

LOYD SORENSEN
VON L. SORENSEN
KENNETH JONES

IBLA 79-143

Decided July 20, 1979

Appeal from decision of Administrative Law Judge Robert W. Mesch, dismissing appeal from decision of the District Manager, Elko, Nevada, District, Bureau of Land Management. N-1-78-2.

Affirmed.

1. Grazing and Grazing Lands -- Grazing Permits and Licenses: Generally

Where an applicant for a range improvement project involving alteration of the native range by reseeding with nonnative species and requiring the expenditure of a large sum of public funds does not show that there is an urgent situation requiring immediate improvement of the range as proposed, a decision by the BLM range manager denying the application because management framework and allotment management plans have not been formulated is properly affirmed, as, ordinarily, such a venture should not be undertaken without the type of information these plans are intended to provide.

APPEARANCES: Stewart R. Wilson, Esq., Richard G. Barrows, Esq., Elko, Nevada, for appellants; James E. Turner, Esq., Office of the Regional Solicitor, Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Lloyd Sorensen, Von L. Sorensen, and Kenneth Jones (appellants) hold grazing licenses or permits to graze sheep and cattle in the Spruce Allotment in the Currie Planning Unit of the Wells Resource Area of the Elko, Nevada, District, Bureau of Land Management (BLM).

On December 6, 1977, appellants filed applications to make range improvements on approximately 15,000 acres in the Spruce Allotment with the District Manager, BLM. Specifically, appellants applied to seed the area with crested wheat grass and to install water improvements there, and requested the allocation of range management funds to help finance these improvements.

On October 19, 1977, the District Manager issued his decision rejecting appellants' applications, holding that the Elko District is prohibited by an order of the United States District Court for the District of Columbia in NRDC v. Morton (Civil Action No. 1983-73), from implementing range improvements until a grazing environmental impact statement was completed, and that BLM policy prohibits the expenditure of range improvement funds as there was no adequate Allotment Management Plan (AMP) completed for the area.

Appellants protested this decision, and on November 30, 1977, a conference was held between them and the District Manager. No resolution of the dispute was achieved at this conference, and, following issuance of a decision reaffirming rejection of the application on December 9, 1977, appellants filed a notice of appeal of the District Manager's rejection of their application.

The matter was referred to Administrative Law Judge Robert W. Mesch, who scheduled a prehearing conference to define the issues in question. At this prehearing conference, held March 17, 1978, the parties agreed that the District Manager's decision of December 9, 1977, should be amended to delete reference to NRDC v. Morton, supra, 1/ and that the sole issue for determination in the proceeding would be "whether the action of the District Manager in rejecting the appellants' requests for the expenditure of range betterment funds because a Management Framework Plan and an Allotment Management Plan had not been developed was an arbitrary and capricious abuse of administrative discretion."

Judge Mesch held a hearing on July 11, 1978, in Elko, Nevada, at which testimony was taken concerning the circumstances surrounding the operation of the Elko District and the filing of appellants'

1/ Appellants and BLM apparently agreed that the proviso in section 401(b)(1) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1751(b)(1) (1976), that "[t]he annual distribution and use of range betterment funds . . . shall not be considered a major Federal action requiring a detailed statement pursuant to section 4332(c) of title 42 of the United States Code" obviated the necessity of filing an environmental impact statement.

application to make range improvements. On November 22, 1978, Judge Mesch issued his decision which affirmed the District Manager's refusal to grant appellants' application in the absence of a management framework plan (MFP) and an allotment management plan (AMP), from which decision this appeal followed.

[1] Judge Mesch stated as follows in his decision:

A Management Framework Plan (MFP) is a planning decision document which establishes, for a given area of land, usually a planning unit, land use allocations, coordination guidelines for multiple use, and objectives to be achieved for each class of land use or protection. It is prepared to establish a broad framework for management of the public lands to serve multiple-use and sustained-yield purposes and to protect, among other things, the quality of scenic, historical, ecological, environmental, water resource and archeological values. When the MFP is completed, more specialized plans known as program activity plans are prepared for each type of resource-related activity, such as recreation, wildlife, watershed, and range management, in the unit or planning area. A program activity plan is designed to lay out in detail how the particular activity will comport with the objectives and constraints of the MFP for the particular unit or area. The program activity plan for range management or grazing is called an Allotment Management Plan (AMP). BLM Manual, Section 1601, Glossary, pages 7, 9 (1975); Natural Resources Defense Council, Inc. v. Morton, 388 F.Supp. 829 (D.D.C. 1974).

BLM has, for some years, recognized that MFP's and AMP's are useful, or perhaps necessary, means of providing the proper guidance for sound resource management. The use of the two plans has been confirmed by Congress. FLPMA mandates the preparation of "land use plans," which appear to be the same as MFP's, and specifically recognizes the coverage, use and desirability of AMP's. Sections 103(k), 202(a) and (c), 402(d) and (e). The Act defines an AMP as a document which "prescribes the manner in, and extent to, which livestock operations will be conducted in order to meet the multiple-use, sustained-yield, economic and other needs and objectives as determined for the lands," and which "describes the type, location, ownership, and general specifications for the range improvements to be installed . . . to meet the livestock grazing and other objectives of land management." Section 103(k).

There is absolutely no question that, as a general proposition, the preparation of an MFP and an AMP should precede the initiation of range improvements on the public land. In the absence of an MFP it would be difficult, if not impossible, to make any rational determinations concerning the impact of the proposed improvements on the various and oftentimes conflicting uses of the land or whether the improvements would serve the land use objectives and the protections that might be adopted for the land. Without an AMP it would be hard, if not incapable of attainment, to reach any sound decisions as to whether the proposed improvements were justified from the standpoint of serving the particular livestock operations or the effect of the improvements on other uses of the land. This does not mean that in all instances the two plans must be prepared prior to the initiation of range improvements. There might be instances of such an urgent situation that immediate range improvements would be dictated prior to the preparation or completion of an MFP or an AMP. [Emphasis supplied.]

We agree with the foregoing statement and adopt it as our holding on the point at issue. The project proposed by appellants involves alteration of the native range by reseeding with nonnative species of grass and requires the expenditure of a large sum of private and public funds. Such a venture should not be undertaken without the type of information and intelligence that an MFP and AMP can provide regarding the propriety of such an extensive and expensive range development.

We also concur with and adopt Judge Mesch's finding that appellants did not show that the present case is an instance where immediate range improvement is urgently needed, so as to require proceeding prior to the development of the MFP and AMP:

The appellants' position is, that while the range in the allotment is in better condition at the present time than when they first started using it in 1949, they nevertheless have a problem with a shortage of palatable spring feed and the requested improvements will alleviate that problem. The extent of the problem is shown by the following testimony of Loyd Sorensen:

. . . By feeding that [existing] white sage during that period of time, we can get by and we won't have to feed all of it either. We can feed part one year and part the next and give it a rest, but we would like to get

out off of all that white sage during the growing season and we are willing to help do that and there's facilities, there's ample country, there's thousands of acres that produce nothing but a big sage and I think that should be put into production. We need the food and we need the fiber and we, as individuals, we need the finances that are derived from that to pay the bills. (Tr. 75, 76)

I cannot conclude from the evidence that a situation exists that is sufficient to dictate immediate range improvements as requested by the appellants prior to the development of the two management plans. Under the circumstances, I see no reason why the District Manager should have considered the requests without the benefit and guidance of the two plans. I am in full accord with the following testimony of the Area Manager:

Well, in this particular case, we are talking about spending something that approximates a half a million dollars of public funds and before I go out and commit that kind of expenditure, I feel that I need some kind of a plan of action that lists objectives' what we are trying to accomplish, how we are going to accomplish it and agree to the sequence of grazing this that will provide for the physiological requirements of the plant involved. It's not just prudent management to go out and commit a half a million dollars of public money with no pre-planning, no plan of action, no direction. (Tr. 35, 36)

I am aware that it might be several years before an AMP can be finalized for the appellants' allotment. However, I do not believe this is particularly significant. The determining factor in this case is whether the appellants presented sufficient evidence to show that at the time of the decision under appeal the circumstances were such as to warrant immediate range improvements without the benefit and guidance of the management plans.

On appeal appellant raises an argument not advanced in the proceedings below, *i.e.*, that the Public Rangelands Improvement Act of 1978, 43 U.S.C.A. § 1901 (West Supp. 1979), when read in conjunction with section 401(b)(1) of the Federal Land Policy and Management Act, 43 U.S.C. § 1751 (1976) (FLMPA), evinces a Congressional

intent that Federal funds be expended to improve Federal range without undertaking the land use planning mandated by FLMPA section 202, 43 U.S.C. § 1712. This argument is disposed of by reference to that portion of section 4(b) of the Rangelands Act, supra, which reads:

. . . Except where the land use planning process required pursuant to section 202 of the Federal Land Policy and Management Act (43 U.S.C. 1712) determines otherwise or the Secretary determines and sets forth his reasons for this determination that grazing uses should be discontinued (either temporarily or permanently) on certain lands, the goal of such management shall be to improve the range conditions of the public rangelands so that they become as productive as feasible in accordance with the rangeland management objectives established through the land use planning process, and consistent with the values and objectives listed in sections 2(a) and (b)(2) of this Act. [Emphasis added.]

In the absence of a demonstration by appellants that circumstances required immediate approval of the project, Judge Mesch properly affirmed the District Manager's decision rejecting appellants' application.

Therefore, 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.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joan B. Thompson
Administrative Judge

