

ROLLING STONE, INC.

IBLA 91-338

Decided November 2, 1992

Appeal from a decision of the Area Manager, Bruneau Resource Area, Idaho, Bureau of Land Management, rejecting an application to lease land for agricultural purposes. IDI-28179.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Exchanges--Federal Land Policy and Management Act of 1976: Leases

An application to lease land for agricultural purposes to one applicant was properly rejected where another applicant had applied to acquire title to the land by exchange and BLM decided, for the sake of consistency in management of the land, to lease it to the exchange applicant pending completion of the exchange.

APPEARANCES: Reyes F. Lopez, Jr., Rolling Stone, Inc., Mountain Home, Idaho, for appellant; Roger E. Schmitt, Associate District Manager, Boise District, Bureau of Land Management, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Rolling Stone, Inc. (RSI) has appealed from a decision of the Area Manager, Bruneau Resource Area, Idaho, Bureau of Land Management (BLM), dated May 10, 1991, rejecting application IDI-28179 to lease 80 acres of public land for agricultural purposes. RSI's application to lease the W $\frac{1}{2}$ NE $\frac{1}{4}$ sec. 35, T. 4 S., R. 6 E., Boise Meridian, Elmore County, Idaho, was filed on January 31, 1991, pursuant to section 302(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1732(b) (1988). The application stated that RSI desired to farm the land, which borders private land that RSI leases, and offered to lease the land for either 1 or 5 years.

A conflicting agricultural lease application (IDI-28180) was filed by Squaw Creek Farms (Squaw Creek) on February 1, 1991. Squaw Creek sought to lease the same land as RSI, along with 120 acres of additional land in

the NW $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 24 and the E $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 26, T. 4 S., R. 6 E., Boise Meridian, Elmore County, Idaho, near private land con

All of the land that is the subject of these two lease applications, comprising 200 acres, is subject to an August 9, 1991, exchange with Squaw Creek for acquisition in exchange for about 300 acres of private land in secs. 13, 23, and 24, T. 5 S., R. 6 E., Boise Meridian, Elmore County, Idaho. In a January 22, 1991, Feasibility Report, the exchange was in the public interest. The report stated that conveyance of the public land would allow BLM to dispose of land which has little, if any, value for wildlife, recreation, or other resources. In turn, acquisition of the private land would permit BLM to exchange landholdings within the Snake River Birds of Prey Area with land that offers various benefits to wildlife (including raptors).

The record indicates that the exchange proposal is delayed by action concerning withdrawals of the 200-acre tract of land for reclamation purposes. While the Bureau of Reclamation's withdrawals be lifted, the request is still pending in the Department. BLM predicted in May 1991 that revocation of the withdrawals and completion of the exchange could take three or more years.

In order to assess the environmental impact of leasing the 200-acre tract for agricultural purposes and to decide whether it is in the public interest to so lease the land and to whom to lease the land sought by both RSI and Squaw Creek, BLM prepared an Environmental Impact Statement in May 1991. BLM first proposed to lease the land sought by both RSI and Squaw Creek to RSI (thus rejecting Squaw Creek's application for an 80-acre portion of the land) and to lease the remaining 120 acres to Squaw Creek. BLM also considered the alternative of rejecting RSI's application and issuing a lease to Squaw Creek for the entire 200-acre tract (Alternative No. 1). Finally, BLM considered the alternative of issuing a lease to RSI for the entire 200-acre tract (Alternative No. 2).

In a Decision Record dated May 8, 1991, the Area Manager adopted Alternative No. 1. He stated that RSI's lease application was rejected and a lease issued to Squaw Creek "for a term of ten years or until a patent for the subject lands is issued, whichever is earlier." In the May 1991 decision, the Area Manager rejected RSI's lease application because issuance of a lease would "negatively impact" the pending exchange proposal. He explained:

Splitting up the three public land parcels would reduce the overall value of the public lands being exchanged, thereby reducing the acreage of private land that could be acquired. In addition, issuance of a lease to [RSI] would leave BLM with a small parcel of public land that would be difficult and uneconomic to manage without public access.

RSI appealed from the Area Manager's May 1991 decision.

Also by decision dated May 10, 1991, the Area Manager approved Squaw Creek's lease application and required and return a lease within 30 days of receipt of the decision. Thereafter, Squaw Creek timely executed and returned the lease by the Area Manager on May 29, 1991, and issued effective that date. The lease provides that it will expire "on December subject lands are transferred out of Federal ownership, whichever occurs first." The Area Manager explained in a memorandum Examiner on May 29, 1991: "BLM agreed to lease the subject public lands to Squaw Creek Farms until such time as the re revoked and the land exchange can be processed. * * * The lease will terminate when the land exchange is completed." Id.

RSI contends that leasing the subject land to RSI until the exchange is completed will be "in the public interest" since it will put the land to a beneficial use and provide money to the public treasury. RSI also argues that BLM has "discriminated" against it "in fa and has failed to keep RSI informed of current developments concerning the application.

[1] Section 302(b) of FLPMA authorizes the Secretary of the Interior, "[i]n managing the public lands, * * * [to] leases * * * the use * * * of the public lands, including, but not limited to, long-term leases to permit individuals to utilize cultivation." 43 U.S.C. § 1732(b) (1988). Accordingly, BLM has discretionary authority under section 302(b) of FLPMA agricultural purposes. See 43 CFR 2920.1-1; BLM Response at 2. In deciding whether to deny a particular use of the public use, BLM must generally weigh less stringent alternatives to denial. See Esdras K. Hartley, 54 IBLA 38, 43-44, 88 I.D. 43 Association of Four-Wheel Drive Clubs, 38 IBLA 361, 367-68 (1978), aff'd, California Association of Four-Wheel Drive C 1797-N (S.D. Cal. Aug. 5, 1980), aff'd, (9th Cir. Jan. 22, 1982). If both uses can be accommodated without conflict, BLM should pursue that course of action. Nonetheless, the record provides a valid rea lease application, which we find persuasive. That reason is that issuing a lease to the same party who will eventually take land under an exchange provides for consistency in BLM's management of the land. The record indicates that this reasoning to lease the W¹/₂ NE¹/₄ sec. 35 to Squaw Creek, rather than RSI. In the EA relied upon by the Area Manager in making his M stated that "[r]ejection of application IDI-28179 [of RSI] and approval of application IDI-28180 [of Squaw Creek] will pro management." Id. at 4. See also BLM Response at 1.

Issuing a lease to the exchange proponent insures that BLM need only deal with that single party during the lease to the transfer of title, thus reducing the administrative burden of management.

Moreover, authorizing Squaw Creek's use of the land allows BLM to promote continuity in the manner of use of the land in the land for the specific purpose for which it will ultimately be acquired by Squaw Creek. RSI has offered no evidence to show that its interest in management is not a valid reason for leasing to Squaw Creek, rather than to RSI. We hold that it is.

The record also indicates that the Area Manager intended, by issuing the lease to Squaw Creek, to encourage Squaw Creek's interest in obtaining title to the land so that it would follow through on the exchange proposal (once the withdrawals were removed, permitting Squaw Creek to make a substantial investment in farming the land. In his May 1991 memorandum to the District Director at page 2, the Area Manager stated that a lease was issued to Squaw Creek "in order to keep open the option to complete a land exchange with the Lessee when the reclamation withdrawal on the subject public lands is lifted." (Emphasis added.) This suggests that BLM was concerned that it might otherwise lose interest in the exchange desired by BLM if it were not issued the lease.

Ensuring that the exchange goes forward has obvious benefits to the public interest because the exchange will permit the consolidation of land within the Snake River Birds of Prey Area. It is what the Area Manager meant by stating in his May 1991 decision that rejection of RSI's application was necessary so that an exchange could proceed. We find such reasoning likewise to be a valid basis for leasing the land to Squaw Creek, rather than RSI, and appropriate for BLM to take into account the pending exchange when providing for an interim lease of the land. See Joe Lyon, Jr., 63 IBLA 53, 55 (1982), affirming rejection of an oil and gas lease offer in favor of an exchange conveyance from Federal ownership, and Natural Gas Corporation of California, 59 IBLA 348, 351-52 (1981), where we held that an oil and gas lease offer because issuance of a lease was incompatible with a pending land exchange.

Rather than show, as RSI contends, that the decision to issue a lease to Squaw Creek, instead of RSI, was an act of arbitrary and capriciousness, the record establishes that the decision was fully supported by a reasoned analysis of all relevant facts, made with due regard for the public interest, and is properly upheld in the absence of any showing of error or omission in that analysis. See Colorado River & Trail Exchange, 374, 375-76 (1992). At best, RSI expresses disagreement with BLM's decision, which is not sufficient to establish an error or omission. 76. Furthermore, nothing in the record before us suggests that RSI was denied information concerning the decisionmaking process, or that such information were not communicated timely by BLM. Therefore, we conclude that the Area Manager, in his May 1991 decision, properly denied RSI's application to lease the W $\frac{1}{2}$ NE $\frac{1}{4}$ sec. 35.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge