 2711.3-3; see Kenneth W. Bosley, 99 IBLA 327 (1987).

A decision whether to sell a particular tract of public land is within the discretion of BLM. Section 203 of FLPMA provides for the exercise of Secretarial discretion in the formation of suitable tracts of land to be sold. The statute provides that "[t]he Secretary shall determine and establish the size of tracts of public lands to be sold on the basis of the land use capabilities and development requirements of the lands * * *." 43 U.S.C. § 1713(e) (1994). The intent of this provision "is not to give the Secretary unlimited powers, but to allow him the flexibility to make conveyances which are tailored to appropriate land uses." S. Rep. No. 583, 94th Cong., 1st Sess. at 48; Dean M. Anderson, 94 IBLA 88, 91 (1986). Under 43 CFR 2711.3-1(f), BLM enjoys discretion to withdraw any tract from sale if it finds that "[c]onsummation of the sale would be inconsistent with the provisions of any existing law." See C. Sody Soderstrom, 95 IBLA 382, 386 (1987).

Section 101(a)(1)(A) of the NHPA, as amended, 16 U.S.C. § 470a(a)(1)(A) (1994), authorizes the Secretary of the Interior to expand and maintain an NRHP, composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering and culture. The NHPA requires that the head of any Federal agency having direct or indirect jurisdiction over a proposed Federal undertaking shall, prior to approval of the undertaking, "take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register." 16 U.S.C. § 470f (1994). Implicit in those provisions is the policy of maintaining historical and archeological sites on Federal lands. BLM's decision not to approve a sale of this parcel is consistent with that policy and may be affirmed for that reason alone.

We have not disregarded the Youngmans' recitation of abuse of the property by the mill site operator and their willingness to preserve the integrity of the site. However, we give considerable deference to BLM decisions where they are based on firsthand knowledge of the land. Dean M. Anderson, supra at 91; see also Committee for Idaho's High Desert, 85 IBLA 54, 56 (1985); U.S. Fish & Wildlife Service, 72 IBLA 218, 221 (1983). Such decisions may be overcome if an appellant offers a preponderance of countervailing evidence, but not if he simply disagrees. Id. In this case BLM's decision to retain the property in Federal ownership was based on a thorough study of the property resulting in the conclusion that the site is considered eligible for inclusion in the NRHP. While the Youngmans assert that the property would be better cared for in their hands, it cannot be said that they have presented a preponderance of evidence that BLM's judgment was in error. The overriding purpose of retention of the land in Federal ownership is to prevent the ownership of historic artifacts from passing into private hands. Although we have no reason to doubt appellants' good faith in asserting that they would maintain those artifacts, there could be no guarantee that they would not be sold in the future if the lands passed into other private hands. We therefore affirm BLM's decision to declare the parcel unsuitable for disposal.

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.

David L. Hughes
Administrative Judge

I concur.

Will A. Irwin
Administrative Judge