

DAVID V. UDY

IBLA 83-686

Decided May 22, 1984

Appeal from decision of the Salmon, Idaho, District Office, Bureau of Land Management, rejecting desert land entry application, I-13751.

Set aside and remanded.

1. Desert Land Entry: Generally

Analysis of the economic feasibility of proposed reclamation of desert land is an acceptable factor for BLM to consider when reviewing, pursuant to 43 CFR 2520.0-8(d)(3), whether a desert land entry application may be allowed in the form sought.

2. Administrative Practice -- Desert Land Entry: Generally

Where BLM uses a computerized economic analysis to justify rejection of a desert land entry application, BLM must explain the basis of its analysis and the deficiencies of the applicant's proposal in its decision so that the applicant has some basis for understanding and accepting the rejection or appealing and disputing it. Sufficient facts and explanations to support the decision must be present before the Board will affirm such a decision on appeal.

3. Desert Land Entry: Applications

Rejection of a desert land entry application will be set aside where the applicant has alleged facts which, if proved, would result in a different conclusion.

APPEARANCES: W. F. Ringert, Esq., Boise, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

David V. Udy appeals a decision of the Salmon, Idaho, District Office, Bureau of Land Management (BLM), dated May 3, 1983, rejecting his desert land entry application, I-13751, because BLM's economic analysis of his proposed agricultural operation concluded that it would not be profitable.

Udy submitted an application for desert land entry and petition for classification of the land on August 29, 1977, for 320 acres in the W 1/2 sec. 27, T. 16 N., R. 25 E., Boise meridian, Lemhi County, Idaho. Following completion of an environmental assessment (January 21, 1980), mineral report (November 19, 1981), and land report (July 28, 1981), BLM approved the classification on April 8, 1982, for 200 acres of the land sought and notified Udy by letter dated October 18, 1982. The recommendation to classify only 200 acres as suitable for desert land entry appeared in the land report, where the distinction between suitable and unsuitable acreage was made on the basis of soil classification. The 200-acre area was found suitable because it consists mostly of soils determined by the Soil Conservation Service (SCS) to be class III and capable of producing a crop. The 120 excluded acres considered unsuitable consist of SCS class IV soils where cultivation is impractical. <sup>1/</sup>

Thereafter, BLM performed a computer-assisted economic analysis for Udy's proposed reclamation of the 200-acre parcel. This analysis compared the anticipated revenues with production costs based on average yields and expenses for SCS class III lands in Lemhi County. BLM advised Udy in a February 8, 1983, letter that the economic analysis had been conducted for his application and the proposed operation appeared economically feasible. Further processing of the application, however, was postponed until certain issues concerning water rights were settled.

On April 13, 1983, BLM reconducted the computer-assisted analysis after Jim Whittaker, the owner of private lands bordering the desert tract in question on three sides, met with BLM to discuss the yield figures used in the economic analysis. <sup>2/</sup> Based on yield averages derived from discussions with Whittaker and the Lemhi County Extension Agent, the recomputed analysis showed operating losses for each year of the projected 3-year reclamation program. Thereafter, BLM rejected desert land entry application I-13751.

In his statement of reasons, Udy presents two major objections to BLM's rejection of his application: (1) BLM failed to follow its own procedure in rejecting the application, and (2) BLM's economic analysis was incorrect. Appellant also contends he was improperly denied the opportunity to rebut the revised data relied upon by BLM.

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<sup>1/</sup> According to the land report, only 170 acres in the application are SCS class III soils while the remaining 150 acres are SCS class IV. The recommended 200-acre tract is described according to the official survey plat to include all of the 170 acres of suitable soil.

<sup>2/</sup> Whittaker has taken other action to oppose disposal of this land to appellant. He first protested Udy's entry application in a letter to BLM dated Sept. 6, 1979. He also filed a protest of the proposed classification of the land for desert land entry which protest was denied by BLM. After Udy filed an application to appropriate water with the State of Idaho, Whittaker protested that application and it was this action which postponed approval of the entry after the initial, favorable computer analysis. Finally, according to appellant, Whittaker filed a conflicting desert land entry application for the subject lands on May 7, 1982. Thus, as a source of information, he was clearly not a disinterested party.

[1] Udy alleges that BLM improperly required a showing of economic feasibility in support of his desert land entry since all economic determinations regarding desert land capable of reclamation should be made during the classification process which had already been completed. He asserts that a requirement to show economic feasibility for an agricultural project on desert land is a collateral attack on the classification decision that the land is suitable for such agricultural purposes.

The Desert Land Entry Act of 1877, as amended, 43 U.S.C. §§ 321-339 (1976), was enacted to facilitate the reclamation of desert lands by private entrymen. Williams v. United States, 138 U.S. 514 (1891). Subsequent to its enactment, public lands outside of Alaska were generally withdrawn from entry by Exec. Order Nos. 6910 and 6964. Section 7 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315f (1976), grants the Secretary discretionary authority to classify public lands and, in exercising this discretionary authority, he may weigh all factors which have a bearing on the suitability of the land for the proposed use and disposal. See Guy A. Martin, 26 IBLA 254 (1976). Classification under section 7 is a prerequisite to the approval of all entries, including desert land entries. Under 43 CFR 2410.1, land under review for classification must be physically suitable for the uses for which it is classified. Therefore, only unreserved public land which is classified as susceptible to irrigation by practicable means may be the subject of a desert land entry application.

Once public land has been reviewed and classified as suitable for desert land entry, an applicant for entry must establish his personal qualifications under 43 CFR Part 2520. Under the Desert Land Entry Act, each applicant is required to declare "that he intends to reclaim" the targeted desert land. Pursuant to the statute, the Secretary of the Interior promulgated a regulation at 43 CFR 2520.0-8(d)(3), which provides:

In determining whether entry can be allowed in the form sought, the authorized officer of the Bureau of Land Management will take into consideration such factors as the topography of the applied for and adjoining lands, the availability of public lands near the lands sought, the private lands farmed by the applicant, the farming systems and practices common to the locality and the character of the lands sought, and the practicability of farming the lands as an economically feasible operating unit.

Udy originally sought 320 acres of public lands, but only 200 acres were classified as suitable for reclamation under a desert land entry. Thereafter, BLM reviewed the revised application, not to ponder the suitability of the land for reclamation, but to consider the feasibility of reclaiming it in the manner proposed in the application. BLM's observations and conclusions regarding the economic feasibility of the proposed operation do not affect or alter the Secretary's classification, but rather constitute the application of the guidelines set forth by the Secretary in 43 CFR 2520.0-8(d)(3).

[2] Appellant asserts that BLM improperly considered opinions and information obtained from Whittaker and others without prior notification to him and it failed to provide him with an opportunity for rebuttal. A review

of BLM's use of the gathered information presents an issue recently addressed by the Board in Roger K. Ogden, 77 IBLA 4, 90 I.D. 481 (1983). In response to the use of computer-assisted analysis, the Board commented:

[I]t is incumbent upon BLM to ensure that its decision is supported by a rational basis and that such basis is stated in the written decision and demonstrated in the record. Otherwise, the Department is left open to the charge that its actions are arbitrary. \* \* \*

\* \* \* BLM may not simply report the results of its computer analysis; it must reveal the underlying facts used to obtain the result and the assumptions on which the computer program is based and it must demonstrate why its facts and assumptions, and therefore its results, are more reasonable than the applicant's or offeror's, as the case may be. See Southern Union Exploration Co., 41 IBLA 81 (1979). The applicant must be given some basis for understanding why his or her plans do not meet the requirements of the law and applicable regulations.

Roger K. Ogden, *supra* at 7-8, 90 I.D. at 483-84. BLM's decision did not provide an explanation for its conclusion. <sup>3/</sup> Indeed, Udy made a request to this Board, which was granted, for the opportunity to review the case file in order that he might understand why his application had been rejected. BLM's decision is especially confusing in light of its earlier declaration that Udy's proposed operation appeared economically feasible and, therefore, the decision appears arbitrary.

The decision-supporting documents in the case file, where BLM's rationale for its decision should be found, consist of two BLM notes written for the file and the computer printout. The first written note, dated March 10,

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<sup>3/</sup> In its entirety, the decision reads:

"On April 13, 1983 this office completed an Economic Analysis of your desert land application as required by 43 CFR 2520.0-8(d)(3). The analysis was completed to determine the practicability of farming the lands as an economically feasible operating unit. Some of the factors used include soils, climate, topography, farming systems and practices common to the locality, character of the subject land and adjacent land, as well as your proposed plan of irrigation.

"The analysis showed that your proposed entry would not be an economical unit to farm. Your application is hereby rejected.

"This decision becomes final thirty days after its receipt unless an appeal is filed pursuant to the regulations in 43 CFR, Part 4, Subpart E. (See enclosed Appeal Information Sheet, ID-040-1840-2.)"

It is verbatim (except for the date cited) the same decision rejected by the Board in Roger K. Ogden, *supra*, as undemonstrative of BLM's rationale for rejection and, therefore, subject to remand for reconsideration of BLM's position.

1983, concerns a discussion between a BLM employee and Whittaker, initiated by Whittaker, concerning the data used in the analysis. It reads in part:

Our SCS Class III shows an average yield of 3.5 ton/ac for alfalfa. Class IV average 2 ton/ac. These figures are based on averages for Lemhi County.

He [Whittaker] had Bob Loucks, County ext. agent, do some measuring. His figures show 1.7 ton/ac on his private ground next to I-13751. He flood irrigates so sprinkled ground would get somewhat higher.

He had a rough idea of other neighbor's production and none of them were getting anywhere near 3.5 ton/ac as we were using for Class III soils in Lemhi County.

He thought we should change our figures to reflect the Leadore area's production.

This note is followed by a report of a telephone conversation with Bob Loucks, the county agent, which produced the following information for yields (alfalfa): West of Leadore -- 2.5 tons per acre, average, and 3 tons per acre, highest; comparatively, east of Leadore -- 3.5 tons per acre, average, and 4.5 tons per acre, highest. An addendum note added that Ralph Swift, a person unidentified in the case file, agreed with these figures. The program model for the computer analysis was redone with the base data revised to 100 percent SCS class IV soils in Ada County, Idaho.

In this case, there is inadequate explanation provided as to how the data used pertained to the land under review or why it was considered a reasonable deviation from the established average for the land as classified. Although the Board will normally not substitute its own judgment for that of Departmental experts, sufficient facts and a sufficiently comprehensible explanation must be present before the Board will affirm a decision and supporting rationale. Roger K. Odgen, supra at 8, 90 I.D. at 484; M. Robert Pagle, 68 IBLA 231, 234 (1982). The yield averages provided by the county agent are general in nature and, in particular, do not account for the recognized difference between the soils of the parcel sought and some of its adjoining lands. Nowhere is it shown that this tract was inspected by BLM or the proponents of a lower yield figure to ascertain whether it actually is comparable to lands suggested to be its equal. Moreover, BLM does not explain why Ada County was substituted for Lemhi County in the computer model, a factor which is sufficient grounds alone to dispute the reliability of the conclusion.

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4/ It is speculative that BLM used the data for class IV lands in Ada County to create an average yield factor of 2.5 tons per acre of alfalfa. However, this is the type of speculation and uncertainty which disclosure of the rationale for a decision will eliminate.

[3] Aside from BLM's lack of explanation for its analysis, Udy alleges that BLM's data was incorrect. <sup>5/</sup> The primary item of debate is BLM's election in the computer model to treat the land as SCS class IV instead of its classification as SCS class III soil. SCS classifications take into consideration both soil structure and limiting factors such as climate, potential for erosion, slope, moisture holding capacity, and fertility. BLM's strict reliance upon SCS land classification is evidenced by the fact that it considered only 170 acres of the subject tract to be conducive to farming. This figure is the calculation for SCS class III soils within the tract.

The average yield for class III soils in Lemhi County is 3.5 tons of alfalfa per acre. Based on a projected yield of 3.5 tons of alfalfa and 70 bushels of barley per acre, BLM's initial computer analysis for the proposed entry showed profitability. BLM's decision to recompute the analysis for a yield of 2.5 tons per acre alfalfa and 61 bushels of barley per acre, was based on the verbal information supplied by Whittaker and the county agent.

In rebuttal, Udy asserts the following examples favorable to his assertion that the land sought should produce, on the average, 3.5 to 4 tons of alfalfa and at least 70 bushels of barley per acre. First, he notes that a desert land entry application by his wife which was filed contemporaneously with his application was approved for SCS class III soils only 4 miles away on the basis of 3.5 tons of alfalfa per acre yield. He asserts in an affidavit that since 1936 he has operated a ranch, only 1 mile distant having similar soils and presently averages 3.5 to 4 tons of alfalfa and 85 bushels of barley per acre. He accompanies his affidavit with letters of individuals familiar with the subject tract and the neighboring lands, including a former adjacent landowner, who all state that this parcel should usually produce 3.5 to 4.5 tons of alfalfa and 70 to 100 bushels of barley per acre.

The remaining computer data opposed by appellant is concerned with operating costs. Most of the figures used by BLM in the computer model were either IDWR researched averages or specific amounts inserted by BLM. Appellant focuses in his arguments on adjustments which he claims should have been made to BLM's version of the operating costs which would reflect his individual proposal for reclaiming the land. In particular, BLM presented cost estimates which appellant claims are much higher than the costs he will actually incur. Several of these items, he argues, are certain to match his lower projections because of completed negotiations and the existence of his nearby operations.

Rejection of a desert land entry application will be set aside where the applicant has alleged facts which, if proved, would result in a different conclusion. See Joanne F. Wright, 49 IBLA 237 (1980); Dixie J. Bjornestad,

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<sup>5/</sup> The computer program model was developed by the Idaho Department of Water Resources (IDWR) and BLM. While the case file is devoid of explanation or information about this evaluation tool, a descriptive discussion is found in Roger K. Ogden, supra, a decision involving a May 23, 1983, rejection of a desert land entry in the township just east of the subject parcel.

27 IBLA 201 (1976). BLM relies on its computer analysis to reach its conclusion that the projected entry is unacceptable. When BLM considers whether an entry can be allowed in the form sought, there are other factors listed in 43 CFR 2520.0-8(d)(3) to be pondered besides the practicability of the project as an isolated unit. BLM's computer model does not outwardly provide sufficient tolerances for "the private lands farmed by the applicant," and "the farming systems and practices common to the locality and the character of the lands sought," nor does BLM explain how it accounts for these factors. Thus, appellant correctly suggests that consideration should be given to his cost estimates which incorporate farming methods developed over many years by himself and others in this area, as well as other factors peculiar to his proposed operation.

The facts alleged, but not proved, by appellant would support a conclusion that the subject lands can be profitably reclaimed. He has also prepared his own budget analysis for the first 3 years of reclamation showing its profitability which, when explained, appears to be a reasonable projection. His presentation is not disproved by BLM in its decision or in the material found in the case file. Under these circumstances, we must set aside the appealed decision and remand for consideration of the pertinent factors raised by appellant. A subsequent decision should provide a reasoned and factual explanation for its conclusions. Our action is not an invalidation of BLM's computer-assisted analysis, but is an affirmation that the computer model is only a tool "to be used in assessing the economics of agricultural development" and cannot be the sole basis for the decision to either allow or reject an entry under review. See Roger K. Ogden, supra.

Accordingly, 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 set aside and the case remanded for action consistent herewith.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Gail M. Frazier  
Administrative Judge

