

STALEY ANDERSON

IBLA 79-31

Decided November 20, 1979

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting private exchange application. U-8645.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Exchanges -- Private Exchanges: Public Interest

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716(a) (1976), the Bureau of Land Management may reject an application to exchange public lands for private lands as not in the public interest in order to protect a significant waterfowl habitat.

APPEARANCES: Staley Anderson, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Staley Anderson has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated September 8, 1978, rejecting his private exchange application U-8645 filed for public land in Tooele County, Utah. BLM based its rejection on the fact that the selected land contains "marsh areas, springs, and a fluctuating body of water known as Rush Lake which constitutes a significant waterfowl habitat." Exchange of the land was not felt to be in the "public interest."

Appellant, on the other hand, argues that the Rush Lake area contains no springs and is dependent on water from surrounding private land, which because of the scarcity of water in Utah is frequently diverted to other uses. The result is that Rush Lake is often dry.

Prior to 1969, the Lake area was used as summer and winter range pasture for 200 head of cattle and 100 head of horses. Appellant also argues that turning the lake area into a waterfowl habitat would lead to difficulties to surrounding private owners because of "lack of hunter respect" for private land; and compounding the problem would be BLM's inability to manage such a "small isolated tract."

[1] Section 206(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1716(a) (1976), provides: "A tract of public land \* \* \* may be disposed of by exchange by the Secretary under this Act \* \* \* where the Secretary \* \* \* determines that the public interest will be well served by making that exchange \* \* \*." The determination of "public interest" is committed by law to the Secretary's discretion. Lewis v. Hicikel, 427 F.2d 673 (9th Cir. 1970), cert. denied, 400 U.S. 992 (1971). A decision involving the exercise of administrative discretion must be supported on a rational basis.

The selected land is the subject of three conflicting private exchange applications and an application by the Utah Division of Wildlife Resources for a Recreation and Public Purposes (R&PP) site pursuant to the Recreation Act of June 14, 1926, as amended, 43 U.S.C. § 869 (1976). On August 30, 1978, an Environmental Assessment Record (EAR) and Land Report was prepared in order to provide information necessary to resolve the conflict.

The EAR and Land Report disclosed that Rush Lake is the "largest fresh water lake in Tooele County," which although dependent on annual precipitation and spring flow supports numerous species of wildlife. Bird counts taken in 1973, 1977, and 1978 indicate that the land is an "important waterfowl and shore bird habitat." Transfer of the land out of Federal ownership could interfere with the wildlife habitat. On the other hand, the Utah Division of Wildlife Resources intends to promote hunting, recreational, and wildlife habitat values. The EAR and Land Report concluded by recommending rejection of the private exchange applications and disposition of the land under the R&PP Act, supra.

Appellant has offered no evidence disputing the findings in the EAR and Land Report regarding the presence of a body of water, albeit fluctuating, in the Rush Lake area, which supports a significant waterfowl population. Appellant's concern with "lack of hunter respect" is not a sufficient reason for reversal, for the BLM decision to preserve the selected land as a significant waterfowl habitat is in the public interest. Cf. Siesta Investments, Inc., 28 IBLA 118 (1976). It conforms to the language in FLPMA, supra, that the Secretary "when considering public interest \* \* \* shall give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food fiber, minerals, and fish and wildlife \* \* \*." (Emphasis added.)

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.

Joseph W. Goss  
Administrative Judge

I concur:

Anne Poindexter Lewis  
Administrative Judge

ADMINISTRATIVE JUDGE FISHMAN CONCURRING SPECIALLY:

Although the proposed exchange was deemed "feasible" as far back as May 16, 1969, and appellant then informed to file his formal exchange application, it does not appear that the decision below is without some substance.

However, I find the majority opinion is not free from weaknesses. It states that: "Transfer of the land out of Federal ownership could interfere with the wildlife habitat. On the other hand, the Utah Division of Wildlife Resources intends to promote hunting, recreational, and wildlife habitat values."

Presumably, the majority is suggesting that the soil will be disturbed by cultivation of crops. It is rank speculation to guess that crops will be raised on the selected land. Since the land has been used for grazing, the likelihood is that such use would continue if private ownership resulted from an exchange. The use of the land for grazing would not necessarily interdict foraging by game animals; in fact such uses are ordinarily quite compatible.

It would appear that the opposition of the Tooele County Wildlife Federation to the exchange, manifested in part by its letter of September 22, 1976, triggered the rejection of the exchange application. The concern of sportsmen that passage of the selected lands into private ownership might hinder their hunting activities appears to have been a cogent factor in the rejection.

Nevertheless, it does not appear that the proposed exchange would serve any public purpose in a positive way. It cannot be said that the rejection of the exchange offer, despite its pendency for over a decade, is without a sufficient predicate, since the public interest prerequisite is lacking. Cf. LaRue v. Udall, 324 F.2d 428 (1963), cert. denied, 376 U.S. 907 (1964).

Frederick Fishman  
Administrative Judge

