

Appeal from a decision of the District Manager, Boise, Idaho, District Office, Bureau of Land Management, rejecting desert land entry application I-10040.

Set aside and remanded.

1. Desert Land Entry: Applications

Rejection of a desert land entry application on the grounds that the lands applied for are not a viable economic unit will be set aside and the case remanded for readjudication when BLM fails to consider the applicant's proposal to use an existing well or the equipment he has on hand or the crops he plans to plant.

APPEARANCES: Wm. J. Brauner, Esq., and David L. Young, Esq., Caldwell, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

G. V. (Pete) Cope has appealed from a decision of the District Manager, Boise, Idaho, District Office, Bureau of Land Management (BLM), dated September 29, 1986, rejecting desert land entry application I-10040 based on a determination that the land sought in the application could not be economically farmed.

On October 17, 1975, appellant G. V. (Pete) Cope filed desert land entry application I-10040 for 182.18 acres of land situated in sec. 1, T. 6 N., R. 5 W., and sec. 6, T. 6 N., R. 4 W., Boise Meridian, Payette County, Idaho. On October 23, 1975, he filed his sworn declaration constituting "a full disclosure of all my plans \* \* \* for the financing and actual development, irrigation, cultivation and farming of the lands in my desert land application." It read:

I plan to irrigate the land filed on in my Desert Entry Application from an existing well on deeded land in Lot 1 of Section 1, T6N, R5W, B.M.

I plan to finance the improvements and irrigation system with my own money.

I plan to farm the land myself with hired labor help.

On June 23 and August 13, 1976, appellant filed amendments to his application in response to decisions from BLM dated June 7 and 29, 1976, requiring that it be completed. As completed, the application projected total annual costs of \$141,740 and total annual income (from beets, hay, and renting pasture) of \$188,200. <sup>1/</sup> The cost of the existing well was listed as "\$20,000.00 (unencumbered)." A 250-horsepower turbine pump was listed as costing "\$14,000 (this figure is approx. based on today's prices)." On August 18, 1976, BLM forwarded his application "for the required field examination and classification action."

On July 28, 1983, BLM classified 142.18 acres of the land included in the application (sec. 6, lots 4 and 5, NE<sup>^</sup> SW<sup>^</sup>, T. 6 N., R. 4 W.) as unsuitable for agricultural development based on a determination that they should be retained and managed for wildlife habitat to promote nesting of the long-billed curlew.

In December 1984, BLM approved a land report recommending that the remaining 40 acres, i.e., the SE<sup>^</sup> NE<sup>^</sup>, sec. 1, T. 6 N., R. 5 W., be classified as suitable for agricultural development based on seven criteria, the first of which was:

Any tract that contains 60% of Class IV or poorer soils will be classified unsuitable for disposal under the Desert Land or Carey Acts. If there is 40% or more of Classes I, II, or III, the parcel is suitable. This is based on the Soil Conservation Service Soil Capability Classification System.

The report explained that a 1976 Soil Conservation Service (SCS) publication entitled "Soil Survey of Payette County" had grouped 17 acres within capability class VI, 9 acres as class II, and 14 acres as class III. <sup>2/</sup>

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<sup>1/</sup> BLM's June 29, 1976, decision said: "There appears to be an error in your total costs. According to our calculations these costs would total \$141,175 rather than \$141,740." Cope's Aug. 12 response (headed "Pete Cope Drilling Co., Inc.") stated: "I have run another tape and come out with the same figure again. This is just an approximate figure as we have a lot of the materials already on hand." Cope's tape is correct. BLM apparently overlooked his entry of \$565 for "Other."

<sup>2/</sup> The December 1984 Land Report states at page 2:

"Capability groupings show, in a general way, the suitability of soils for most kinds of field crops. The groups are made according to the limitations of the soils when used for field crops, the risk of damage when they are used, and the way they respond to treatment. Based on this grouping system, Classes I, II, III and IV are considered suitable for agricultural development, whereas, Classes V, VI, VII and VIII are considered unsuitable."

The SCS publication is not included in the record.

"Class VI, therefore, comprises 43% of the subject parcel. Applying criteria No. 1 shows that the parcel is suitable for agricultural development. See copy of soils map contained in the case file." 3/

On April 2, 1985, BLM classified the remaining 40 acres of the application as suitable for agricultural development. On July 8, 1985, BLM's area manager wrote appellant that the April 2 decision cleared the way for a "determination that your proposal for developing and farming the land is technically and economically feasible and a showing that sufficient water is available," and requested that appellant arrange a meeting with BLM "to discuss the specific development details you are considering on the land."

Appellant and his attorney met with the BLM realty specialist who had prepared the land report on July 25, 1985. 4/ On July 26, 1985, appellant delivered two alternative plans on page 3 of the Desert Land Entry application form for irrigating the land. 5/ One alternative called for construction of a new well in the SE<sup>^</sup>NE<sup>^</sup> (the land applied for) under State permit 63-8359. Appellant listed the cost of this well as "\$10,000 (unencumbered)," the cost of a "20 H.P. [horsepower]" submersible pump and diesel generator as \$5,000 and \$10,000, respectively, and the cost of a sprinkler system as \$9,000, for a total of \$34,000. His cover letter stated this alternative "would require amending [his] approved application # 63-8359 with the State of Idaho." Under the other alternative, water would be obtained from an existing well constructed under State permit 63-8214 on the Malson property immediately to the north of the land applied for. For this alternative appellant listed \$20,800 as the completed cost for the well, \$15,000 as the cost of a 200-H.P. turbine pump, and \$9,000 for a sprinkler system, for a total of \$44,800. His cover letter said utilizing the existing well "would require approval of the Department of Water Resources of the State of Idaho as well as a lease/use agreement being entered into with Malson." By letter dated July 29, 1985, appellant's attorney wrote BLM to say that they had neglected to explain that the \$9,000 cost estimates for the sprinkler system under each alternative "was based upon the costs for a 6" main line and 3" laterals." 6/

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3/ This apparently refers to the photocopy of a map of R. 5 W. and R. 4 W. headed Payette County, Idaho, that is attached to the Endangered and Threatened Plant Clearance Worksheet dated Nov. 15, 1984, and the accompanying diagrams calculating the proportions of each of the three soil classifications. There are 14.24 acres allocated to class III, 8.93 acres to class II, and 16.83 acres to class VI.

4/ The file contains no BLM report on this visit. Cf. note 8, infra.

5/ The cover letter from appellant's attorney stated, in part: "I trust you will find the enclosures in satisfactory form and in compliance with your written and verbal instructions. If not, please let us know."

Appellant's statement of reasons states that when he delivered the forms, the BLM realty specialist "advised that he was transferring from the Boise District Office" (SOR at 2).

6/ Both forms list 40 as the total acreage irrigable and then list 40 acres each for hay, row crops, grains, and corn as the type of crop to be grown.

In its September 29, 1986, decision rejecting appellant's entry BLM stated that an economic feasibility analysis had been made. "The analysis is based on a computer generated model which was developed between the Idaho Water Resources Department and [BLM] with information from the University of Idaho, local extension agents, commodity associations, seed and fertilizer companies, agricultural specialists in local banks, and others," the decision said.

BLM's decision states:

The information specific to [I-10040] is based on an irrigation system similar to the one proposed by the application with data obtained from a local irrigation systems company, the local electrical company and based on a standard crop rotation system for the area. The analysis shows that desert land application I-10040 would not result in an economic farm venture.

BLM's decision then discusses the two alternatives submitted by appellant:

One alternative dealt with a diesel generator for power instead of electricity and use of water from a leased well. Although the leased well may not meet the criteria of a permanent water source as required under 43 CFR 2521.2(d), [7/] it would probably reduce costs and affect the economic analysis. Even after analyzing a leased well situation where nominal costs for leasing the well were utilized and after analyzing the diesel generator alternative, it still resulted in this farm venture not being economic.

The decision also states that the land applied for includes approximately 42.5 percent class VI soils which "have very severe limitations that make them generally unsuited to cultivation and limit their use." Further, it notes that appellant's class VI soils were "generally characterized by rather steep topography," and adds: "The computer economic model projects poorer yields on poorer soils."

The decision stated that BLM did not know whether appellant owned property in the vicinity of the tract, but even if he did "it does not provide enough of a benefit to offset the poor economics of this tract \* \* \*." It also noted that it was highly improbable that much additional public land

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7/ 43 CFR 2521.2(d) provides in part:

"No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right \* \* \*."

in the Long-Billed Curlew Management Area would be classified suitable for agricultural development.

"The Bureau of Land Management's economic analysis has utilized cost of farming systems and practices common to the locality and find [sic] that this is not a viable economic unit," BLM's decision concluded. It therefore rejected the application.

In a cover letter to appellant, the District Manager stated that a detailed explanation of all information considered in BLM's analysis, or the source of any particular information, could be obtained in discussion with the BLM realty specialist who carried out the economic analysis. Appellant's attorney visited this realty specialist on October 27, 1986. The realty specialist's report of the visit 8/ reads in part:

I explained to Mr. Gass our use of a computer generated economic model and showed him a copy of Idaho State Office Manuel [sic] supplement H-2520-1 - Economic Feasibility Analysis of Desert Land Act Applications. We discussed how the model was developed and the various sources of information used and the organizations involved in development of the model. We also discussed that the model was based on farm practices which would result in a long-term sustained farm operation which did not result in the "mining" or any other degradation of the soil. I explained that crop prices were based on weighted averages to show basically the current situation. I also explained to Mr. Gass where I had obtained the other information necessary to complete the analysis (see memo in case file to Richard A. Geier from Effie Schultsmeier dated 9/25/86 for the information and where it was obtained). [9/] I

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8/ Confirmation/Report of Telephone Conversation & Office Visit, from Elbert Gass to Effie Schultsmeier, by Effie Schultsmeier, Nov. 28, 1986.

9/ This memorandum reads in part:

"The computer model does not have data on Payette County, therefore, I used the closest county with data available which is Canyon County. Using the Canyon County data probably benefitted the applicants as it has a large economic farm base. The data on the costs and designs on pumps, motors, electric hookups to the box, wells, and the irrigation system was from Jim Enoki who works for Agri-Lines Irrigation, Inc., of Parma, Idaho. Mr. Enoki based his estimates on the basic information which the applicants provided with their applications. Mr. Enoki provides this type of information to farmers wishing to purchase and install new irrigation systems in the area on a day to day basis.

"One analysis was made on I-10040 using the above described method. Two other runs were made on the computer model using the updated information Mr. Cope presented in his two alternatives. All three analyses indicated an uneconomic farm venture.

"The cost of the electrical hookup from the box to Idaho Power Company lines was obtained from George Vickers of the Payette Idaho Power Company office. Mr. Vickers based his estimations upon the well being located where

then went on to explain that using the data for one computer run it showed a loss of \$11,794. I then informed him that I made two addition[al] computer runs using the data submitted by Mr. Cope (except for use of water rented from well) and those two runs showed losses of \$10,370 and \$17,932. I explained that I had not used the rented water alternative as no figures for the cost of the rented water were submitted and that that situation probably would not meet the Desert Land Law requirement of a guaranteed permanent water source. I showed Mr. Gass the copies of the computer runs, my worksheets, and all the other information in the file I thought he might be interested in examining. \* \* \*

Later that afternoon Mr. Gass called and requested copies of manuel [sic] supplement H-2520-1 and my worksheets for the computer runs. I informed Mr. Gass that I had been looking through IBLA decisions to find anything that was similar to this situa-tion and had found one that he might be interested in reviewing (David V. Udy, 81 IBLA 58 [(1984)]. He requested a copy of it.

On October 28, 1986, Mr. Gass came to this office and picked up the copies.

On October 29, 1986, appellant filed a timely notice of appeal. In his statement of reasons (SOR), filed November 26, 1986, appellant alleges:

At the time of discussion of the specific development details with [the BLM realty specialist] on July 25, 1985, he was advised by both Cope and his agent that the pump, generator, and irrigation main lines were on hand, free of any incumbrance. Cope was advised to include the cost of such, but that as an alternative the fact the pump, generator and main lines were on hand would be considered as alternative.

(SOR at 2).

Appellant complains that he was never given an opportunity to rebut BLM's economic analysis or "to review or rebut the information obtained by BLM from outside sources that were 'plugged' into its computerized model prior to the decision of September 29, 1986" (SOR at 1, 3). He objects

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fn. 9 (continued)

the applicant[s] located it on their map or as close to that location as possible but still on the lands classified suitable for agricultural entry. (In some cases the applicant had indicated a location on those lands classified unsuitable; in those cases the location was moved to the nearest parcel of land classified suitable). Mr. Vickers stated that these were "ballpark" estimates and that the actual cost might well be much higher if additional reconstruction of existing lines was necessary to accommodate the high electrical needs of the irrigation pump.

"Class VI soils were lumped together with the Class IV as per Stan Frazier, BLM, Idaho State Office, as the model does not accept Class VI soils."

that BLM's decision failed to provide sufficient facts and explanations to support it (SOR at 3).

Appellant states:

Nowhere is it explained or shown the 40 acre tract was inspected by BLM to ascertain soils classification of the 40 acre tract and the farming system and practices in the locality. \* \* \* Nowhere is it shown or explained whether the 40 acre tract is comparable to the lands suggested to be its equal. \* \* \* Nowhere is it shown or explained why Canyon County was substituted for Payette County in the computer model. If no engineering and economic factors are available for Payette County, Cope asserts that first hand information obtained by field inspections are more reliable in rejecting or accepting a desert entry. Again, without economic or engineering factors available, why should not Washington and Gem Counties, or any other County, be considered more viable substitutes than Canyon County?

(SOR at 3-4).

Appellant states that a licensed engineer tested the tract and determined that the soil classification "would in fact be not less than Class II, and contrary to the decision of BLM, no Class VI soils exist" within the tract (SOR at 4). 10/

Appellant states that it is improper to base an economic analysis on a 7-year crop rotation within a 3-year economic period (SOR at 4).

Finally, appellant asserts that "BLM's computer analysis does not provide, nor account for, the sufficient tolerances for the climate, farming systems and practices common to the locality. The area of the land is from 10-15 degrees warmer than [the] City of Payette and for that matter Canyon County" (SOR at 4).

Based on the lack of an opportunity to rebut BLM's analysis "and the utter lack of diligence in disposition of his application," 11/ appellant

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10/ See note 12, *infra*.

11/ Appellant argues that it took nearly 10 years to classify some of the land he had applied for as suitable for agricultural development and another 18 months to reject his application. The record discloses, however, that in 1976, during the preparation of the Management Framework Plan for the Black Canyon Planning Unit, in which the subject land was located, it was discovered that a population of long-billed curlew nested in the area. Since the long-billed curlew was a "status undetermined" species, meaning that it was not known whether the species was threatened or endangered, the decision was made to maintain its present habitat pending study. This study commenced in 1977 and resulted in a 1982 report entitled "Behavioral Ecology and Habitat Relationships of Long-Billed Curlews in Western Idaho." During the period in which this study was being prepared, all land actions which

requests that "the decision of September 29, 1986, be set aside and that, in the alternative (a) he should be given the opportunity to rebut BLM's computerized analysis or (b) his application be approved" (SOR at 3).

With his statement of reasons, appellant filed a request to review BLM's complete file in order to determine whether the information BLM relied on would be sufficient to sustain its decision "even if Cope were given the opportunity to rebut in advance of the decision." The Board returned the file to the BLM Boise District Office, where appellant's attorney inspected it on December 9, 1986. On April 23, 1987, this attorney filed a notice that he was withdrawing as attorney. On May 7, 1987, he filed a soil analysis prepared by John P. Taberna of Western Laboratories, Inc., in order that it "will not be lost in the transfer of file matter to another attorney." <sup>12/</sup> On June 9, 1987, appellant's present attorneys filed a notice of appearance and requested to review the file. Accordingly, the file was again returned to the BLM district office, where it was reviewed on June 29, 1987. Appellant made no further filings. Nor has BLM filed an answer.

[1] Section 1 of the Act of March 3, 1877, as amended, 43 U.S.C. § 321 (1982), provides for the patenting of tracts of desert land not exceeding 320 acres to persons who make satisfactory proof of reclamation of the land and pay the required purchase price. The statute specifically provides that entered tracts of land shall be "managed satisfactorily as an economic unit." 43 U.S.C. § 321 (1982). Accordingly, the applicable regulation, 43 CFR 2520.0-8(d)(3), states that in determining whether to allow a desert

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fn. 11 (continued)

had a potentially adverse impact on the long-billed curlew were suspended, including several desert land entry applications, among which was appellant's application. This inability to proceed further on the land classification petition was the major component in the delay in acting on appellant's petition/application. While we may sympathize with appellant's frustrations, BLM could not, consistent with its many obligations, grant the application without first undertaking this study.

<sup>12/</sup> Taberna's report states he found 7 acres of hilly Elijah Series soil with slope variation between 7-12 percent and 33 acres of flat Purdam Series soil with slope variation of 3-7 percent. The report continues:

"According to our soil analysis, the Purdam Series (flat area) first foot shows no crop limitations due to a nutrient deficiency or a soil physical abnormality. However, in the second foot there is a high sodium level which could limit crop yields if the sodium is not leached lower in the profile. The only exception would be to plant a sodium tolerant crop.

"The Elijah Series (hilly area) should have no crop limitations except for the possibility of erosion. Also at the 8-inch depth, the soil texture changes from a silty clay loam to a sandy loam. Therefore in order to reduce erosion, I suggest that the crop be planted on a contour to the slope and then dammer diked to aid in moisture retention.

"I highly advise that this 40 acres be managed under sprinkler irrigation, with flow control nozzles at an output of no more than the soil infiltration rate.

land entry, the authorized BLM officer will take into account, among other factors, the "practicability of farming the lands as an economically feasible operating unit." <sup>13/</sup> The question of economic feasibility, according to the BLM Manual at 2520.0-6(A)(4) (Oct. 21, 1974), is whether the land

can be developed into a profitable operation on a "permanent" basis. The value of the increased production of a given tract of land must be sufficient to provide a profit after all costs have been deducted. This profit must be large enough to ensure the expectation of continued cultivation. \* \* \* The concern is with the stability of the farming operation.

Therefore, where the evidence has established that lands sought in a desert land entry application could not be farmed as an "economically feasible operating unit," we have affirmed BLM's rejection of the application based on that rationale.

In Roger K. Ogden, 77 IBLA 4, 90 I.D. 481 (1983), we observed concerning a decision on a desert land entry application that was based on a computer-assisted economic analysis:

Initially we state emphatically that it 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. \* \* \* [T]he Board will require sufficient facts and a sufficiently comprehensible analysis to ensure that a rational basis for the determination is present.

The increasing use of computer models to support decisionmaking makes the above requirements even more imperative. The running of a computer program is not a substitute for evaluation of the issue at hand but rather support for the decision made. <sup>4/</sup> BLM may not simply report the results of its computer analysis; it

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fn. 12 (continued)

"Based from my survey and analysis, I find this land farmable if it is managed with the precautions I have suggested. Also, the soil test should indicate the amount and type of nutrients needed for optimum production."

Accompanying this report were descriptions of the Elijah Series and the Purdam Series and soil fertility reports with nutrient recommendations for the first foot and the second foot of both the hilly and the flat land. <sup>13/</sup> 43 CFR 2520.0-8(d)(3) provides:

"In determining whether an 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."

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 result, 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.

4/ Instruction Memorandum No. ID-83-134 states in part that the computer model in this case was developed "as a tool to be used in assessing the economics of agricultural development," and cautions: "You should not expect the computer model to make the decision to either allow or reject an entry. It is the responsibility of each manager to make an informed decision based upon the best information available."

Roger K. Ogden, *supra* at 7-8, 90 I.D. at 483-84.

In David V. Udy, 81 IBLA 58 (1984), the case the BLM realty specialist provided to appellant's attorney, we set aside a BLM decision that had rejected a desert land entry application based on a computer-assisted economic analysis, citing Ogden, *supra*, and observing:

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. \* \* \* [T]here 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."

81 IBLA at 62, 64.

In Frederic C. Tullis, 102 IBLA 215 (1988), BLM informed the applicants of the results of its computer-assisted economic analysis. The applicants disputed the distribution of crops in the model, BLM's estimate of the cost

of the electrical hook-up for the pump, and the fact that BLM assigned costs for purchasing equipment they already owned. We set aside BLM's decision, noting:

A determination of whether it is economically feasible to farm a tract of land must, to a certain extent, take into account the particular circumstances of the desert land entry applicant, just as it takes into account the actual characteristics of the land and existing market conditions, because all of those factors influence the determination of economic feasibility. See David V. Udy, supra at 64. In this case, one of those circumstances, apparently is preexisting ownership of equipment needed in the farming operation. [Footnote omitted.]

102 IBLA at 222.

Recently, in Leroy R. Davis, 107 IBLA 204 (1989), we stated that "[r]ejection of a desert land entry application will be set aside, however, where the applicant has alleged facts which, if proved, would result in a different conclusion," 107 IBLA at 207-08, and set aside BLM's decision because the specific plan for development presented by the applicant suggested farming the lands would be economically feasible. In that decision we observed:

At no point in its decision does BLM discuss any of the specific proposals made by appellant concerning the use of the lands identified in the application. BLM relies totally on its computer analysis to reach its conclusion that the application is unacceptable because the land cannot be farmed as an economically feasible operating unit. In so doing, BLM used a standard crop rotation as the basis for its calculations and not the specific crops appellant proposed to cultivate. While it is clear that BLM may properly utilize economic feasibility analysis in adjudicating a desert land entry application, the record must also show that BLM considered the specific plans of the applicant. If the crop rotation proposed by the applicant is not adequate to sustain a viable operation, then the record should show that. Mere use of the standard crop rotation by BLM without explanation is not enough to discredit an applicant's proposal. Nevertheless, as we stated in Frederic C. Tullis, 102 IBLA 215, 223 (1988), the applicant bears the ultimate burden of establishing the economic feasibility of farming the land.

107 IBLA at 208.

We believe that in this case, too, BLM took insufficient account of appellant's proposals and relied too heavily on its computer model in arriving at its decision. We have several areas of concern.

First, appellant proposed in his original application in 1975 (and in the accompanying declaration), and repeated as one of the alternatives submitted in July 1985 for the 40 acres eventually classified as suitable for

agricultural development, that he would use his neighbor's existing well. Appellant's July 1985 cover letter pointed out that one of the alternatives would require "a lease/use agreement being entered into with Malson." The record in this case contains two handwritten notes about this proposal. One says "possible to purchase water from existing well," and the other says "the proposal to use the existing Malson well needs to be covered by a long term easement." <sup>14/</sup>

Thus, although BLM knew about appellant's intention to use the existing well, the realty specialist's October 28, 1986, memorandum of her meeting with appellant's attorney states she told him she "had not used the rented water alternative as no figures for the cost of the rented water were submitted." This is reflected in BLM's DLE (Desert Land Entry) Economic Analysis Data Worksheets contained in the record. The first of these, which entered a figure of \$14,000 for Item 5, Cost of Well(s), bears the notation "no info on purchasing water from existing well - no agreement to use well -used info to establish new well as no other data available." For Item 4, Cost of Pumps & Motors and Elect. Hookups, \$21,000 was entered, \$16,000

for the pump plus \$5,000 for the hook-up. Using this data, which BLM's September 29, 1986, decision describes as "similar to the one proposed by the application," (i.e., the original application submitted in 1975), the computer model projected the loss of \$11,794 mentioned in the October 28, 1986, report of the office visit set forth above. A second worksheet, bearing the notation "I-10040A elec. alternative applicant's data," entered \$20,000 as the cost of the 200 horsepower pump and electrical hook-up (\$15,000 for the pump, as indicated on the sheet appellant submitted in July 1985, and \$5,000 for the hook-up). This second worksheet entered \$10,000 as the cost of the well, the figure appellant provided as the cost of drilling a new well. With this data the economic model projected a loss of \$10,370. A third worksheet bearing the notation "I-10040B diesel alternative applicant's data" listed \$15,000 for the cost of the pump and the generator (\$5,000 for the pump and \$10,000 for the diesel generator) and \$10,000 for the cost of the new well, as appellant had on the sheet he submitted in July 1985. However, it also entered a figure of \$10,281 as the annual cost of diesel fuel, instead of the \$1,815 for electricity costs on the previous two worksheets. It did so on the assumption that appellant would have a 50-horsepower deep well pump that would need a 125 KW generator, although

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<sup>14/</sup> An easement would be one way for appellant to meet BLM's concern that "the leased well may not meet the criteria [sic] of a permanent water source as required under 43 CFR 2521.2(d)" (Decision at 1). See generally Wallace S. Bingham, 21 IBLA 266, 278-82, 82 I.D. 377, 382-84 (1975):

"It will be noted that the concern of the Secretary [in Orin P. McDonald, 13 L.D. 30, 31 (1891)] was that the water supply and the entryman's control of it be permanent, not that the irrigation works be permanent. This view comports with the requirement in the current regulation, 43 CFR 2521.2(d), which refers to the entryman's showing that he has a 'right to the permanent use of sufficient water to irrigate \* \* \*.'" Id. at 279, 82 I.D. at 383 (emphasis in original).

appellant specified a 20-horsepower submersible pump. With this data the computer model projected a loss of \$17,932.

As indicated above, BLM's decision referred to the fact that "after the classification decisions were final, the applicant proposed two different alternatives." As to these, the decision stated:

One alternative dealt with a diesel generator for power instead of electricity and use of water from a leased well. Although the leased well may not meet the criteria of a permanent water source as required under 43 CFR 2521.2(d), it would probably reduce costs and affect the economic analysis. Even after analyzing a lease well situation where nominal costs for leasing the well were utilized and after analyzing the diesel generator alternative, it still resulted in this farm venture not being economic.

This statement apparently confuses the two alternatives appellant presented in 1985, one to build a new well for \$10,000 and pump it with a 20-horsepower submersible pump powered by a diesel generator, the other to use the existing well and pump it with a 200-horsepower turbine pump hooked up to electricity. In any event, what BLM in fact analyzed as appellant's alternatives, as set forth above, were the costs of building a new well for \$10,000 and pumping water from it either with a \$15,000 pump hooked up to electricity or with a \$5,000 pump powered by a diesel generator. Although the BLM decision refers to "analyzing a leased well situation where nominal costs for leasing the well were utilized," it does not appear from the record that BLM did so. The October 28, 1986, memorandum states that the "rented water alternative" was not analyzed, and none of the worksheets indicates that it was. Thus, BLM significantly altered appellant's two alternatives: instead of analyzing the costs of leasing his neighbor's existing well, it assumed a \$10,000 cost for building a new well and figured the costs of two different ways of pumping water from it, and instead of analyzing the costs of his alternative for a new well and a 20 horsepower pump, and it assumed the need for a pump more than twice as powerful, which resulted in very high fuel costs.

We have a second concern with BLM's analysis of appellant's costs. In his August 12, 1976, cover letter to his amended application he stated that the figure for his total costs was "approximate \* \* \* as we have a lot of the materials already on hand." Presumably he had them on hand because he was in the well drilling business. See note 1, *supra*. In his statement of reasons appellant says he told the BLM realty specialist at their July 1985 meeting that the pump, generator, and main lines were "on hand, free of any incumbrance," presumably for the same reason. However, the BLM realty specialist who prepared the economic analysis data worksheets and conducted the computer-assisted analysis in September 1986 entered data on costs for "pumps, motors \* \* \* and the irrigation system \* \* \* from Jim Enoki of Agri-Lines Irrigation, Inc.," see note 9, *supra*, probably because the application pages appellant submitted in 1985 did not indicate this equipment was on hand and the realty specialist's predecessor left no record that he had advised appellant "to include the cost of such, but that as an alternative

the fact the pump, generator and main lines were on hand would be considered as [an] alternative." See SOR at 2.

Indeed, there are no figures from appellant for estimated total annual costs and estimated annual income available for these 40 acres, because the page of the new application form that he submitted in July 1985 does not contain this question on the back, as the original form did. In Frederic C. Tullis, supra, we noted that "preexisting ownership of equipment needed in the farming operation" was one of the particular circumstances that BLM must consider in evaluation of a desert land entry application, and provided the appellant an opportunity to present evidence indicating what his cost figures were and how they differed from BLM's. 102 IBLA at 222. In this case appellant states he has "alot of the materials" and "the pump, generator, and main lines" "on hand, free of any incumbrance." Although this does not, of course, mean these items were "free," here, too, appellant should have the opportunity to show specifically what his costs for the pump, generator, main line, and other materials were, so that BLM may analyze his application using this information. 15/

Our third area of concern is the crops that appellant plans to plant. As indicated in note 6, supra, on the forms appellant submitted in July 1985 he indicated he would grow hay, row crops, grains, and corn in rotation on these 40 acres. BLM's September 29, 1986, decision indicated it employed "a standard crop rotation system for the area" in the economic analysis it conducted. This standard is set forth in Appendix 1 of Idaho State Office User's Manual H-2520-1, Economic Feasibility Analysis of Desert Land Applications:

Alfalfa establishment	1%
Alfalfa	5%
Winter wheat	17%
Barley	17%
Potatoes	22%
Sugar beets	17%
Dry edible beans	21%

The manual states that "[i]f the application is feasible, no further analysis is necessary. If the application is found not to be feasible, analyze

15/ In our Oct. 3, 1988, order denying BLM's petition for reconsideration of our decision in Tullis we stated:

"BLM now argues that certain ownership costs are an appropriate cost of doing business, even when an applicant owns the necessary equipment. We did not intend to preclude the inclusion by BLM of costs for depreciation, insurance, taxes, and interest in its economic modelling. As BLM explained through the affidavit of Stanley C. Frazier, a BLM agricultural economist in Idaho, BLM spreads those costs out over the life of the equipment on the basis of the expected life of the equipment. In addition, BLM properly includes labor costs and also lost opportunity costs. The real question is what are the appropriate ownership costs in this case." (Emphasis in original).

the application using the rotation proposed by the applicant if such rotation is determined to be reasonable and suitable [sic]." 16/ No analysis of the economic viability of appellant's proposed rotation, or of a determination that it is not reasonable and sustainable is contained in the record. As we stated in Davis, supra: "If the crop rotation proposed by the applicant is not adequate to sustain a viable operation, then the record should show that. Mere use of the standard crop rotation by BLM without explanation is not enough to discredit an applicant's proposal." 107 IBLA at 208.

Our final concern is related to the previous one and involves the conflicting appraisals of the soils on these 40 acres. BLM categorized 9 acres as class II, 14 acres as class III, and 17 acres as class VI. (For purposes of the computer model, class VI soils were evaluated as class IV, note 9, supra.) BLM's decision states the class VI soils "were generally characterized by rather steep topography." Appellant's soil analyst, Taberna, said approximately 7 acres were Elijah series soils (7-12 percent slope variation) that "should have no crop limitations except for the possibility of erosion." Such soils have a capability rating of "IVe-1" when irrigated, according to the page of the SCS publication describing them that Taberna submitted. The remaining 33 acres were Purdam series soils with a slope variation of 3-7 percent, Taberna said; irrigated, these soils have a capability rating of IIIe-8, according to the same source. While Taberna's report cannot support appellant's claim that the soils "would in fact be not less than Class II," see text at note 10, supra, neither does it square with BLM's land report. It is not apparent from the land report that BLM inspected the tract. See David V. Udy, supra. Rather, it appears that BLM estimated its soil capabilities from the SCS map. In any event, the difficulty at this stage is there has been no evaluation of the limitations the soils on this tract pose for the crops appellant proposes to plant or of the productivity of those crops on these soils.

As we have said, it is a desert land entry applicant's ultimate burden to establish that his proposal to reclaim the land is an economically viable one. Frederic C. Tullis, supra; Leroy R. Davis, supra. However, we have also made clear that it is incumbent on BLM to evaluate what the applicant has proposed, including what equipment he owns, what crops he plans to plant, what the characteristics of the land are, and what the expenses and income of the proposal are. David V. Udy, supra; Frederic C. Tullis, supra; Leroy R. Davis, supra. Although there is no record of what was said at

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16/ "Reasonableness means that crops used in such rotation have been proven to be adaptable to the soil and the climate in the project area. Sustainable [not "suitable"] means that such proposed rotation will not excessively mine the fertility of the soils, promote erosion, stimulate plant disease build-up, or deteriorate the physical or chemical properties of the soil over a 15 to 20-year period. Applicants should submit testimonies/expert opinions from SCS, county agents, or other experts with credentials acceptable to IDWR [Idaho Department of Water Resources] and BLM on the reasonableness and sustainability of their proposed rotation."

Id.

appellant's July 25, 1985, meeting with BLM, it appears he presented all that was requested of him there. Certainly he asked to be told if it was not. Under the circumstances it seems unreasonable to reject consideration of appellant's alternative to use his neighbor's existing well on the grounds he did not offer a copy of any agreement to use the well or figures for the cost of doing so. Nor does it seem reasonable to ignore the equipment appellant has on hand or the crop rotation he proposes. We believe that appellant should have an opportunity to present information about his proposal to use the existing well, the equipment he has on hand, the income he anticipates from the crops he intends to plant, as well as any other relevant data, and that BLM should then re-evaluate his application. See Harriet B. Ravenscroft, 105 IBLA 324, 328-29 (1988).

Therefore, in accordance with 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 is remanded for further action consistent with this opinion.

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Will A. Irwin  
Administrative Judge

I concur:

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James L. Burski  
Administrative Judge