INTERIOR BOARD OF LAND APPEALS

Susan J. Doyle, et al.

138 IBLA 324 (March 7, 1997)

SUSAN J. DOYLE ET AL.

IBLA 94-72, 94-198, 94-199 Decided March 7, 1997

Appeal from a decision record and finding of no significant environmental impact issued by the District Manager, Shoshone District, Shoshone, Idaho, Bureau of Land Management, allowing animal damage control on public lands. ID-050-EA-91036.

Affirmed.

1. Animal Damage Control ! ! Environmental Quality: Environmental Statements ! ! National Environmental Policy Act of 1969: Environmental Statements

   BLM properly allowed a Federally administered program for controlling depredation of livestock grazing on public lands, including use of lethal means, after considering environmental impacts of the proposed action and alternatives thereto, including relevant matters of environmental concern, and having reasonably concluded that no significant impact would result therefrom.

APPEARANCES: Susan J. Doyle, Ketchum, Idaho, pro se; Jerry Grubbs, Bozeman, Montana, for the Predator Project; Debra Kronenberg, Esq., Ketchum, Idaho, for Daniel P. Casali.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Susan J. Doyle, Daniel P. Casali, and the Predator Project have appealed from an October 13, 1993, finding of no significant impact (FONSI) and decision record rationale for Environmental Assessment (EA) ID-050-EA-91036 of animal damage control activities in the Shoshone, Idaho, District, Bureau of Land Management (BLM). The Shoshone District is in south central Idaho on the Columbia River Plateau, and encompasses over 3,045,000 acres, over half of which is public land (EA at 11). Animal damage control methods include use of traps, snares, dogs, electronic scare devices, calling and shooting, denning, aerial hunting, technical training on good husbanding practices, and M44's (a poison delivery device) (EA at 4, 5). These methods are to be applied as corrective measures in response to actual loss or repeated harassment and as part of a preventive strategy to reduce coyote populations (EA at 3).

As authorized by 7 U.S.C. § 426 (Supp. 1996), animal control activities on Federal lands are undertaken by the Animal and Plant Health

Inspection Service for Animal Damage Control (ADC), an agency of the United States Department of Agriculture. BLM is responsible for determining the compatibility of ADC practices with multiple-use objectives on BLM administered public lands. See Memorandum of Understanding (1987) (MOU) between BLM and ADC, ¶ 5.0B. In this case, BLM has implemented the MOU by developing a plan addressed in an EA. The plan is primarily directed at controlling coyotes. On December 27, 1993, the Board denied a petition for stay of BLM's decision, thereby permitting ADC activities to occur in emergency control situations.

Appellants question whether BLM properly considered environmental consequences of allowing a proposed ADC program, and alternatives thereto, as required by section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) as amended, 42 U.S.C. § 4332(2)(C) (1994), and implementing Council of Environmental Quality (CEQ) regulations. Appellants argue that the EA underlying the FONSI is inadequate; they allege that BLM has failed to demonstrate a need for lethal predator control methods, and that the EA fails to adequately assess impacts of the control plan on coyote populations (Casali Statement of Reasons (SOR) at 2; Predator Project SOR 2-4; see also Doyle SOR). They maintain that use of population studies in other locales does not provide a sound basis for estimating coyote population densities within the Shoshone District.

Doyle argues that "[t]he EA fails to provide any detailed, site-specific data on coyote populations, because it predicates its findings on out-of-district studies and an assumption by the Government accounting office" (Doyle SOR filed Nov. 24, 1993). Predator Project charges that the Secretary's decision in Committee for Idaho's High Desert (CIHD), SEC 92-ID 101 (1992), holds that, without population data on the species, BLM "cannot reasonably define the impacts of the ADC program on the coyote population" (Predator Project SOR, at 3-4, quoting CIHD at 18, 19). Further, Predator Project maintains BLM did not provide a reasonable range of alternatives in the EA, and that BLM is required to monitor the impacts of the coyote damage control plan.

Both Casali and Doyle contend that BLM arbitrarily shifted approval from Alternative 2, which emphasized nonlethal control methods, to the proposed action, which emphasizes "an "integrated pest management approach" that includes use of lethal methods for controlling predatory activities of the coyote population. See EA at 3. Predator Project alleges that because BLM did not consider an alternative that required livestock owners to "demonstrate livestock losses and to provide guard dogs to protect their property" (Predator Project SOR at 3), BLM did not consider an adequate range of alternatives.

Casali argues that BLM's reliance upon estimates of total sheep loss based upon a low percentage ratio of confirmed to actual losses, creates a bias towards a control program without supporting data, and generates overall unreliability in statistics which are used to justify the need for an ADC program. He alleges that BLM does not require the type of reporting that would create an accurate data base for "a rational determination of

the need for control or for a rational evaluation of the intensity of control required" (Casali SOR at 8), and mistakenly relies on old, inaccurate data.

BLM examined five alternatives in the EA: the preferred (proposed) alternative, which uses both lethal and nonlethal methods of control; elimination of ADC controls altogether; a program emphasizing nonlethal methods but permitting lethal controls; the method in use at the time the EA was issued (the current, or no-action method, which authorized use of all techniques, subject to approval by the Area Manager); and an alternative allowing no preventive controls, but permitting ADC activity subsequent to confirmed livestock losses (EA at 23, 24). We find no merit to arguments by Predator Project that an adequate range of alternatives was not considered. See Utah Wilderness Association, 134 IBLA 395, 400-401 (1996).

The current method of predator control was implemented following execution of a 1988 MOU between ADC and BLM (EA at 2). The EA explains that this plan divided lands within the District into two classes: the human safety area and the bird hunting area (EA at 9). No animal damage control was permitted in human safety areas. In bird hunting areas, traps, snares, and M44's were not used during bird hunting seasons because of threat of injury to dogs. When hunting was not in season, predator control activities conducted at the discretion of ADC emphasized aerial gunning and call and shoot techniques, but included trapping, snares, and denning. Spring-operated M-44 devices, which kill by propelling a cyanide mixture into the mouth of animals that trigger them (EA at 15), were permitted on a case by case basis, with approval by the BLM Area Manager. Preventive strategies were implemented in all areas except in human safety areas; BLM and ADC met on an annual basis to determine such strategies.

The preferred alternative allowed by the decision here under review continues to rely on lethal and nonlethal methods for coyote control. Both methods will be applied as either a corrective (in response to actual loss or repeated harassment) or preventive (local coyote population reduction) strategy (EA at 3). BLM and ADC will continue to hold annual meetings to determine which control devices or practices will be used. The plan provides for a coyote population reduction strategy, as well as control of "offending" mountain lions, black bears, and bobcats. Id. "ADC would maintain a high degree of discretion over choice of predator control tools having their full list to choose from with restrictions on M44's" (EA at 18). Use of M44's within "planned control areas" would continue on a case by case basis, at the discretion of the BLM District Manager, and only where historic losses are high and other methods have been used without success. M44's will not be used north of State Highway 20 due to the possible presence of threatened or endangered species, and human or domestic animal safety considerations; nor will they be used during bird hunting seasons or in wilderness study areas (EA at 3-4).

The EA reports that about 80 percent of grazing permittees used guard dogs with varying degrees of success, and that ADC could continue to offer training and provide sources for dog procurement to permittees

(EA at 4). Electronic scare devices, including propane exploders, siren strobe devices, and tape recordings are permitted "where practical and as each situation dictates." Leg snares or dogs will be used to capture depredating bear and mountain lion, on a case-by-case basis. Preventive measures to be used in planned control areas include calling and shooting, denning, and aerial hunting (EA at 4).

As a threshold matter, BLM is required to establish that a control program is needed. CEQ regulation 40 CFR 1508.9(b) states that an EA "[s]hall include brief discussions of the need for the proposal." BLM has taken the position that ADC may be allowed on public lands when a demonstrated need for livestock protection has been identified; such a need exists when losses or damage have been verified. See Utah Wilderness Association, supra at 397 (1996). In the CIHD decision, the Secretary remanded an EA with instructions to BLM to "provide * * * sufficient evidence and analysis of predation losses to justify the level of ADC program activities." CIHD, supra at 20. In Predator Project, 127 IBLA 50, 53-54 (1993), the Board held that when there was an extremely low level of reported (although not confirmed) losses (four sheep lost to coyotes on BLM lands), BLM had not shown sufficient need for an ADC program.

In this case, however, BLM states that a control program is needed because, before 1993, there was an estimated annual average of 3,698 sheep lost to coyote predation, with an average annual confirmed loss of 169 animals. According to BLM, the estimated annual average of losses "represents a $247,766 loss based on the 1991 value of $67 per sheep. Without ADC control," BLM maintains, "losses to predation would rise approximately 8%." The EA reports that during the same 5-year period, the annual average number of coyotes killed by ADC and private trappers was 727, "out of a population which may range between 1,200 and 5,000." BLM cites 1992 Idaho agricultural statistics (IASS) for a finding that the sheep industry in Idaho represents 0.4 percent of Idaho's total agricultural receipts (EA at 1).

Graph 2 (EA at 25) reveals that BLM has obtained data from ADC and IASS since 1988. Confirmed livestock losses since 1988 ranged from a low in 1989 of 118 and rose to a high in 1991 with 213 losses confirmed; 189 sheep were confirmed lost to predation in 1992. IASS estimates of livestock loss, based on reports from owners, show a rise in reported losses to predation between 1990 and 1992 from 3,360 to 4,620. In CIHD, the Secretary found that the EA in question contained no "information on the numbers of livestock lost to predation in recent years upon which the BLM could base its conclusions for the level of ADC activities needed * * *." This is clearly not the situation before us; in the instant case, appellants question the reliability of the data presented, rather than a lack thereof.

[1] The Secretary is entitled to rely upon his technical experts; absent showing of error by a preponderance of the evidence, a mere difference of opinion with BLM's expert will not overcome the reasoned opinions of the Secretary's technical staff. Bill Armstrong, 131 IBLA 349, 351

(1994). Appellants have presented a theoretical analysis which presumes that BLM's statistics are exaggerated. They have not, however, proven by a preponderance of the evidence that the IASS statistics used by ADC are not reasonably reliable as estimates of sheep losses to coyotes within the Shoshone District. We find, therefore, that BLM has shown sufficient need to justify allowing the ADC program to proceed on public lands.

We further find that appellants have not shown by a preponderance of the evidence of record that the level of predation does not justify the Shoshone District ADC program activities. The summary of alternatives listed in Table 1 (EA at 23) reveals that differences between the current plan and the proposed plan are insignificant in terms of use of lethal techniques, effects on both livestock and coyote populations, and effects on nontarget wildlife. The BLM area manager has yielded some measure of control over use of M44's to ADC (EA at 18); however, M44 use is reasonably restricted to use after "predation has been documented in historic high loss areas" (EA at 4). The EA predicts that coyote killing will remain essentially the same under both the current and proposed alternatives. In addition, preventive measures may be limited during annual work plan meetings, and monitoring and reporting requirements on coyote kills will be increased over the current plan (EA at 18).

In CIHD, the Secretary held that BLM had not complied with CEQ regulations requiring an assessment of cumulative impacts upon the coyote population because BLM neither provided population data, nor did it disclose whether information on coyote population levels could be obtained at "less than exorbitant cost" or whether the means of obtaining that information was not available, as required by 40 CFR 1502.22. CIHD, supra at 18-20. In the EA before us, however, BLM finds that "[i]t is beyond the scope of this assessment and beyond the financial means of the Shoshone District BLM to collect site specific data on coyote populations," thereby complying with 40 CFR 1502.22 (EA at 16). Moreover, BLM has provided data on coyote densities in Butte County, southeastern Idaho, and in the Curlew valley of south-central Idaho and northwest Utah in "habitat similar to that found in the Shoshone district" (EA at 16). BLM extrapolated data from population studies outside of Idaho to come up with an estimated coyote population in the Shoshone District of between 2,998 and 5,044. It was then concluded that, with an average annual take by trappers and ADC of 727 coyotes (not including kills by livestock operators and private hunters), the coyote population was neither directly or immediately impacted, nor would the coyote population in the Shoshone District sustain indirect and cumulative impacts from the proposed ADC activity. Appellants have not provided evidence tending to contradict these conclusions.

Of greater interest to this inquiry into impacts of ADC activities on the coyote population is BLM's analysis under Alternative 1, which would eliminate the use of ADC in the control of predation. BLM cites a study by Knowlton and Stoddart indicating that "variations in rates of emigration may be density-dependent, thus enabling densities to remain at or near saturation levels" (EA at 19). The Knowlton and Stoddart report states: "[L]imited evidence suggests that the availability of food and behavioral characteristics such as territoriality and social hierarchies may be

primary factors" in the regulation of coyote populations (Knowlton and Stoddart, "Coyote Population Mechanics: Another Look," in Bunnell, Eastman, and Peek, Eds., Symposium on Natural Regulation of Wildlife Populations, (University of Idaho: Forest, Wildlife and Range Experiment Station) at 101). This and other studies listed in the EA on page 27-29 indicate the species maintains itself with remarkable resilience, and that ADC control activities do not significantly impact coyote populations, either locally or regionally. Appellants have produced no evidence showing that this important conclusion by BLM's experts is in error.

The argument by appellants that BLM arbitrarily altered its choice of alternatives in order to allow lethal means of control overlooks the principle that "[t]he standard of review used in determining whether the BLM complied with * * * [NEPA] and * * * [CEQ] regulations is reasonableness." CIHD, supra at 8. The EA reveals that the level of predatory activity by coyotes in the Shoshone District is not significantly less than in previous years, when lethal control was permitted. Appellants have produced no evidence tending to show that BLM's decision to allow lethal methods of coyote control will produce a significant impact on either the coyote population or the surrounding environment. In such a case, BLM may properly decide to proceed with a Federally administered program for controlling the depredation of livestock grazing on the public lands, by both lethal and nonlethal means, when it has taken a hard look at all of the environmental impacts of such action and appropriate alternatives thereto, including all relevant matters of environmental concern, and made a convincing case that no significant impact will result therefrom. Utah Wilderness Association, supra.

Doyle also argues that lethal methods of controlling the coyote population are costly, and that the burden of protecting livestock populations should inure to the rancher, not the taxpayer. With regard to this allegation, we find that "NEPA does not require a particularized assessment of non-environmental impact." Idaho Conservation League v. Mumma, 956 F.2d 1508, 1522-23 (9th Cir. 1992); see CIHD at 16-17.

To the extent appellants have raised arguments not specifically addressed herein, they have been considered and rejected.

Accordingly, 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.

Franklin D. Arness
Administrative Judge

I concur:

R.W. Mullen
Administrative Judge