

WILLIAM J. & GRACE GANDOLFO

IBLA 2001-255

Decided March 2, 2004

Appeal from decision of the Battle Mountain (Nevada) Field Office, Bureau of Land Management, to convey ownership of Federal lands for use as a municipal airport.

Affirmed.

1. Airports: Generally

When the FAA files a request with BLM under section 516 of the Airport and Airway Improvement Act of 1982 to convey Federally-owned lands covered by a public airport, 43 CFR 2641.2(a) dictates that BLM must complete the requested conveyance unless it is inconsistent with the needs of the Department. Where BLM determines that the conveyance (1) is consistent with its resource management plan, (2) will not result in environmental harm and unnecessary or undue degradation of the public land, and (3) will promote the public interest of citizens in the area of the airport, BLM has demonstrated that the conveyance is not inconsistent with the needs of the Department and properly decides to make the conveyance.

2. Airports: Generally-- Environmental Quality:
Environmental Statements--National Environmental
Policy Act of 1969: Environmental Statements

A BLM decision to issue a conveyance to a county under the Airport and Airways Improvement Act of 1982 will be affirmed where BLM has prepared an environmental

assessment taking a “hard look” at the environmental consequences of the proposal, and reasonable alternatives thereto.

3. Airports: Generally--Grazing and Grazing Lands:
Generally

In the absence of a showing that a party has a legally-cognizable right to drive cattle across lands to be conveyed to a county under the the Airport and Airways Improvement Act of 1982 and in the presence of indications that there is in fact no such right, BLM is not obligated to place a reservation in the conveyance to the county guaranteeing use of a grazing corridor or stock lane

APPEARANCES: William J. and Grace Gandolfo, pro sese; Emily Roosevelt, Esq., Office of the Field Solicitor, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

William J. and Grace Gandolfo (appellants) have appealed from the February 28, 2001, decision record/finding of no significant impact (DR/FONSI) of the Battle Mountain (Nevada) Field Office, Bureau of Land Management (BLM), announcing a decision to transfer ownership by conveyance of fee simple title to 1,205.09 acres of Federal lands to Lander County, Nevada (the County), for use as the Austin Municipal Airport.

The County has operated the Austin Airport for many years on Federal lands pursuant to Federal Airport Lease Nev-057498, which covers approximately 1875 acres near Austin, Nevada, in secs. 25 and 36, T. 19 N., R. 42 E., secs. 30 and 31, T. 19 N., R. 43 E., sec. 1, T. 18 N., R. 42 E., and sec. 6, T. 18 N., R. 43 E., (Environmental Assessment (EA) Ex. B; BLM Answer at 15.) All of the 1205.09 acres designated for transfer are covered by the airport lease.

Appellants own lands near the airport and enjoy grazing privileges on the Airport Pasture. Although the Airport Pasture is depicted in the EA as covering the Austin Airport (EA at Appdx. H.), BLM indicates that the 1875-acre airport leasehold “is not part of the BLM-administered permit and preference held by” appellants. (BLM Answer at 15-16.) However, BLM concedes that only 600 acres have been fenced out of the Airport Pasture in the past and that appellants have enjoyed “free

use” (presumably use without authorization) of the unfenced portion, consisting of about 1275 acres. (BLM Answer at 15; EA at 5, Appdx. F.) BLM’s decision to convey these lands will result in all of the 1205.09 conveyed acres being fenced to exclude cattle. (DR/FONSI at 1; Letter from Appellants to BLM dated Apr. 21, 2000, at 2.) Thus, the conveyance will have the effect of ending appellants’ “free use.” Also at issue is a purported grazing corridor or stock lane running east-west across the airport property to allow appellants’ cattle to access their grazing land east of the airport. The conveyance does not contain any reservation of the right to use such a corridor or stock lane.

In March 1995, the County inquired from BLM how it might be able to obtain title to the Austin Airport. BLM responded with two options, including purchasing the property under the Federal Land Policy and Management Act of 1976 (FLPMA) or requesting through the Federal Aviation Administration (FAA) that the lands be conveyed under authority of section 516 of the Airport and Airway Improvement Act of 1982 (AAIA), as amended, 49 U.S.C. § 47125 (2000).^{1/} The County pursued the latter option. On March 16, 1998, FAA filed with BLM a copy of the County’s application for conveyance. On August 26, 1999, FAA formally requested fee title transfer of 1205.09 acres, and BLM assigned serial number N-62443 to the request on September 9, 1999.

On October 15, 1999, BLM prepared a notice of realty action (NORA) for the conveyance. The NORA was published in the Federal Register on October 27, 1999, 64 FR 57903 (Oct. 27, 1999), and in the Battle Mountain Bugle on November 18, 1999. Copies were also sent to interested parties in the area, including appellants. Interested parties were invited to comment on the proposed conveyance.

On November 19, 1999, BLM gave notice that a draft EA for the conveyance was available for review. On November 22, 1999, BLM signed a DR/FONSI indicating that the proposal had been approved. This action was premature, as the decision record was not ripe for signature because the time for commenting on the proposal had not yet expired.

On December 9, 1999, appellants filed their comments on the EA and filed a protest against the DR/FONSI. They listed eight grounds for protest, many of which are before us in the present appeal. BLM treated the protest as an appeal from the November 22, 1999, DR/FONSI and forwarded the matter to this Board, where it was docketed as William J. (Jay) & Grace Gandolfo, IBLA 2000-89. However, on December 28, 1999, BLM, realizing that the DR/FONSI had been signed prematurely

^{1/} The AAIA was amended on Apr. 5, 2000, and apparently recodified by Pub.L. 106-181, 114 Stat. 75. It was previously codified as 49 U.S.C. § 2215 (1994).

and that it had not had an opportunity to consider and rule on appellants' protest, requested that we remand this matter to it. By order dated February 9, 2000, the appeal was dismissed without prejudice and the matter was remanded to BLM to consider appellants' protest.

On April 24, 2000, appellants filed a letter detailing their opposition to the conveyance, particularly with respect to the purported stock lane. It appears that appellants envision an open passage allowing livestock "free access between food and water," while (according to appellants) the County envisions "a narrow lane with closed gates at both ends, permitting us to only herd the livestock through from one side to the other." (Letter from appellants to BLM dated Apr. 5, 2000, at 2.) In August 2000, BLM released a revised EA analyzing possible impacts of the proposal, again inviting public comment. On September 13, 2000, appellants reiterated their opposition to the conveyance, noting that their previous points of protest had not been remedied in the newer EA. On February 21, 2001, BLM issued a revised EA specifically responding to their protest.

On March 8, 2001, BLM issued the DR/FONSI approving the conveyance, and the present appeal ensued. Appellants generally challenge the need for the airport conveyance, asserting that the amount of land conveyed is excessive. They also complain that the EA fails to consider impacts to their livestock operation or on soil, vegetation, and water resources.

[1] Section 516 of the AAIA dictates that the Secretary of Transportation request

the head of the department, agency, or instrumentality of the United States Government owning or controlling land or airspace to convey a property interest in the land or airspace to the public agency sponsoring the project or owning or controlling the airport when necessary to carry out a project under this subchapter at a public airport, to operate a public airport, or for the future development of an airport under the national plan of integrated airport systems.

49 U.S.C. § 47125 (2000). Thus, the Department of Transportation (through its agency FAA) is authorized to request the Department of the Interior (through its authorized agency BLM) as the owner of land, to convey a property interest in that land to the public agency (here the County) that controls a public airport (here, the

Austin Municipal Airport), as the land is necessary to operate the public airport.^{2/} On August 26, 1999, the United States Department of Transportation, through the FAA, made a request to BLM to convey such a property interest in land (namely, “fee title transfer of 1205.9 acres for airport purposes”) for the Austin Municipal Airport.

It is the FAA, not BLM, which is charged with the duty of determining when a conveyance “is necessary * * * to operate a public airport” under the AAIA. FAA did so as part of its review of the County’s application. FAA plainly decided that there was a need for the airport by making its request for conveyance to BLM.

However, BLM must also address the compatibility of the conveyance with the Department of the Interior’s own institutional needs. Thus, section 516 of the AIAA dictates that the “head of the department” that “own[s] or control[s] land or airspace” must “decide whether the requested conveyance is consistent with the needs of the department.” 49 U.S.C. § 47125 (2000). Section 516 also expressly provides that, “[i]f the head of the department * * * decides that the requested conveyance is consistent with its needs, the head of the department * * * shall make the conveyance.” *Id.* The Department of the Interior has promulgated regulations at 43 CFR Subpart 2640, putting into effect the terms of section 516 of the AIAA. BLM’s obligation to take action on an FAA request is spelled out at 43 CFR 2641.2(a):

Upon receipt of the request from [FAA], the authorized officer shall determine whether the requested conveyance is inconsistent with the needs of the Department of the Interior, or any agency thereof, and shall notify [FAA] of the determination within 4 months after receipt of the request. On determining that the conveyance is not inconsistent with the needs of the Department of the Interior, the authorized officer also shall determine what, if any, covenants, terms, conditions and reservations should be included in the conveyance, if made. Any conveyance shall be made subject to valid existing rights of record, and to those disclosed as a result of publication or otherwise.^{3/1}

BLM’s NORA published in October 1999 indicates that the 1205.09 acres had been “found suitable for conveyance to Lander County for airport purposes under section 516 of the” AAIA. 64 FR 57903 (Oct. 27, 1999). The rationale for that

^{2/} The record also reflects that the County has received airport development grants from FAA for the Austin Municipal Airport. Thus, the conveyance may also be seen as necessary both “to carry out a project” and “for the future development of an airport.”

^{3/} The regulations also contain instructions on the approval of the conveyance. 43 CFR 2641.4.

decision is fully set out in BLM's DR/FONSI and its extensive EA, both issued in February 2001.

BLM's DR/FONSI indicates that the decision to convey "is consistent with the Shoshone-Eureka Resource Management Plan" (RMP) ^{4/} and that "all practicable means to avoid or minimize environmental harm and unnecessary or undue degradation of the public land have been adopted." (DR/FONSI at 1.) The fact that the conveyance is consistent with the governing RMP is a strong indication that it is not inconsistent with the needs of the Department. BLM is required by section 202(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1712(c) (2000), to develop land use plans considering present and potential uses of the public lands weighing long-term benefits to the public against short-term benefits. Further, prevention of both environmental harm and of unnecessary or undue degradation of the public land are requirements for land management established by FLPMA. Sec. 302 of FLPMA requires that "[i]n managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b) (2000). Sec. 102(a) of FLPMA imposes broad stewardship duties, including the requirement to manage land "in a manner that will protect the quality of * * * environmental * * * values." 43 U.S.C. § 1701(a) (8) (2000). We regard the duties imposed by FLPMA as an accurate manifestation of the "needs of the Department" in the context of considering applications under the AAIA. Furthermore, the record amply supports BLM's conclusions that its action will promote the public interest of citizens in the area of the airport. In the comparable context of sales of public land tracts, sec. 103(a) (3) of FLPMA directs BLM to consider whether

disposal of such tract will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership.

43 U.S.C. § 1713(a) (3) (2000). Again, we regard that Congressional standard as a strong indication of the "needs of the Department," and we find that BLM's record amply supports its conclusion that conveyance of the lands to the County will serve the important public objective of expansion and economic development of the

^{4/} BLM's EA indicates that the "proposed action is in conformance with the Shoshone-Eureka [RMP] approved March 4, 1986," citing "Part I-ROD, B (2) Land Tenure Adjustments #1, p.3."

County. Moreover, as the airport facilities are already in place on the lands to be conveyed, it would not be economically feasible to construct another facility on other non-Federal lands. Nor is there any suggestion in the record that the lands being conveyed have recreation or scenic values that must be protected by maintaining the tract in Federal ownership.

Accordingly, as we find that the conveyance meets the requirements of the AAIA, we must reject as unfounded appellants' assertions that the conveyance is unnecessary. Congress, in the AAIA, directed the FAA to consider the need for such conveyances and request them in appropriate cases. FAA's decision to make such a request is not subject to review by this Board. BLM established a record amply demonstrating that making this conveyance is not inconsistent with the needs of the Department of the Interior.

Nor do we find any basis to disturb the acreage recommended for conveyance by FAA. We find nothing granting BLM discretion under AAIA to question the acreage established by FAA under the AAIA as "necessary to * * * operate a public airport."

[2] We find no fault in BLM's environmental analysis here. A BLM decision to take an action is properly affirmed where BLM has taken a "hard look" at the significant environmental consequences of the proposal, and reasonable alternatives thereto. See 42 U.S.C. § 4332(2)(C) (2000); Kleppe v. Sierra Club, 427 U.S. 390, 410 n.21 (1976); Dubois v. U.S. Department of Agriculture, 102 F.3d 1273, 1285-86 (1st Cir. 1996), cert. denied, 521 U.S. 1119 (1997); Silva v. Lynn, 482 F.2d 1282, 1284-85 (1st Cir. 1973); Save Medicine Lake Coalition, 156 IBLA 219, 229; Colorado Environmental Coalition, 142 IBLA 49, 52 (1997); The Sierra Club, 104 IBLA 76, 83 (1988); see 40 CFR 1502.1. By preparing its EA, BLM met its burden of taking a "hard look" at the environmental consequences of making the requested conveyance.

Appellants disregard the amendments that BLM made to its EA expressly addressing the effects of its action on grazing in the vicinity. (EA at 4-5, 8-9, 11-12; App. L, Responses to Comments D-3, D-16 through D-19.) However, it is likely that appellants are objecting not to any failure to consider those effects, but instead to BLM's decision to allow the action to proceed despite its adverse effects on their grazing activities. Granting the conveyance will not reduce the amount of their authorized grazing. BLM points out that appellants have not been authorized to graze the unfenced portion of the airport lease.^{5/} Since BLM's action will free up approximately 675 acres (those lands in the airport lease that are not being conveyed

^{5/} The record shows that appellants have "realized 'free use' on the unfenced portion of the Austin Airport lease" since 1958. (BLM Answer at 15; EA at 5.)

to the County), adjudication of those acres could conceivably result in a determination that additional animal unit months are available for grazing. (Answer at 15-16.) Since appellants the only permittees of the Airport Pasture, a favorable adjudication could result in an increase of their authorized grazing.

Appellants complain that there is no provision in the conveyance guaranteeing them use of a corridor allowing cattle movement between the east and west portions of the airport pasture. We find no basis to conclude that BLM was obligated to reserve such access across the conveyed lands. Appellants have not shown that they have a cognizable legal right to move cattle across the lands. BLM indicates that they do not, as they have no right to graze on the lands subject to the airport lease, which include all of the lands to be conveyed. (Answer at 15-16.) Nevertheless, the County has expressed its willingness to allow appellants to cross the lands after they are conveyed. (EA at 2; DR/FONSI at 1.) Appellants lack any basis for asserting that they presently have a property interest that must be protected.

To the extent not expressly considered herein, appellants' objections have been considered and rejected. BLM's decision to convey these lands under the AAIA is in conformance with that act and Departmental regulations and is supported by the record. The decision must be affirmed.

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

David L. Hughes
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge