

INTERIOR BOARD OF LAND APPEALS

Joyce Berlin

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JOYCE BERLIN

IBLA 96-50 Decided November 21, 1997

Appeal from action taken by the Bishop, California, Resource Area Manager, Bureau of Land Management, to implement the Travertine Area of Critical Environmental Concern Management Plan under environmental assessment CA-017-95-54.

Affirmed.

1. Environmental Quality: Environmental Statements—Federal Land Policy and Management Act of 1976: Land-Use Planning—National Environmental Policy Act of 1969: Environmental Statements

A decision to implement a resource management plan will be affirmed, although the plan did not ban nude bathing at a hot spring in an ACEC and order removal of a pool where such bathing was reported, when the decision includes an environmental assessment that fully considers relevant matters of environmental concern including use and maintenance of the hot springs resource.

APPEARANCES: Joyce Berlin, Bridgeport, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Joyce Berlin has appealed from a September 1, 1995, Decision Record and Finding of No Significant Impact of the Bishop, California, Resource Area, Bureau of Land Management (BLM), implementing the Travertine Area of Critical Environmental Concern (ACEC) Management Plan based on environmental assessment (EA) CA-017-95-54. The BLM Decision approved a number of management activities to be performed by BLM employees over the life of the plan, which BLM determined to be consistent with an April 1993 Bishop Resource Management Plan (RMP) and Environmental Impact Statement for the Bridgeport Valley where the Travertine Hot Springs ACEC is situated.

In her Statement of Reasons in support of appeal (SOR), Berlin complains that BLM failed to include, as part of the plan approved by the Decision here under review, a proviso designed to prevent use of springs

in the ACEC for nude bathing, which is contrary to a local ordinance. She also argues that designation of the springs as an ACEC does not adequately protect the resource, which she maintains should be made a national monument. In a supplement to her SOR (SSOR), which includes photographs and a geologist's monograph on the springs, Bishop argues that nude bathing is continuing at the springs and that BLM's plan should require BLM to remove "all man-made tubs and water diversions" in order to "allow natural re-establishment of the moles, flora, and fauna that are indigenous to the area." Her contention that the springs have recently been modified to permit the offending use is based in part on personal observation; she states that

[t]he historical use of the springs for bathing is questionable. When we moved here in 1972, there were no bathing facilities. Members of the Bryant family, whose ancestors settled this country, stated to me that bathing did not occur there until recent years. Danny Bryant related to me that his father, when a young boy, went to the Travertine area to boil eggs in the hot springs and suck on lemons, and that was the extent of happenings there. Existing tubs were constructed around the time George Williams published a book on hot springs in our area.

George's "tub" is made of concrete and has carpeting around it and sometimes hoses to control the water flow because of the excessive heat. It is obvious that if the water was not diverted for a tub, it would form a mole.

In her SSOR, Berlin concedes that BLM may lack authority to designate the ACEC area a national monument, but argues, nonetheless, that such designation is merited because the springs are "geologically unique," possess "natural beauty," and inspire a sensation of "wonder," in a combination that merits such recognition.

The 1993 RMP continued designation of the hot springs area in the Bridgeport Valley as an ACEC, and directed that they be managed to "enhance recreation opportunities and to protect candidate species habitats, unique geologic features and cultural resources." (RMP at 29.) The RMP directed BLM to take actions designed to afford "[y]earlong [p]rotection of the ACEC." *Id.* To comply with the RMP's directives, BLM published a draft plan for activity in the ACEC and held a public meeting to review and solicit comments thereon on February 15, 1995. Comments received from Berlin and others were considered in evaluating whether to implement an activity plan for the ACEC.

The plan adopted by BLM describes the tubs where the bathing to which Berlin objects takes place:

The Travertine hot springs attract many people. There are two main tub areas. One is a cement tub approximately 4 feet deep and the other consists of 3 interconnected tubs. Both have

a constant flow of water. A third tub exists but is seldom used except for a camping site. The third tub maintains a constant growth of algae and is pooled only by a ring of rocks. Presently the area is visited by approximately 50 cars per day during the peak season which is May-October. Access to the site is unlimited throughout the year and can be achieved by 2WD and 4WD vehicle, bicycles, walking, equestrian and occasionally by skiing and snowmobiling during winters that deposit adequate snow. Recreation use in the area consists of soaking in the hot tubs, camping, exploring, picnicking, and photography.

Id. at 8. Pertinent to this appeal, the plan approved by BLM closed three roads to the area, id. at 14, 23, prohibited camping, fires, and alteration of existing tubs, id. at 14, 15, 18, provided for monitoring, mapping, and regulation of water flow to the tubs, id. at 20, directed withdrawal of the ACEC from geothermal leasing and development, id. at 21, and required establishment of a natural flow of water to the western end of the hot tub area while prohibiting construction of new bathing pools. Id. at 22.

The EA prepared for the plan found that elimination of camping and changing the area to a day-use area will decrease the length and impact of visits, and observed that, while "[n]oise, dust, and visual impacts will exist at the cement hot tub," that further

tub construction will be prohibited. There will be a decrease in the current amount of man made tubs for recreational use at the base of the "main ridge." Natural water flow restoration from the "main ridge" water source would improve vegetative composition of the adjacent wetland and improve habitat for candidate species. The area around the tubs will become a more natural setting.

(EA at 3.)

The Decision here under review finds the activity plan conforms to the 1993 RMP, applicable Departmental regulations, and objectives described in the EA. Based on this conclusion, the Decision finds the proposed plan will not have an adverse environmental effect, but "will allow continued recreational use of the ACEC, while doing much to protect the cultural, geological and other natural resource values of the ACEC."

In response to the arguments raised by Berlin, BLM comments that her concerns about public nudity are outside the jurisdiction of BLM to control, but that the local sheriff will enforce a county ordinance forbidding public nakedness and a copy of the ordinance will be posted at a BLM kiosk at the entrance to the ACEC. Concerning Berlin's request that the tubs be removed, BLM takes the position that this matter was addressed and decided in the 1993 RMP and is no longer subject to appeal.

[1] One challenging a BLM decision to implement a resource management plan that is based upon an EA must show that it was premised on an error of

law or fact or that the analysis provided by BLM failed to consider a material question. See Southern Utah Wilderness Alliance, 128 IBLA 382, 389 (1994), and cases cited therein. No such showing has been made in this case. The decision to continue the existence of the Travertine ACEC was made in April 1973 when the RMP that directed development of the present activity plan was approved. An explanation of the consequences of such planning was provided by BLM when public notice of the development of the activity plan presently before us was given. See generally, 43 U.S.C. § 1712 (1994); 43 C.F.R. §§ 1601.0-5 and 1610.7-2. Although Berlin has made clear that she would go further than BLM has done to ensure that the natural resource of the springs is protected, she has not shown that BLM's action aimed at preserving and continuing the ACEC designation is contrary to law or fact, or that it is inconsistent with the 1993 RMP under which the plan challenged by Berlin was developed.

The record indicates that BLM's Decision is consistent with the RMP and Departmental regulations governing such plans as this. See 43 C.F.R. § 1610.5-3, requiring that BLM conform subsequent planning activity to approved resource management plans. It appears that BLM has considered Berlin's comments and has taken action to address them in the final plan adopted for the ACEC. Her stated preference for removal of the concrete pool and designation of the present ACEC as a national monument does not tend to show error in the Decision appealed from, while her objections to violations of the county ordinance prohibiting nude bathing should be addressed to the local sheriff charged with enforcement of such rules, rather than to BLM. Under the circumstances shown, there being no showing of error in BLM's decisionmaking, the Decision must be affirmed. Southern Utah Wilderness Alliance, *supra*.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

Franklin D. Amess
Administrative Judge

I concur:

T. Britt Price
Administrative Judge