INTERIOR BOARD OF LAND APPEALS

National Organization for River Sports

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NATIONAL ORGANIZATION FOR RIVER SPORTS

IBLA 94-150 Decided January 24, 1997

Appeal from a decision of the District Manager, Salem (Oregon) District, Bureau of Land Management, adopting the Sandy Wild and Scenic River and State Scenic Waterway Management Plan, OR-080-94-03, and finding no significant impact.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Land- Use Planning--Public Lands: Administration--Wild and Scenic Rivers Act

   Absent a showing of clear reasons for modification or reversal, a BLM decision implementing a wild and scenic river management plan will be affirmed on appeal if it is based on a consideration of all relevant factors, is supported by the record, and accords with statutory directives.

2. Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact

   An environmental impact statement need not be prepared if, based on an adequate EA, BLM finds that a proposed action will produce no significant impact. The Board will affirm a FONSI determination if the record demonstrates that BLM has carefully reviewed environmental problems, all relevant environmental concerns have been identified, and the determination that the impact is insignificant is reasonable in light of the analysis.

3. Environmental Quality: Environmental Statements--Federal Land Policy and Management Act of 1976: Land-Use Planning--National Environmental Policy Act of 1969: Finding of No Significant Impact--Public Lands: Administration--Wild and Scenic Rivers Act

   A party challenging a FONSI finding must show that the determination was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of

> material significance to the action for which the analysis was prepared. Mere differences of opinion provide no basis for reversal of BLM's decision if the decision is reasonable and supported by the record.

APPEARANCES: John H. Garren, Regional Representative, National Organization for River Sports; Van E. Manning, District Manager, Salem District, Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

On September 13, 1993, the Salem District Manager, Bureau of Land Management (BLM), issued a decision adopting the Sandy Wild and Scenic River and State Scenic Waterway Management Plan (Sandy River Plan) and a finding of no significant impact (FONSI), based on an environmental assessment (EA) of that plan.

On November 8, 1993, 1/ the National Organization for River Sports (NORS), filed an appeal of the District Manager's decision, alleging that the decision and FONSI were "inappropriate" because they "ignored, deferred, or treated superficially" two issues--the method of allocating river use and the management of concessionaires by use of Special Use Permits (Notice of Appeal and Statement of Reasons (SOR) at 1). NORS further argued that the issues it identified should have been thoroughly examined in an environmental impact statement (SOR at 2).

The Sandy River was designated as a scenic and recreational river by Congress in the Omnibus Oregon Wild and Scenic Rivers Act of 1988, P.L. 100-557, 102 Stat. 2782 (1994), 16 U.S.C. § 1274(a)(100) (1994). A 12.5-mile segment of the Sandy River

> from the east boundary of sections 25 and 36, township 1 south, range 4 east in Clackamas County near Dodge Park, downstream to the west line of the east half of the northeast quarter of section 6, township 1 south, range 4 east, in Multnomah County at Dabney State Park, the upper 3.8 miles [was designated] as a scenic river and the lower 8.7 miles [was designated] as a recreational river.

16 U.S.C. § 1274(a)(100)(C) (1994). The statute also specifies that the 12.5-mile segment designated as a scenic and recreational river is "to be administered through a cooperative management agreement between the State of Oregon, the Secretary of the Interior and the Counties of Multnomah and Clackamas in accordance with section 1281(e) of this title."

1/ In its notice of appeal, NORS notes that it received the decision notice and FONSI on Oct. 18, 1993. The appeal of Nov. 8, 1993, was therefore timely. 43 CFR 4.411(a).

The statutory provision requiring a management plan for the river states:

> For rivers designated on or after January 1, 1968, the Federal agency charged with the administration of each component of the National Wild and Scenic River System shall prepare a comprehensive management plan for such river segment to provide for the protection of the river values. The plan shall address resource protection, development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the purposes of this chapter. The plan shall be coordinated with and may be incorporated into resource management planning for affected adjacent Federal lands. The plan shall be prepared, after consultation with State and local governments and the interested public within 3 full fiscal years after the date of designation. Notice of the completion and availability of such plans shall be published in the Federal Register.

16 U.S.C. § 1274(d)(1) (1994).

The statute further provides that:

> Each component of the national wild and scenic rivers system shall be administered in such a manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archaeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area.

16 U.S.C. § 1281(a) (1994).

An interagency planning team was formed in the Spring of 1989 and began developing a wild and scenic river management plan for the river segments described above. The initial team included representatives from BLM, the Oregon Parks and Recreation Department, and Clackamas and Multnomah counties. In March 1991, a draft resource assessment for the Sandy River was completed and mailed to 80 resource experts for comment and review.

John H. Garren, NORS' Regional Representative, participated on its behalf in the public comment and review process leading to the Sandy River Plan. He was sent a copy of the draft resource assessment in March 1991, with a letter asking for his comments and suggestions, and was sent a copy of the final resource assessment in January 1992. BLM's records also indicate that he was sent copies of the draft Sandy River EA and draft management plan (BLM Answer to Appellant's SOR, Summary of Involvement, at 2).

On July 29, 1992, a public meeting was held to review the draft EA and draft management plan. The record contains the following summary of Garren's expression of NORS' position: "The National Organization for River Sports (NORS) believes issues regarding (1) restricting motorized use (on river); (2) establishing recreation use limitations; (3) determining the type of allocation method to be implemented and; (4) determining a concessionaires policy warrants a full environmental impact statement" (Comments on the Sandy River Wild and Scenic River EA and Draft Management Plan, Comment 3, at 2).

In a letter filed August 5, 1992, Garren reiterated three of the four issues he raised at the July 29 meeting, stating that the issues should be addressed in a "full environmental impact statement." Garren requested and was sent the decision and FONSI adopting the final management plan (Alternative D), dated September 13, 1993.

On appeal NORS asserts that "two major issues * * * are ignored, deferred, or treated superficially" (SOR at 1). The first is BLM's decision to defer the development and imposition of an allocation system for boating use (Sandy River Plan at vi, vii; SOR at 1). BLM's rationale for this decision is as follows:

> 1. Control and permit of commercial river running activities. Rationale: Public input indicates the need for controls and restrictions of commercial boating activities on the Sandy River. Currently very little commercial float boating of any kind has been documented as to [sic] taking place on the river. The river is suitable and has been used in the past for commercial or outfitted floating and guided fishing activities. The river does have boat ramps and other public boating access and its water flows are sufficient for commercial floating activities during most of the year. Commercial river use activities will be managed in accordance with federal guidelines for Commercial Special Recreation Use Permits. Commercial permits will be issued and monitored annually. This decision in no way restricts boating use of the river for individuals. When and if restrictions on recreation use levels are needed and an allocation system is subsequently developed, the BLM shall consider a full range of alternative allocation options including the "Freedom of Choice" system. [2/]

(Decision Notice, Sandy River Plan, at vi, vii).

2/ The record contains material on the Freedom of Choice allocation system submitted by NORS. In a telephone conversation with Garren on July 20, 1992, BLM's Sandy River planner stated that the NORS definition of Freedom of Choice "would be considered if and when the allocation determination process (Separate EA process) occurs." Garren told the planner "that recognizing Freedom of Choice as an option if and when allocation is necessary in the final plan may or may not satisfy his concerns" (Phone Conversation Record, dated July 20, 1992, 10:50 a.m. at 1).

NORS argues that by deferring the allocation question, BLM is denying the public "the opportunity to comment on a deferred action which is not part of the plan," and asserts:

> There is no basis for avoiding a decision on the method of allocation. This decision is independent of the need for further monitoring, capacity research and whether use levels require an allocation system in the future. The allocation decision is necessary now, so that if limitations are imposed in the future, they may be implemented as part of the management plan without revisiting the NEPA [National Environmental Policy Act of 1969] process.

(SOR at 1).

In its answer, BLM states that floating and boating recreation presently accounts for only 3 to 4 percent of the overall recreation use of the Sandy River (EA at 57) and that "[t]he issue of choosing the allocation method is not ripe and should not be addressed until adequate information, research and public involvement demonstrates the need for regulatory management actions." BLM argues that

> [d]etermination of any allocation system would be more appropriately accomplished through a separate NEPA process, complete with full public involvement of the affected parties, at the time when recreation monitoring reveals that acceptable limits are about to be reached and after all other non-regulatory efforts have been exhausted and found to be ineffective.

(BLM Answer at 3).

The second issue is NORS' objection to BLM's plan to manage commercial river use activities pursuant to Federal guidelines for special use permits. NORS admits that the Sandy River is not a limited access river but objects to the Federal policy for managing commercial river guides and outfitters on limited access permit rivers, suggesting that, in the future, the river might become a limited access river. It argues for adoption of a management plan specifying in advance whether and how much commercial activity will be allowed, how many special use permits should be granted, and the identification of the kinds of commercial activities that best reflect the public interest (SOR at 1, 2).

In its answer, BLM states that, under 43 CFR 8372.1-1, it is required to issue special recreation permits for commercial use in special areas designated under the Wild and Scenic Rivers Act. BLM notes, however, that commercial recreational use of the Sandy River has decreased in recent years, and states that it may not be necessary to regulate this use in future years. See EA at 57. BLM asserts that "[u]ntil it is demonstrated that recreation management actions and strategies contained in the plan fail to control visitor use by following indirect, non-regulatory

approaches, limiting the number of commercial permits would be an arbitrary and unnecessary decision" (BLM Answer at 7). Addressing NORS' concern for managing events that may not occur, BLM states:

> It is not possible to address how the BLM would handle all possible future problems in the management plan. The plan is designed to be a flexible and adaptive document. The plan provides clear guidance on how to resolve issues as monitoring reveals management problems. The plan outlines the monitoring and research process needed to identify problems and the method, NEPA environmental analysis, by which alternative strategies would be developed to address complex problems or issues.

(BLM Answer at 7.)

[1, 2, 3] The evidence does not support NORS' allegations that the allocation and concessionaire issues were improperly "ignored, deferred, or treated superficially" in the EA. Further, NORS has not shown that BLM based its decision on a error of law or demonstrable error of fact. As the party challenging a FONSI, NORS must show that BLM's determination was premised on a clear error of law, a demonstrable error of fact, or show that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. The Steamboaters, 131 IBLA 223, 228 (1994), aff'd, Civ. No. 95-6251-HO (D. Or. Aug. 16, 1996); Powder River Basin Resource Council, 124 IBLA 83, 91 (1992). Absent a clear showing of a reason for modification or reversal, this Board will affirm a BLM decision implementing a resource management plan if we find the decision to be based on a consideration of all relevant factors and supported by the record. The Steamboaters, supra at 228; Lands of Sierra, 125 IBLA 15, 20 (1992); Animal Protection Institute of America, 117 IBLA 208, 216 (1990).

Our review of the EA and Sandy River Plan discloses that BLM made a diligent evaluation of the present use of the Sandy River for floating and boating recreation and considered allocation and concessionaire issues. BLM's finding that floating and boating recreation comprises between 3 and 4 percent of all recreational activity on the Sandy River supports its conclusion that the development of a regulatory program allocating commercial floating and boating use of the river would be premature and speculative.

We recognize that NORS holds a different opinion. However, it has fallen considerably short of demonstrating a violation of statutory directives or mandates, or showing that BLM has abused the discretionary authority afforded by the Wild and Scenic Rivers Act. Accordingly, we find that NORS has failed to show error which would justify modification or reversal of BLM's decision. High Desert Multiple Use Coalition, 124 IBLA 125 (1992); William A. Franklin, 121 IBLA 37 (1991); Southern Utah Wilderness Alliance, 114 IBLA 326 (1990).

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.

R.W. Mullen
Administrative Judge

I concur:

T. Britt Price
Administrative Judge