

INTERIOR BOARD OF LAND APPEALS

Utah Wilderness Association

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UTAH WILDERNESS ASSOCIATION

IBLA 94-602

Decided August 29, 1997

Appeal from a decision of the District Manager, Moab (Utah) District, Bureau of Land Management, approving an animal damage control plan for public lands in the Moab District.

Set aside and remanded.

1. Animal Damage Control—Federal Land Policy and Management Act of 1976:  
Generally

In approving an animal damage control plan BLM is required to provide sufficient evidence and analysis of predation losses to justify the level of ADC program activities. Specifically, BLM must explain why planned control is necessary on all the areas where it is provided and relate the level of control to the level of livestock losses.

APPEARANCES: Scott Williams, Esq., Salt Lake City, Utah, for the Utah Wilderness Association.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Utah Wilderness Association (UWA) has appealed the May 17, 1994, Decision Record and Finding of No Significant Impact (DR/FONSI) issued by the Moab (Utah) District Manager, Bureau of Land Management (BLM), approving an animal damage control (ADC) plan for public lands (excluding those within the Glen Canyon National Recreation Area) in that district.

The DR/FONSI was issued based on Environmental Assessment (EA) No. UT 060-03-001. It concluded that the proposed action analyzed in the EA

provides the best balance in meeting commitments to be responsive to animal damage complaints to minimize livestock losses and provide necessary safeguards to the environment. Necessary restrictions and protective measures are included to prevent adverse impacts to any threatened, endangered, sensitive, or non-target animal species and adequate precautions are provided to protect human health and safety and also protect wilderness values.

(DR/FONSI at 1.)

The BLM intends the EA on which the DR/FONSI is based to be a "long term document (at least 5 years)." (EA at 2.) The BLM states that "ADC work will continue as authorized under an ADC annual work plan until such time that significant changes occur in predator control procedures to require revision of the EA." Id. The EA states that the ADC work plan and EA will be administratively reviewed on an annual basis to evaluate the results of the previous year's activity and to review monitoring data and that APHIS [1/] is responsible for evaluating individual requests for ADC as well as for determining what level of control or control techniques (within the scope of the Decision Record) will be employed." Id. The EA "specifies where, when and under what restrictions ADC activities will be carried out on public lands within the Moab District to assure ADC activities are compatible with other multiple use objectives." Id.

The EA analyzes the proposed action, designated as integrated non-lethal and lethal control, as well as three alternatives: (1) continuation of the previously authorized ADC program; (2) no ADC on public lands; and (3) emergency ADC only.

Under the proposed action, "sheep operators would be responsible for first line preventive measures. \* \* \* [N]on-lethal management practices would be a prerequisite to lethal predator control." (EA at 6.) If a sheep permittee wants authorization for lethal control on his allotment, he must inform BLM, before the grazing season, of the nonlethal practices he proposes to use and these will be included in his permit. Nonlethal practices include "animal husbandry" (e.g., use of herders or guard dogs, gathering sheep when predation is most likely, use of sheds and pens to protect lambs), "habitat modification" (e.g., fences on small ranches), and "animal behavior modification" (e.g., tactics to scare predators). (EA at 6-7.) "Sheep operators would be required to use one or more of [these] practices based on level of risk, need and practical application." Id. at 7. The BLM would notify permittees that "[l]ethal control by APHIS-ADC may be authorized when the [BLM] Authorized Officer \* \* \* determines that you have applied non-lethal practices, that these practices have not been effective, and the potential for continued sheep loss is serious." Id. at 6. Sheep operators would be encouraged to have at least one herder per band of sheep and to use guard dogs in addition to animal husbandry practices. The APHIS-ADC would provide technical guidance in the use of scare devices or aversive agents at the request of a permittee. Fences would be applied where circumstances warrant.

Lethal control methods authorized under the proposed action include leghold traps, snares, hunting by calling and shooting from the ground, aerial shooting (between December 1 and March 31), denning, use of chase or hunting dogs, and M-44 sodium-cyanide ejector devices "only after all other methods have failed." (EA at 7-8.) The EA notes that under Utah law livestock permittees would be able to use all methods authorized for APHIS-ADC except aerial gunning and toxic chemicals. (EA at 8.)

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1/ The APHIS-ADC is the Animal and Plant Health Inspection Service - Animal Damage Control, U.S. Department of Agriculture.

Control areas, shown on Map 1 of the EA, would include all sheep allotments. Some cattle allotments used as sheep trailing areas with "historic" predation as well as certain buffer areas (e.g., cattle allotments intermingled with or surrounded by sheep allotments) would be considered for control under emergency procedures. Nonlethal, corrective lethal, and preventive lethal control methods would be authorized in control areas; preventive lethal methods would be limited to local offending coyotes in allotments and areas where annual review indicates a need. (EA at 10.)

"No control" areas under the proposed action include all cattle allotments except those used as sheep trailing or buffer areas that are included as control areas. However, on cattle allotments and other no control areas corrective lethal control methods can be authorized under "Emergency ADC" procedures that are set forth in the EA. (EA at 10-11.)

The proposed action sets forth restrictions on ADC activities that apply to threatened, endangered, candidate and sensitive species, e.g., bald eagles and peregrine falcons, as well as to wilderness study areas, human health and safety zones, and game bird hunting areas. (EA at 12-13.)

Under Alternative 1 to the proposed action, BLM "would continue the ADC program that was in place during the 1989 to 1993 period," limited, however, to the 124 individual grazing allotments with ADC agreements unless there was an emergency elsewhere. Control methods would include trapping, snaring, M-44's, ground shooting, denning, use of dogs, and aerial gunning. (EA at 14.) The APHIS would evaluate livestock operator emergency requests to determine if control is needed. Similar restrictions to those described for the proposed action would apply. *Id.* at 15.

Under Alternative 2, no APHIS-ADC lethal predator control activities would be authorized on BLM lands to protect livestock but only where necessary for public safety, e.g., garbage-hunting bears in campgrounds. The State of Utah and private landowners could make their own agreements with APHIS-ADC for ADC programs on non-BLM lands. (EA at 15-16.)

Under Alternative 3, the entire District would be designated a no-control area and operator requests for "emergency" ADC activities would be reviewed on a case-by-case basis by APHIS and submitted to BLM for approval. All restrictions listed under the proposed action would apply to this alternative. (EA at 16-17.)

In its Statement of Reasons (SOR), UWA argues that the EA does not consider an adequate range of alternatives; fails to demonstrate that the proposed action is needed or will be effective; does not adequately respond to the comments on the draft EA; and fails to assess the cumulative impacts of the proposed action.

Appellant argues that the EA fails to demonstrate that the proposed action is needed. (SOR at 13-20.) The EA notes that BLM received a comment on the draft EA that it was "deficient from a NEPA [National Environmental Policy Act] perspective in showing a need for the ADC program" and responds: "Pages 2-4 of the EA explains the purpose and need for the ADC program in the Moab District." (EA at 44.)

Under purpose and need, BLM notes that as

multiple use custodian and manager of public lands, BLM must consider interrelationships of the various uses such as domestic livestock grazing, wildlife, and recreation. The primary source of wildlife damage in the Moab District relates to predation on domestic livestock, particularly sheep. Hence, past and current animal damage programs have focused primarily on control of predators (mainly coyotes).

(EA at 2.)

The BLM provides a table, based on data supplied by APHIS, of confirmed and reported livestock losses as well as target predator species killed for fiscal years 1989, 1990, 1991, 1992, and 1993 (through July 21). Id. at 3. During that period, BLM reports, a total of 879 coyotes have been killed in the Moab District. "[Animal Damage Control] is considered a resource management tool to be applied when and where necessary on the depredated animal or on local populations causing damage[,] not the species as a whole," BLM states. (EA at 3-4.)

On page 4, BLM states:

Reported user losses in the Moab District under the current APHIS-ADC Control Program for the five year period of 1989 - 1993 annually averaged 523 sheep and 14 calves (Table 1). The number of sheep and cattle protected for which losses were reported \* \* \* averaged 29,178 and 29,903 respectively on BLM administered lands for the five year period. This represents an average annual loss for all livestock on BLM lands of approximately .91 percent. Average annual percent losses for sheep was approximately 1.8 percent and .05 percent for calves. Average annual dollar losses for sheep were estimated to be approximately \$38,179 \* \* \* assuming a value of \$73 per head. Average annual dollar losses for calves were estimated to be approximately \$5,950 assuming a value of \$425 per head with an average weight of 500 pounds per head. The reported losses occurred on BLM allotments during an average annual grazing season of 5.5 months. The 1993 Utah Agricultural Statistics reported an annual sheep loss to all predators of 12 percent (approx. 52,400 sheep) with a value of \$3,847,100 for the State of Utah in 1992. These figures are for all sheep grazing on private, State and Federal lands in the State.

Reported sheep and cattle losses in the Moab District varied from 990 sheep in 1992 to 302 in 1990 and 26 calves in 1990 to 7 in 1989 (Table 1). Season of use, success of husbandry practices, the success of ADC personnel in taking offending animals, and the number of coyotes in a particular locale affect the loss level for a given year.

Confirmed losses (livestock actually found and diagnosed by ADC personnel as predator kills) in the District, over the five

year period averaged approximately 16 percent of the reported sheep losses and 36 percent of the reported calf losses. Confirmed sheep and cattle losses ranged from 134 sheep in 1990 to 65 in 1992 and 14 calves in 1989 to 1 in 1991 (Table 1).

Under a "no control" situation, losses would be expected to be significantly greater. Studies reported in Predator Damage in the West (1978) showed that average loss rates with control were 0.5 percent for ewes and 4.3 percent for lambs, while average loss rates were 3.2 percent for ewes and 14.9 percent for lambs without control. Studies also reported in Predator Damage in the West (1978) showed losses in no control situations were 1.5 to 3 times greater than where control was practiced. Hence, it appears that some form of ADC must be considered as a part of the District wildlife and grazing management programs in order to be responsive to law, legal mandates, and local economic conditions.

The UWA argues that BLM does not explain "why the simple existence of such losses demonstrates a need for the proposed action. This was precisely the scenario found inadequate in Committee for Idaho's High Desert." <sup>2/</sup> (SOR at 14.) Noting that the 1.8-percent average annual percentage of reported sheep losses in the Moab District that is set forth in the EA is based on a 5.5-month grazing season, UWA observes that even if one doubles this figure to 3.6 percent, to make it comparable to the annual 1992 Utah Agricultural Statistics figure of 12-percent loss due to predators, the EA suggests a much less significant predation problem in the District than exists statewide. "[I]t is unclear how this small percentage demonstrates a need for an expensive lethal control program that allows all forms of lethal predator control methods and preventative control tactics." (SOR at 14-15.)

The UWA notes that in Predator Project, 127 IBLA 50 (1993), we set aside the BLM Grand Junction District ADC plan for 1993 because the record did not establish the need for it, stating that "[t]his [was] a significant failure, in view of the extremely low level of reported (although not confirmed) losses (four sheep lost to coyotes) from BLM lands." Id. at 53. "Though the numbers are different in this case, the percentages are similar, and the rationale is identical," UWA argues. (SOR at 16.)

The UWA argues that the studies in Predator Damage in the West <sup>3/</sup> that BLM referred to in the EA in support of some form of ADC program

<sup>2/</sup> In the Matter of the Appeals of Committee for Idaho's High Desert, Golden Eagle Audubon Society, and John Baringer, SEC 92-ID 101, Dec. 17, 1992, in which Secretary Lujan concluded that the Boise District of BLM had "failed to demonstrate the level of need for the [ADC] program that was set out in the environmental assessment and the Plan" for 1992. (SEC 92-ID 101 at 1.)

<sup>3/</sup> The full title is "Predator Damage in the West: A Study of Coyote Management Alternatives," U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C., 1978. (EA at 47.)

"could not support a conclusion that lethal predator control is either needed or likely to be effective." (SOR at 16-17.) The UWA attaches comments on the draft EA from Jack Spence that point out the limitations of the studies for showing relationships between control and no control on predation losses and offer quotes from the studies acknowledging these limitations. (SOR, Ex. C.) "Moreover, Mr. Spence has demonstrated to the District that analyses of statistics from the Moab District can offer no support for the proposition that lethal predator control has been effective in reducing predation." (SOR at 17.)

In Committee for Idaho's High Desert, *supra*, the EA contained no information on numbers of livestock lost in recent years, and the statistics provided by APHIS were not included or analyzed in the EA. *Id.* at 11. The Secretary stated:

Although it is evident that predation occurs in the Boise District, a decision regarding the necessity for the level of control proposed in the EA must be reasonable and supported by adequate information. An EA must contain a brief discussion of the need for the proposed action. (40 C.F.R. § 1508.9(b).) An agency is required to provide enough detail in a NEPA document to establish that it has taken a good-faith, objective, hard look at the environmental consequences of the proposed actions. \* \* \*

Simply citing data is insufficient; CEQ [Council on Environmental Quality] regulations require analysis in addition to evidence. (40 C.F.R. § 1508.9.) The BLM has submitted only one year's worth of raw data to support their determination, and they have submitted no evidence of any reasoning based on that data. The BLM offers conclusions, not analysis. For example, the BLM states that "the ADC program is needed and directed towards livestock depredation problems associated mostly with coyotes and occasionally with [other predators]." The BLM then describes the areas of planned and restricted control and the control methods to be used on the Boise District. \* \* \* The BLM also states that in 1990 APHIS killed 980 coyotes in the Boise District. The BLM does not explain why planned control is necessary on all the areas where it is provided. They do not relate the level of control to the level of livestock losses. Because the BLM failed to provide adequate analysis relating the raw data to the level of need for the ADC activities, I conclude that the information submitted by the BLM does not reasonably support the level of control proposed in the Boise District as set forth in the EA and the Plan. (See 40 C.F.R. §§ 1500.1.(b), 1508.9(b).)

(SEC 92-ID 101, at 11-12.) The Secretary remanded the Boise District's EA "for a thorough analysis and supplementation in those areas found deficient in this opinion. Specifically, the BLM must provide in the EA sufficient evidence and analysis of predation losses in the Boise District to justify the level of ADC program activities." (SEC 92-ID 101, at 20.)

[1] In Committee for Idaho's High Desert, *supra*, at 11, the Secretary stated that "a decision regarding the necessity for the level of control proposed in the EA must be reasonable and supported by adequate information. \* \* \* Whether evidence is sufficient is a matter of reasonableness. An agency's definition of its objective for an action will be upheld so long as the chosen objective is reasonable, and the alternatives chosen and discussed by the agency are reasonable and adequately analyzed." In our view, although the Moab District's EA provides data about livestock losses that were missing in the Boise District's EA, it does not provide sufficient evidence and analysis of predation losses in the Moab District to justify the level of ADC program activities in the proposed action. Specifically, it does not "explain why planned control is necessary on all the areas where it is provided" or "relate the level of control to the level of livestock losses." (SEC 92-ID 101, at 12.)

At the conclusion of its statement of the purpose and need, the BLM's EA stated: "[I]t appears that some form of ADC must be considered \* \* \* in order to be responsive to law, legal mandates, and local economic conditions." (EA at 4.) The BLM apparently concluded that the levels of losses of cattle and sheep reported for 1989-93, averaging approximately \$44,000 annually, and its commitments under Memorandums of Understanding with APHIS-ADC and the State of Utah required that it adopt a program for the Moab District. *See* EA at 1 and Appendix A. The BLM states that "[t]he proposed action[,] in line with current APHIS policy[,] uses an IPM [integrated pest management] approach to predator control, using nonlethal methods as a first line defense against predators with use of lethal methods where necessary to prevent or reduce excessive damage." (EA at 29.) But BLM does not adequately explain why, even assuming that "some form of ADC must be considered" and that an IPM approach is "in line with current APHIS policy," the proposed action is appropriate to the circumstances in the Moab District.

The BLM is to "explain why planned control is necessary on all the areas where it is provided." Committee for Idaho's High Desert, *supra*. The BLM does not explain the basis for the change from conducting ADC activities on the 124 individual allotments covered under the ADC Program that was in place from 1989-93 to the areas shown on Map 1. It is not clear how these areas differ or, more importantly, why control is needed on the areas shown on Map 1. The EA does not explain whether or how BLM applied the criteria listed as the basis for changing "corrective control areas," through the process of developing annual work plans, in determining the original areas shown on Map 1. <sup>4/</sup>

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<sup>4/</sup> The EA states:

"Any change in designation of corrective control areas would be determined and updated through the annual work plan process. Criteria to be considered in determining zones and level of control or any restrictions in method include: animal husbandry practices in effect; number and kind of livestock damaged or killed; public health and safety; intensity and timing of general recreation use and "sport" hunting; whether or not the losses were confirmed by ADC; the season in which the losses occurred; extent and frequency of past predation; presence of threatened and endangered species; potential for recurrence of loss; possible impacts of control on other wildlife; and benefits and workload." (EA at 9.)

The BLM states that "[w]ith the use of the integrated approach in the proposed action it is felt that livestock losses would remain at about .91 percent per year for all cattle and could increase to approximately two percent for sheep in the District." <sup>5/</sup> (EA at 29.) It suggests that under the proposed action predation losses "could be expected to be slightly higher \* \* \* due in part to more restrictions in areas of control and in the use of toxicant." Id. But it does not explain how the proposed action, which differs from the previously authorized ADC program, described above as Alternative 1, will achieve approximately the same results.

Nor does the EA "relate the level of control to the level of livestock losses." Committee for Idaho's High Desert, supra. Table 1 of the EA shows:

<u>Fiscal Year</u>	<u>Coyotes Killed</u> (Confirmed)	<u>Livestock Losses</u> (Reported)	<u>Livestock Losses</u>
1989	278	45 sheep 32 lambs 14 calves	150 sheep 330 lambs 7 calves
1990	164	79 sheep 55 lambs 2 calves	167 sheep 135 lambs 26 calves
1991	110	49 sheep 22 lambs 1 calf 15 calves	190 sheep 147 lambs
1992	175	25 sheep 40 lambs 5 calves	175 sheep 815 lambs 14 calves
1993	152	55 sheep 54 lambs 5 calves	172 sheep 333 lambs 8 calves

(EA at 3.)

The only "evidence of any reasoning based on" this data, Committee for Idaho's High Desert, supra, at 11, is BLM's statement that season of use, success of husbandry practices, the success of ADC personnel in taking offending animals, and the number of coyotes in a particular locale affect the loss level for a given year. (EA at 4.) But this does not analyze how those factors relate to the varying levels of losses experienced from 1989-93 that are shown in Table 1 of the EA. Nor does it explain how levels of control, either in the previously authorized ADC program or, more importantly, in the proposed action, relate to the levels of actual or projected livestock losses.

<sup>5/</sup> Actually, the average annual percent of losses for cattle from 1989-93 was given as 0.05 percent for calves in the EA. (EA at 4.)

We have no objection in principle to the proposed action or the IPM policy it seeks to implement, but we conclude that BLM has not conformed to the standards of evidence and analysis required by the Secretary in Committee for Idaho's High Desert, supra, in support of its decision. We assume that the information gathered under the monitoring and evaluation efforts described in the EA at 13-14 and the annual work plan process during the period this appeal was pending will enable BLM to provide the evidence and analysis required to support the proposed action or a revised version of it. We will set aside BLM's May 17, 1994, DR/FONSI and remand this case for preparation of a new EA and decision.

Therefore, pursuant to the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the BLM's May 17, 1994, Decision is set aside, and this case is remanded for action consistent with this opinion.

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Will A. Irwin  
Administrative Judge

I concur:

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James P. Terry  
Administrative Judge