

INTERIOR BOARD OF LAND APPEALS

Nevada Outdoor Recreation Association, et al.

136 IBLA 340 (October 17, 1996)

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NEVADA OUTDOOR RECREATION ASSOCIATION, ET AL.

IBLA 93-477, 93-478,
93-479, and 93-480

Decided October 17, 1996

Appeals from a decision of the Las Vegas District Manager, Bureau of Land Management, implementing the Meadow Valley-Arrow Canyon-Delamar Habitat Management Plan for Bighorn Sheep. EA NV-054-91-92.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

The approval of a plan to install water catchment structures within wilderness study areas to enhance the habitat of desert bighorn sheep will be affirmed where the record establishes that the project is consistent with BLM's Interim Management Policy and Guidelines for Lands Under Wilderness Review, and the record shows that the project will not impair the area's suitability for inclusion in the permanent wilderness system.

APPEARANCES: Paul C. Clifford, Jr., National Field Representative, Nevada Outdoor Recreation Association, Inc., Cleveland Heights, Ohio, and Charles S. Watson, Jr., Director, Nevada Outdoor Recreation Association, Inc., Carson City, Nevada; John E. Hiatt, Conservation Chairman, Red Rock Audubon Society, Las Vegas, Nevada; Howard Booth, Southern Nevada Group, Toiyabe Chapter, Sierra Club, Boulder City, Nevada; Fred and Cheri Madison, North Las Vegas, Nevada, pro se; Ben F. Collins, District Manager, Las Vegas, Nevada, District Office, Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

The Nevada Outdoor Recreation Association (NORA), Red Rock Audubon Society (Audubon), Toiyabe Chapter - Sierra Club (Sierra), and Fred and Cheri Madison have filed separate appeals from a notice dated March 15, 1993, issued by the Las Vegas District Manager, Las Vegas, Nevada, Bureau of Land Management (BLM), announcing implementation of the Meadow Valley-Arrow Canyon-Delamar Habitat Management Plan (MAD HMP) for Desert Bighorn Sheep.

The HMP encompasses approximately 249,000 acres, including portions of the following wilderness study areas (WSA's): Arrow Canyon WSA, Fish and Wildlife #1, #2, and #3 WSA's, Delamar WSA, and Meadow Valley WSA. The draft plan, along with a draft environmental assessment, was presented for public review in September 1991. It was developed cooperatively with the Nevada Department of Wildlife (NDOW) pursuant to a memorandum of understanding. As stated therein, the objective of the HMP is "to improve habitat conditions for desert bighorn sheep, allowing for expansion of existing populations" (MAD HMP at 1). A finding of no significant impacts (FONSI) and a Decision of Record (DOR) were approved by the District Manager on October 10, 1992.

On appeal, NORA asserts the decision to implement the MAD HMP is in error because the stated purpose has been satisfied, and the proposed actions would violate guidelines found in the Department's Interim Management and Protection Handbook (IMP). NORA states that the IMP does not justify "habitat manipulation to favor species numbers above those already naturally occurring in a viable, stable population" (NORA's Statement of Reasons (SOR) at 3). It contends the proposed water guzzlers constitute "a major and unwarranted intrusion in the WSA's" (NORA's SOR at 4).

Audubon contends that the Wilderness Act prohibits construction of permanent structures within a WSA, and reasons that "[a] water system consisting of two or three large fiberglass tanks per installation with attendant catchment structure and piping constitutes a structure" (Audubon's SOR at 1). Audubon also asserts an environmental impact statement has not been performed "to examine the long term impacts of the project on bighorn sheep populations in the affected areas" (Audubon's SOR at 1). Finally, Audubon argues the proposed water project is an unnatural augmentation of a limiting resource contrary to the inherent features of a desert.

Sierra asserts that the proposed actions would violate the HMP's stated objective of establishing "viable populations" of desert bighorn sheep, constituting a manipulation which exceeds "establishing or reestablishing natural numbers in a natural distribution with natural interaction of indigenous species" (Sierra's SOR at 2 (emphasis in original)). Sierra maintains the HMP should be deemed unacceptable, and the proposed slickrock guzzlers should be considered unsatisfactory in enhancing wilderness values. Sierra asserts the HMP fails to meet the nonimpairment standard with respect to the slickrock guzzlers.

Fred and Cheri Madison oppose the slickrock guzzlers as contrary to wilderness values and propose that BLM devote more effort to locating natural water sources. They contend that BLM's decision that the water project will not result in significant impacts to the WSA's is erroneous.

BLM has filed an extensive answer denying each appellants' contentions in detail.

[1] The circumstances of this case are very similar to those we recently addressed in Howard G. Booth, 134 IBLA 300 (1996), wherein we upheld BLM's decision to authorize slickrock water catchment structures within a WSA to benefit desert bighorn sheep. The standard and guidelines we applied in arriving at our decision in Booth are applicable here, and are as follows:

The standard for managing a WSA during wilderness review is found in section 603(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1988). The Secretary is expressly directed to "manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness." 43 U.S.C. § 1782(c) (1988). See generally Ralph E. Pray, 105 IBLA 44, 46 (1988); California Wilderness Coalition, 101 IBLA 18, 25 (1988). "Impairment of suitability for inclusion in the Wilderness System" is defined as causing such impacts "that cannot be reclaimed to the point of being substantially unnoticeable in the area as a whole" by the time the Secretary is scheduled to make his recommendation as to the area's suitability for wilderness. 43 CFR 3802.0-5(d).

In furtherance of this directive, the Department adopted the Interim Management Policy and Guidelines for Lands Under Wilderness Review (IMP), which governs BLM's management of WSAs pending ultimate congressional determination regarding whether the study areas should be included in the permanent wilderness system. See Oregon Natural Resources Council, 114 IBLA 163, 167 (1990); The Wilderness Society, 106 IBLA 46, 55 (1988); L. C. Artman, 98 IBLA 164, 168 (1987).

The IMP guidelines relevant to this appeal are as follows:

Certain permanent installations may be permitted to maintain or improve conditions for wildlife and fish, if the benefitting species enhance wilderness values. Enhancing wilderness values means that a natural distribution, number, and interaction of indigenous species will be sought; natural processes will be allowed to occur as much as possible, and wildlife species should be allowed to maintain a natural balance with their habitat and with each other. Installations to protect sources of water on which native wildlife depend, such as e[n]closures, may be built for permanent use if they are substantially unnoticeable in the area as a whole and blend into the natural setting. Springs, wells, and guzzlers may be maintained, and

new ones may be installed if they are substantially unnoticeable in the area as a whole and would not require maintenance involving motor vehicles if the area were designated as wilderness.

(BLM Manual, H-8550-1, at 41).

134 IBLA at 303. Under the IMP guidelines quoted above, water catchment structures are permitted within a WSA. However, such structures are required to enhance wilderness values, meaning that a natural distribution, number, and interaction of indigenous species must be sought. Appellants suggest that BLM's stated goal, to "establish and maintain viable populations," is a manipulation of their numbers. With respect to the levels identified in the HMP/EA, BLM explains:

The MAD HMP sets population objectives which were based upon inventory of the habitat, the Clark and Caliente Management recommendations from the Nevada Department of Wildlife. The Arrow Canyon, Delamar and Meadow Valley ranges all contain sufficient habitat to support more than 80-120 bighorn sheep without resource degradation. The Elbow range, when considered with the Las Vegas Range on the Desert National Wildlife Refuge, also has sufficient habitat to support more than 80-120 bighorn sheep. Through habitat inventory, past monitoring data and consultation with the Nevada Department of Wildlife, the BLM and NDOW have determined the approximate carrying capacity of the four mountain ranges in question[;] these numbers are reflected in the population objectives for each mountain range.

(BLM Answer at 2-4). BLM's stated goal of augmenting existing populations is based on the fact that current levels are not natural:

The desert bighorn sheep (*Ovis canadensis nelsoni*) was well distributed throughout Nevada before the arrival of Europeans in the early nineteenth century. Then, bighorn sheep were probably found in most mountain range in Nevada (Monson, 1980 and McQuivey, 1978). Archeological findings and petroglyph sites suggest that most of the ranges in the state supported at least some bighorn sheep (McQuivey, 1978). Bighorn sheep numbers began to decline in the late 1800s to early 1900s with the settlement of the Western United States. Factors that may have contributed to the decline of bighorn include: unregulated hunting, commercial hunting, disease introduced with domestic livestock and loss of habitat to development and recreational use of public lands.

Until recently, bighorn sheep numbers in Southern Nevada were on the decline. In some mountain ranges, remnants of historical populations still existed, while in others, populations were completely eliminated.

(MAD HMP/Environmental Assessment (EA) at 1). Population estimates will be revised as necessary in accordance with monitoring by NDOW to determine appropriate population size and distribution (MAD HMP/EA at 47-53). Further, placement and construction of the planned slickrock guzzlers are restricted under the mitigating measures imposed in the FONSI/DOR to render insignificant any resulting impacts and to maintain "substantially unnoticeable" conditions.

BLM's proposed actions are not contrary to the Wilderness Act, 16 U.S.C. § 1131(c) (1994), which recognizes that some human intrusion is necessary in that a wilderness is to be "protected and managed so as to preserve its natural conditions." (Emphasis added.) In this instance, BLM acts to protect and manage a resident species. While it is reasonable to conclude that an additional source of water might allow more animals to survive the prevalent arid conditions, such manipulation is permitted by the IMP.

Moreover, BLM was required to make subjective judgment decisions when assessing whether the proposed action would impair the suitability of the area for preservation as wilderness. Those decisions are entitled to considerable deference, even though reasonable persons might differ in making such assessments. When BLM's subjective decisions are challenged on appeal, they may not be overcome by mere expressions of disagreement; there must be a showing of clear error of law or demonstrable error of fact. Committee For Idaho's High Desert, 130 IBLA 327, 332 (1994); Utah Wilderness Association, 86 IBLA 89, 90-91 (1985).

We conclude that appellants have failed to establish that BLM's decision to manage the population levels of desert bighorn sheep and improve their habitat needs by installing water catchment structures is contrary to the relevant statutes and policy guidelines, or that such determination was based on a factual error.

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

John H. Kelly
Administrative Judge

I concur.

David L. Hughes
Administrative Judge