

STEVE MEDLIN

IBLA 89-87

Decided June 21, 1990

Appeal from a decision of the Nevada State Director, Bureau of Land Management, dismissing a protest of a proposed realty action. N-47788.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Leases

In accordance with 43 U.S.C. § 1732(b) (1982), BLM may regulate the use, occupancy, and development of the public lands by issuing a lease to an individual occupying land in excess of that authorized under a range improvement permit, rather than selling or exchanging such land, where the land use plan for the area, pending reevaluation and revision, calls for the land to be retained in Federal ownership.

APPEARANCES: Steve Medlin, Alamo, Nevada, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Steve Medlin has appealed from an October 5, 1988, decision by the Nevada State Director, Bureau of Land Management (BLM), dismissing a protest filed in response to a Notice of Realty Action (NORA), in which BLM proposed to issue Medlin a 20-year nonrenewable lease for 2.5 acres of public land in Lincoln County, Nevada, described as NW¹/₄ SW¹/₄ NW¹/₄ NW¹/₄ sec. 25, T. 6 S., R. 57 E., Mount Diablo Meridian, Nevada. In its decision, BLM modified its proposal, concluding that it would "propose to offer and issue a 5-year lease with the right of survivorship during the lease term and consideration for renewal if the final disposition of the matter has not been resolved through the land use planning process."

On November 30, 1970, BLM issued a range improvement permit to John R. Moser pursuant to section 4 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315(c) (1982). The permit allowed for the construction, maintenance, and use in the SW¹/₄ NW¹/₄ sec. 25, T. 6 S., R. 57 E., Mount Diablo Meridian, of a "line camp, consisting of a trailer house site, water supply, set of corrals

with a loading chute, small utility building for storage and minor repairs, vehicle and small equipment storage," and for the construction of a "drained road to present Area 51 road." The permit stated that the estimated cost of improvements, excluding a house trailer, was \$4,490. By assignment approved January 7, 1974, the above permit was transferred to Medlin, doing business as D/4 Enterprises. Thereafter, he established a permanent residence for his family on the site and conducted his ranching operation from there.

As early as 1978, BLM recognized that Medlin was trespassing on the public lands and the Caliente Resource Area Management Framework Plan recommended that the situation be resolved. However, no action was taken by BLM until in a memorandum dated August 1, 1986, the Caliente Resource Area Manager requested the assistance of the Las Vegas District Office in concluding the matter.

Following input from the District Office, the Area Office prepared an Environmental Assessment (EA), dated February 10, 1988, analyzing several alternative courses of action. Therein, it noted that additional structures, not listed in the range improvement permit, had been added to the site, including a family residence, consisting of two large trailers joined together, a laundry house, chicken coop, solar shed, and septic system, and that the Medlin family lived on the site year round. BLM characterized this as an "occupancy trespass" and concluded in the EA to legalize it by offering to issue the Medlins a 20-year lease pursuant to section 302 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1732 (1982).

BLM's NORA, published in the Federal Register (53 FR 8809 (Mar. 17, 1988)), stated that the site had been determined to be suitable for leasing by noncompetitive procedures under section 302 of FLPMA, that the land was not needed for other Federal purposes, and that a "nonrenewable, nonassignable, and noninheritable 20-year lease" would be offered to appellant and his wife at fair market rental. ^{1/} The NORA stated that the purpose of the lease was "to authorize improvements which have been located on the site for approximately fifteen years," and that such improvements resulted from the "overdevelopment" of the section 4 permit.

On May 9, 1988, appellant and his wife filed a protest objecting to the restrictions of the proposed lease and suggesting instead a purchase or trade arrangement. The Medlins noted that they had worked hard to improve the land, that they preferred a lease that was assignable to their children, and that BLM's appraised value appeared high, considering that the site lacked power and water. The Medlins also complained that they never received personal notification of the NORA and that they only learned through a friend of its publication in a local newspaper.

The State Director's decision denying the Medlin's protest notes that "essentially all" of the 68 comments received in response to the NORA were

^{1/} By appraisal accepted on Apr. 27, 1988, BLM estimated the fair market annual rental value of the site at \$160.

opposed to the granting of a nonrenewable, nonassignable, and noninheritable 20-year lease, and suggested that a sale or trade be considered instead. The decision then states:

The suggested alternatives of sale or exchange are presently in conflict with the Land Use Plan (LUP) which calls for the land in question to be retained in Federal ownership. The LUP was developed with public comment and retention was determined to be the best course of management for these lands at that time. Disposal of the land at issue would require either an amendment or revision of the LUP which results in a management decision allowing disposal. Since the entire LUP is scheduled for evaluation and revision within the next 5 years, the time and resources required to process a plan amendment, prior to that revision, is not considered to be in the public interest. The sale or exchange of the property will be thoroughly explored and analyzed when the Caliente Land Use Plan is revised. Until the LUP revision can be accomplished, a lease is the only method available for authorizing the use of the land for occupancy purposes.

He then proposed the issuance of a 5-year lease, as explained above.

In the statement of reasons on appeal, appellant asserts that BLM has not responded to the questions and concerns in his protest. Appellant questions the wisdom of the 5-year lease, in view of the investment, in terms of time, money, and effort, he has made in the site. Appellant also asserts that he has asked, but never received, a definition of the term "line camp," which is the use described in his range improvement permit. Appellant appears to contend that his present use comports with that described in the permit and that there may be no need for a lease.

[1] Section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (1982), states in part as follows:

In managing the public lands, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law, regulate, through easements, permits, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands, including, but not limited to, long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns.

Applicable regulations are found at 43 CFR Part 2920. These regulations require that land use authorizations be issued only at fair market value and only for uses that conform with BLM plans, policy, objectives, and resource management programs. 43 CFR 2920.0-6(a). Under 43 CFR 2920.1-1, BLM may authorize "[a]ny use not specifically authorized under other laws or regulations and not specifically forbidden by law" including "residential, agricultural, industrial, and commercial" uses. 43 CFR 2920.4(c) requires a NORA to be published in the Federal Register and in a local

newspaper of general circulation. Also a NORA is to be "sent to parties of interest." 43 CFR 2920.4(a).

BLM's proposed action to lease, as discussed in the State Director's decision, is authorized by FLPMA and the regulations. That decision explains that a sale or exchange was not selected because the land use plan calls for the land to be retained in Federal ownership, and that the option of sale or exchange would be thoroughly explored during evaluation and revision of the land use plan within the next 5 years. It is clear that BLM cannot at this time sell the land to appellant as he requests. The regulations governing sales provide at 43 CFR 2710.0-6(a) that "sales under this part shall be made only in implementation of an approved land use plan or analysis in accordance with Part 1600 of this title." As explained by BLM, the present land use plan does not provide for the sale of the land in question.

Two concerns raised in the protest and not addressed in the State Director's decision related to BLM's appraisal and the sufficiency of the notice appellant received of BLM's proposed action. As to the first, appellant acknowledges having been shown a copy of the appraisal at BLM's offices. The appraisal states on page 5 that "[t]here are no utilities; however, water is piped in for a distance of 11 miles by the proposed lessee." Therefore, the appraiser considered the lack of power and water on the site. 2/

With respect to notice, 43 CFR 2920.4(a) requires that a NORA be sent to "parties of interest." Clearly, BLM should have sent appellant a copy of the NORA, since the realty action involved land occupied by him. However, he does not allege that he never saw the NORA. Rather, after having learned of the NORA through a friend, appellant was able to avail himself of his right to protest BLM's proposed action. For that reason, he was not prejudiced by BLM's omission.

Appellant complains that BLM did not furnish him with a definition of the term "line camp" used in the range improvement permit, and he implies that his current use is in compliance with that permit and that no further authorization should be necessary. It is true that BLM has not defined the term "line camp"; however, whatever that term means, the establishment of a permanent family residence and business headquarters under the guise of a range improvement permit for a "line camp," exceeds the authorization of that permit, despite the fact that BLM, over the years, has apparently acquiesced in the expansion of the site.

2/ As indicated above, the State Director's decision did not refer to BLM's appraisal, and appellant did not challenge, but simply raised a question about the appraisal. Where a BLM appraisal is challenged, absent a showing of error in the appraisal, ordinarily another appraisal must be submitted in order to present sufficiently convincing evidence that the rental charges imposed by BLM are excessive. Earl M. Hardy, 113 IBLA 367 (1990).

BLM is not proposing to cancel the permit, or deprive appellant of improvements to the site, or eject appellant from the site. BLM's purpose in issuance of a permit is to legitimize the occupancy of the public lands. That purpose, and the procedures adopted by BLM are authorized by FLPMA and the regulations referred to above. Appellant has cited no authority by which he would be entitled to an indefinite rent-free occupancy of the land in question. Under section 102(a) of FLPMA, 43 U.S.C. § 1701(9) (1982), the congressional declaration of policy is "that the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute."

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.

Bruce R. Harris
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge