

DONA JEANETTE ONG
CARIE L. NASH
(ON RECONSIDERATION)

IBLA 2000-163R
IBLA 2000-164R

Decided June 14, 2005

Petition for reconsideration of Dona Jeanette Ong, 165 IBLA 274 (2005), affirming decisions of the Cascade Field Manager, Cascade Field Office, Bureau of Land Management, rejecting applications for desert land entry. IDI-31674 and IDI-31676.

Petition for reconsideration denied.

1. Desert Land Entry: Applications--Rules of Practice:
Appeals: Reconsideration

Under 43 CFR 4.403, “[t]he Board may reconsider a decision in extraordinary circumstances for sufficient reason.” A petition for reconsideration of a Board decision affirming the rejection of desert land entry applications does not satisfy the regulation and will be denied when the petitioners merely restate arguments previously made.

APPEARANCES: Dona Jeanette Ong, Nampa, Idaho, pro se, and Carie L. Nash, Melba, Idaho, pro se.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

In a decision dated April 28, 2005, Dona Jeanette Ong, 165 IBLA 274, the Board affirmed the decisions of the Cascade Field Manager, Cascade Field Office, Bureau of Land Management (BLM), rejecting the desert land entry applications of Dona Jeanette Ong (IDI-31674) and Carie L. Nash (IDI-31676) for public lands situated in western Idaho.^{1/} On June 2, 2005, the Board received from Ong and

^{1/} The Board had docketed Ong’s appeal as IBLA 2000-164 and Nash’s appeal as IBLA 2000-163.

Nash a document styled "PETITION FOR RECONSIDERATION OF DECISION BY OFFICE OF HEARINGS AND APPEALS Interior Board of Land Appeals Issued April 28, 2005." We have docketed that filing as a petition for reconsideration by this Board under 43 CFR 4.403.

[1] Under 43 CFR 4.403, "[t]he Board may reconsider a decision in extraordinary circumstances for sufficient reason." See, e.g., Gary L. Carter (On Reconsideration), 132 IBLA 46, 48 (1995). The Department has explained that this regulatory language is intended to reinforce the Board's expectation that "parties will make complete submissions in a timely manner during the appeal, not afterward on reconsideration," and that, "[i]n general, the Board does not give favorable consideration to a petition for reconsideration which merely restates arguments made previously or which contains new material with no explanation for the petitioner's failure to submit such material while the appeal was pending." 52 FR 21307 (June 5, 1987); see Western Slope Gas Co. (On Reconsideration), 43 IBLA 259, 261-62 (1979).

In this case, petitioners merely seek to reargue their case, supplementing their arguments with citations to and quotations from the dissenting opinion by Administrative Judge Irwin, which accompanied the Board's decision in Ong. The Board considered appellants' arguments, as well as the analysis offered by Administrative Judge Irwin, in reaching its previous decision.

Petitioners have failed to provide any basis for reconsidering our April 28, 2005, decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is denied.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

H. Barry Holt
Chief Administrative Judge

ADMINISTRATIVE JUDGE IRWIN CONCURRING:

Although of course I appreciate appellants' approval of my opinion, I agree with my colleagues that they have not shown extraordinary circumstances that would justify reconsidering their decision. I write separately because I want to respond to the conclusion of appellants' petition for reconsideration. There they write:

The BLM's decision should not be upheld by the Board just because it was made by the BLM. * * *

In conclusion, we request a review by Secretary Norton herself, of this majority decision by the panel of administrative law judges, and request that the decision be overturned in the favor of the appellants. We further request that a review of the decision-making process be made to determine if there is a need for an oversight panel to assure that future decisions will not be made solely to satisfy the decision-makers' political agenda, but will be made in the interest of the American public, for whom the decision-makers should be working.

(Petition at 3.)

First, I want to assure appellants that although I disagree with my colleagues, I am confident they did not uphold BLM's decision just because it was made by BLM or to satisfy their political agenda. It is not the Board's function to rubber-stamp BLM decisions or promote or impede any political agenda. We are here to provide the "objective administrative review of initial decisions" that the Federal Land Policy and Management Act declares to be the policy of the United States, 43 U.S.C. §1701(a)(5) (2000), and we endeavor to carry out that assignment conscientiously. We frequently set aside or reverse decisions made by BLM or other agencies in the Department, and every member of the Board has authored opinions that have done that even when it has been contrary to whatever the current political agenda may have been, or be.

Second, if appellants want Secretary Norton to review the Board's decision herself, they must seek that in a request to the Secretary, in accordance with the regulation in 43 CFR 4.5, rather than in a petition to us for reconsideration. That regulation provides that the Secretary has reserved the "authority to review any decision of any employee or employees of the Department, including any administrative law judge or board of the Office [of Hearings and Appeals], or to direct any such employee or employees to reconsider a decision * * *." 43 CFR 4.5(a)(2).

I would, however, counsel appellants not to spend their time and energy requesting such a review. The Secretary is not free to make a decision that is not in

conformance with the land use plan: “The Secretary shall manage the public lands * * * in accordance with the land use plans developed * * * under section 1712 of this title.” 43 U.S.C. §1732(a) (2000). As I noted in my previous opinion, BLM cannot grant appellants’ applications “unless and until it has amended the plan to allow for disposal of the lands,” 165 IBLA at 296, and neither can the Secretary. On this point, my colleagues and I agree. See 165 IBLA at 278. Where we disagree is what BLM must do if appellants choose to file applications for land not designated for disposal.

Finally, I want to note that we have only recently obtained a copy of BLM’s Land Use Planning Handbook and accompanying appendices as they were amended on March 11, 2005 – well before the date of our decision. The contents I described have not substantively changed in BLM Manual Release 1-1693, which supersedes Release 1-1667, although the pagination has.

Will A. Irwin
Administrative Judge