

Editor's note: Reconsideration denied by Order dated April 8, 1992

W. J. AND BETTY LO WELLS

IBLA 90-294

Decided February 28, 1992

Appeal from a decision of the Arizona State Office, Bureau of Land Management, dismissing a protest of a proposed land exchange. A-23677.

Appeal dismissed in part; BLM decision affirmed.

1. Rules of Practice: Appeals: Dismissal--Rules of Practice: Appeals: Statement of Reasons

A statement of reasons filed in support of an appeal that does not affirmatively point out how the decision appealed from is in error does not meet the requirements of the Department's rules of practice and the appeal is subject to dismissal.

2. Appraisals--Exchanges of Land: Generally--Federal Land Policy and Management Act of 1976: Exchanges

BLM's appraisal of the values of land involved in a proposed exchange under sec. 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716 (1988), as amended, will not be overturned when an independent appraisal does not establish its methodology or results were in error.

APPEARANCES: William P. Mahoney, Jr., Esq., Phoenix, Arizona, for appellants; Richard R. Greenfield, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Bureau of Land Management; Gary A. Drummond, Esq., and Teresa H. Foster, Esq., Phoenix, Arizona, for Wayne and Sheree Pitrat.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

W. J. and Betty Lo Wells have appealed the March 13, 1990, decision of the Acting State Director, Arizona State Office, Bureau of Land Management (BLM), dismissing their protest of a proposed land exchange between Wayne and Sheree Pitrat and BLM.

The proposed exchange involves approximately 236 acres of the Pitrats' land on the Bill Williams River in sec. 6, T. 10 N., R. 14 W., Gila and Salt River Meridian, and approximately 586 acres of public lands in sec. 1, T. 16 N., R. 1 W., Gila and Salt River Meridian, near Prescott, Arizona. BLM signed an exchange agreement with the Pitrats on December 1, 1989,

and published a Notice of Realty Action (NORA) in the Federal Register on December 21, 1989, inviting interested parties to submit comments. 54 FR 52463-64 (Dec. 21, 1989). 1/

Counsel for the Wells filed a letter stating five objections on February 1, 1990. It stated:

1. A valuable area of their range will be reduced by [the exchange].
2. The land involved near to their residence * * * has historically served as their holding pasture. No other such convenient facility is near to their headquarters.
3. There is questionable if non-existent access to the land involved.
4. It is clear from a conversation between the parties concerned that the [Pitrats] contemplate subdividing it within the foreseeable future, thereby changing the pastoral and rural character of the land to one of a populated neighborhood, a practice which has plagued the Town of Chino Valley several miles distant.
5. The value of the land concerned significantly exceeds that of the property for which it was exchanged.

BLM treated the Wells' letter as a protest. See 43 CFR 4.450-2. BLM's March 13, 1990, decision responded to objection Nos. 1 and 2 that the selected public lands were listed in the Phoenix Resource Management Plan as available for disposal because their remoteness made them difficult and uneconomical to manage; that the riparian habitat lands offered by the Pitrats were more valuable than continued grazing on the public lands; and that the Wells were sent notice their grazing lease would be cancelled 2 years from the publication of the NORA. See 43 CFR 2201.1(c), 4110.4-2(b). 2/ BLM stated that whether there is access to the selected public lands is not a consideration in deciding whether to approve an exchange but that in this case they were accessible via a county road and crossing Arizona trust lands. As to the Wells' objection No. 4, BLM stated that the Pitrats had not informed it they planned to subdivide the land but that any development would be subject to Yavapai County planning and zoning requirements. Finally, BLM stated the property values of the selected public lands and the offered private lands "were determined by a qualified BLM appraiser. Even though there is a considerable difference

1/ Notice was also published in the Prescott Courier on Jan. 18 and 25 and Feb. 1, 1990.

2/ See Letter of Jan. 9, 1990, to the Wells from the Area Manager, Lower Gila Resource Area, BLM, stating "you have the right to graze livestock on the land for 2-years from [the] date of NORA publication. Livestock grazing on the land [will] terminate on December 20, 1991."

in acreage between the offered and selected lands, the appraisal report determined the properties to be of equal value" ^{3/} (Decision at 2).

The Wells filed a timely notice of appeal and, later, a statement of reasons (SOR). Because the Wells' SOR repeated their letter verbatim, BLM moved that their appeal be summarily dismissed. Subsequently, the Wells submitted appraisals stating the Pitrats' land was worth nearly \$100,000 less than the value determined in BLM's appraisal. BLM moved to strike the Wells' appraisals as untimely. The Wells filed their opposition to that motion and a request for a hearing.

By order dated January 9, 1991, we denied BLM's motion to strike and requested the Wells to "explain what specific issues of material fact require a hearing in this case, what evidence concerning these issues must be presented by oral testimony and what witnesses need to be examined, and what evidence could be presented in documentary form, e.g., by affidavit, rather than by oral testimony." See Woods Petroleum Co., 86 IBLA 46, 55 (1985); KernCo Drilling Co., 71 IBLA 53, 56 (1983). The Wells responded that the differing appraisals created "a valid issue of material fact as to the fairness of the exchange" and that items 2-4 in their SOR also presented material issues of fact. On March 18, 1991, the Pitrats filed an answer to the Wells' SOR and a response to their reasons for a hearing. On the same date BLM filed a supplementary answer that included a reply to the Wells' reasons for a hearing and a request to respond to the Pitrats' answer. BLM also renewed its motion for summary dismissal.

On June 18, 1991, we requested BLM to submit its appraisals of the selected and offered lands that were missing from the record it submitted and authorized it to file a response to the Pitrats' answer. BLM did both on July 11, 1991, and repeated its request that the Wells' request for hearing be denied and their appeal dismissed.

[1] We have recently dismissed appeals from BLM decisions dismissing protests to a proposed land exchange "[w]here submissions on appeal do not affirmatively point out why the decision appealed from is in error." Burton A. & Mary H. McGregor, 119 IBLA 95, 98 (1991). Cf. Oregon Natural Resources Council, 122 IBLA 65, 67 (1992), and cases cited. Repetition of objection Nos. 1-4 from the Wells' letter in their SOR does not point out any errors in BLM's March 13, 1990, decision. Nor do reason Nos. 2-4 present issues of material fact "which, if proven, would alter the disposition of the appeal." Woods Petroleum Co., supra at 55. As to reason Nos. 1-4, therefore, we grant BLM's motion to dismiss the appeal.

^{3/} Section 206(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716(b) (1988), as amended, requires that the "value of the lands exchanged by the Secretary * * * shall be equal, or if they are not equal, the values shall be equalized by the payment of money * * * so long as payment does not exceed 25 per centum of the total value of the lands or interests transferred out of Federal ownership." In this case BLM appraised the value of the selected public lands at \$351,504 and the offered private lands at \$350,000.

[2] In support of their claim that the selected public lands and the offered private lands are not of equal value, the Wells submitted independent appraisals prepared by E. Ray and Warren L. Henry. The Henry appraisal of the Pitrats' land valued it at \$251,000, compared to the \$350,000 value placed on it by BLM's appraisal. Although we approve of this means of attempting to meet the burden of showing error in BLM's appraisal, see Burton A. & Mary H. McGregor, supra at 105, we find the Henry appraisal inadequate for this purpose. In the first place, for understandable reasons, the Henry appraisal is based on an inspection of the Pitrats' property "from the hills above the subject's south boundary," rather than an on-the-ground inspection such as BLM conducted. See September 30, 1990, Letter from E. Ray and Warren L. Henry to W. J. Wells, and Henry Appraisal at 30; BLM Appraisal at 31.

More importantly, we find the market-data methodology of the BLM Appraisal preferable to that of the Henry Appraisal. 4/ The value determined by BLM's appraisal focuses on the value of the 80 acres of the Pitrats' land with perfected surface water rights and adds a value for the remaining acreage of desert lands and floodplain lands without surface water rights. See BLM Appraisal at 3, 28-29, 32-33. In determining a per-acre value for the 80 acres, in addition to comparing two sales of lands with surface water rights and three sales with groundwater rights, BLM analyzed cost and price trends for agricultural lands in the neighborhood. Id. at 30-31.

In contrast, the Henry Appraisal rejected "[t]he Market Approach [because] there are no truly similar properties in the area with just well improvements" (Henry Appraisal at 41) and employed a cost approach. 5/ Only 1 of the 10 sales canvassed by the Henry Appraisal was located on surface waters. See Henry Appraisal at 53. There are discrepancies between the facts of this sale as reported in the Henry Appraisal at 50 and in the BLM Appraisal (Addenda, Sale 4). In addition, it appears the particular circumstances of the sale price were not discovered during the conduct of the Henry Appraisal. See BLM Appraisal at 28; BLM Reply at 5. In any event, we believe the Henry Appraisal, by focussing on the value of the "depreciated improvements and other amenities" of this property, significantly understates the value of land with perfected surface water rights

4/ Because BLM's proposed regulations implementing the Federal Land Exchange Facilitation Act of 1988 have not been finally promulgated (see 54 FR 34380 (Aug. 18, 1989)), this appraisal methodology and the proposed exchange based on it may proceed. 43 U.S.C. § 1716(g) (1988), as amended.

5/ The Henry Appraisal describes the cost approach as one that

"first estimates the value of the subject land by the direct sales comparison approach * * *. Next the reproduction cost new of improvements like the subject are calculated. The physical depreciation, functional and external obsolescence are subtracted from the reproduction cost new of the improvements for the depreciated value of the improvements. The land is added to this value for the indicated value." (Henry Appraisal at 38).

in this desert area at only \$1,120 per acre. See Henry Appraisal at 50, 54. This figure, after further reduction to \$1,000 per acre for the difference in size between this property and the Pitrats' land, accounts for most of the \$99,000 lower valuation attributed to the Pitrats' land by the Henry Appraisal. Id. at 55. 6/

We conclude that the Wells have not demonstrated that either the methodology or results of BLM's appraisal were in error, that the selected public lands and the offered private land are not of equal value, or that the differences between their appraisals and BLM's reflect a material issue of fact that requires a hearing. Burton A. & Mary H. McGregor, supra at 105.

Therefore, under the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed in part and BLM's March 13, 1990, decision is affirmed.

Will A. Irwin
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge

6/ The Henry Appraisal valued the Pitrats' land at \$236,000 (\$1,000 per acre x 235.94 acres), and added \$15,200 for the depreciated value of its improvements for a total of \$251,200, which it rounded to \$251,000 (Henry Appraisal at 57-58).