

INTERIOR BOARD OF LAND APPEALS

Lee and Jody Sprout and Dick and Shauna Sprout

160 IBLA 9 (July 29, 2003)

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LEE AND JODY SPROUT
DICK AND SHAUNA SPROUT

IBLA 2001-332, 2001-333

Decided July 29, 2003

Appeal from a decision by the Dillon (Montana) Field Office, Bureau of Land Management, approving recreation developments and mitigating measures in the area of Ennis Lake, Montana. MT 050-01-11.

Affirmed.

1. National Environmental Policy Act of 1969: Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact--Public Lands: Generally

A decision to limit use of a recreational site to day-use-only (no overnight camping) will be affirmed (1) where BLM took a hard look at the environmental consequences as opposed to reaching conclusions unaided by preliminary investigation, identified relevant areas of environmental concern, and made a convincing case that environmental impact is insignificant; (2) where BLM's decision is supported by valid reasons clearly set out in the supporting documentation; and (3) where those reasons are not challenged on appeal.

2. Color or Claim of Title: Adverse Possession

Parties could not have acquired any prescriptive rights against the United States by using a beach for overnight camping while the beach lands were in Federal ownership, as prescriptive rights cannot be obtained against the Federal government.

3. Color or Claim of Title: Adverse Possession

To the extent that parties assert that they have “prescriptive rights” to use a beach area for overnight camping based on their past use of the beach lands while they were in private ownership, the assertion is not cognizable by BLM in the absence of (1) an indicium of title (such as a title report or a determination of title based on adverse possession against private parties by a court of competent jurisdiction); (2) an offer of proof showing facts from which BLM could determine that prescriptive rights had arisen under State law; or (3) other evidence showing that the United States acquired the property subject to such prescriptive rights.

APPEARANCES: Lee and Jody Sprout, Ennis, Montana, Dick and Shauna Sprout, Bozeman, Montana, pro sese; John C. Chaffin, Esq., Office of the Field Solicitor, Billings, Montana, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Lee and Jody Sprout (IBLA 2001-332) and Dick and Shauna Sprout (IBLA 2001-333) have appealed a decision by the Dillon (Montana) Field Office, Bureau of Land Management (BLM), to approve recreation developments (with mitigating measures) in the area of Ennis Lake in Southwest Montana.^{1/} The decision consisted of a decision record (DR) and finding of no significant impact (FONSI) dated May 23, 2001. BLM’s DR and FONSI are based on the Environmental Assessment for Development of Ennis-area Recreation Sites (EA), which considered the environmental effect of proposed construction at three sites at and near Ennis Lake: The Fall Creek Interpretive Site, the Norman Strung Recreation Site (Klute’s Landing), and Kobayashi Beach.^{2/}

^{1/} We have consolidated these appeals sua sponte because they challenge the same decision and raise the same arguments.

^{2/} The EA was prepared for BLM by a consultant. It was also prepared for PPL-Montana (formerly Montana Power), a private concern. PPL-Montana’s role in developing recreational facilities arises from a directive by the Federal Energy Regulatory Commission (FERC) issued in 1999 in connection with the issuance of a permit to Montana Power Company. The EA explains:

“[FERC] is authorized under the Federal Power Act and the U.S. Department of Energy Organization Act to issue licenses for the construction and operation of non-federal hydroelectric developments within its jurisdiction. During its

(continued...)

Appellants' statements of reasons (SORs) address only Kobayashi Beach, where BLM's decision approved "[d]evelopment as a day use area, to include an internal single-lane road with parking lots, a concrete boat ramp, boat dock, sealed-vault toilets, and interpretation and information about the area's recreational opportunities and local hydroelectric operations." Appellants assert that they have acquired a prescriptive right to continue overnight camping on Kobayashi Beach based upon their frequent use of it for at least 25 years. They point out that they have helped maintain the site, assisted stalled boats and stuck vehicles, provided medical assistance, and worked with law enforcement and BLM when problems have arisen.

In its answer, BLM states that "[t]he land in question was obtained by the United States in 1997" and argues that a party cannot adversely possess property against the interest of the United States. BLM notes that Montana law would apply to any claim arising when the land was privately owned and contends that, under Montana law, "recreational use is insufficient to raise the presumption of adverse use." (Answer at 1-2.) BLM asserts that appellants' SORs neither identify the elements for establishing prescriptive rights set out in Kessinger v. Matulevich, 925 P.2d 864, 868, 278 Mont. 450 (1996), nor show that those elements have been met.

[1] We note initially that the record supports BLM's decision to limit use of Kobayashi Beach to day use (no overnight camping). The matter is addressed in the EA:

Under its current license issued by [FERC], PPL Montana is committed to development of a day-use facility at Kobayashi Beach. However, an alternative allowing limited camping at Kobayashi Beach

^{2/} (..continued)

environmental evaluation of issuing a new license for the Missouri-Madison Hydroelectric Project in 1999, FERC determined a need to protect, mitigate, and enhance the recreational resource throughout the Missouri-Madison Hydroelectric Project area. FERC required PPL Montana, the licensee, to construct a number of recreational improvements within the Missouri-Madison River Corridor. Three of those recreational improvements in the Ennis Lake area of southwest Montana are the subject of this environmental assessment."

(EA at 1.)

It appears from the record that PPL-Montana may have acquired title to some lands near Kobayashi Beach. See n. 4, below. We presume that BLM is involved in the matter because it administers at least some lands affected by the development project at Kobayashi Beach, as well as lands at the West Shore (Norman Strung) and North Shore public access points. (EA at 16.)

was discussed at length during the preparation of this [EA] because some [area] users strongly support continued camping at the site. Under a limited-camping alternative, three to five camping spots would have been considered at Kobayashi Beach on the north side of North Ennis Lake Road in addition to the improvements proposed under Alternative 1.

However, at the January 18, 2001 public meeting, participants in support of continued camping said they would not use campsites across North Ennis Lake Road; they desired continued camping along the beach. Furthermore, after reconsideration, the agencies decided that splitting the location of the site facilities would generate an unacceptable safety hazard, especially for children crossing the road, and that grading to accommodate parking and camping across the road would destroy the aesthetics and existing grasslands there.

Rerouting North Ennis Lake Road to include more land along the lakeshore was also considered, but dismissed, due to the difficulty of reclaiming the roadbed into a rustic day-use setting, the amount of grading and earth removal involved, and the increased associated costs of such an undertaking.

Agency personnel conducted another site visit on January 19, 2001 following the public meeting to determine if enough space was available for both off-beach camping and the proposed day use facilities on the relatively narrow site on the south side of North Ennis Lake Road. It was determined that the space requirements needed for day-use facilities (i.e., toilets, an adequate turnaround radius for vehicles which boat trailers, parking, and picnic facilities) would preclude adequate space for off-beach camping. PPL Montana and BLM subsequently determined through the site visit and scoping that on-beach camping also poses unacceptable conflicts with day users, and could cause environmental damage, such as removal of vegetation, soil erosion, and possible discharge of oil and gas into Ennis Lake. Therefore, this alternative was dismissed from further consideration.

(EA at 12-13 (emphasis supplied).) The EA lists specific reasons supporting BLM's decision to limit use of Kobayashi Beach to day-use only, thus barring overnight camping.

An EA must (1) take a hard look at the environmental consequences as opposed to reaching bald conclusions unaided by preliminary investigation, (2) identify relevant areas of environmental concern, and (3) make a convincing case

that environmental impact is insignificant. Southern Utah Wilderness Alliance, 123 IBLA 302, 308 (1992), and cases cited; see also Kendall's Concerned Area Residents, 129 IBLA 130, 138 (1994). A party challenging a FONSI must demonstrate either an error of law or fact or that the analysis failed to consider a substantial environmental problem of material significance to the proposed action. Oregon Natural Resources Council, 131 IBLA 180, 186 (1994). Appellants do not challenge the adequacy of BLM's FONSI. Nor do they demonstrate error in the underlying decision to restrict use to day-use only. In these circumstances, BLM's decision to establish day-use-only at the Kobayashi Beach is properly affirmed.

[2] Appellants claim that they have "prescriptive rights" to use Kobayashi Beach for overnight camping that are not affected by BLM's decision. The present record does not contain information showing the history of title to the lands appellants claim to have prescriptive rights to, requiring us to make certain assumptions based on what statements there are in the record on the question. It appears that the lands were privately-owned for an indeterminable time ending in 1997, when they were acquired by the United States.^{3/} Some or all of the lands were evidently sold to PPL-Montana in or after 1999.^{4/}

BLM is correct that appellants could not have acquired any rights while the lands were in Federal ownership, as it is well established that prescriptive rights cannot be obtained against the Federal government. United States v. 1,629.6 Acres of Land, 503 F.2d 764, 767 (3rd Cir. 1974); see Yamashita v. Territory of Guam, 59 F.3d 114, 116 (9th Cir. 1995); United States v. Hato Rey Building Co., 886 F.2d 448, 450 (1st Cir. 1989); Sweeten v. U.S. Department of Agriculture Forest Service, 684 F.2d 679, 682 (10th Cir. 1982); Loyla C. Waskul, 102 IBLA 241, 243 (1988).

[3] BLM is also correct that Montana law governs the question whether appellants acquired prescriptive rights during any previous time when the land was owned by private parties. An answer to that question would require not only a review of the relevant Montana statutes and case law, but development of a proper factual record, neither of which has been provided. BLM correctly asserts that

^{3/} BLM states in its answer that the United States acquired the lands in 1997. (Answer at 1.)

^{4/} BLM indicates in the EA that PPL-Montana acquired the Kobayashi Beach lands as part of the mitigation required for renewal by FERC, but does not specify when. (BLM Memorandum dated July 13, 2001, at 1 ("Kobayashi Beach is a small parcel of BLM managed land on Ennis Lake which was acquired by Montana Power (now PPL-Montana) as part of the mitigation required [in 1999] for renewal of their FERC license"; EA at 8 ("PPL Montana has already acquired the Kobayashi Beach site for \$130,000.")). Those statements suggest that PPL-Montana may have acquired the lands from the United States some time after the FERC order in 1999.

appellants have not met the burden of proof necessary to establish supporting facts in the present context. There was no basis for BLM to exempt appellants from the day-use-only (no overnight) camping land use put in place by its decision in the absence of an indicium of title (such as a title report or determination of title based on adverse possession against private parties by a court of competent jurisdiction); an offer of proof showing facts from which BLM could determine that prescriptive rights arose under State law; or some other evidence showing that the United States acquired the property subject to such prescriptive rights. See Donna and Larry Charpied, 150 IBLA 314, 342 n.29 (1999). ^{5/} None has been provided here.

Appellants have not demonstrated that BLM's environmental review was based upon an error of law or fact, or that it failed to consider a substantial environmental problem of material significance to the proposed action. Further, appellants have failed to establish that they have individual prescriptive rights that would somehow prevent BLM from prohibiting overnight camping on Kobayashi Beach.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision under appeal is affirmed.

David L. Hughes
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge

^{5/} Appellants note that they had been discussing with BLM the possibility of acting as "hosts" at the camping site. We perceive no bar to BLM's recognizing appellants' long experience and familiarity with the site by arranging special authorization for them to use the site. That would be within its discretion. We note, however, that this is a "challenge cost-share project" between BLM and PPL-Montana (EA at 8) and that PPL-Montana apparently owns title to at least some of the lands being managed. Accordingly, BLM would presumably need to coordinate any action to grant such authorization with PPL-Montana.