

INTERIOR BOARD OF LAND APPEALS

Oregon Natural Desert Association

140 IBLA 352 (October 7, 1997)

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OREGON NATURAL DESERT ASSOCIATION

IBLA 95-41 Decided October 7, 1997

Appeal from a decision of the District Manager, Vale, Oregon, District Office, Bureau of Land Management, denying a protest to the 1994 Powder River National Wild and Scenic River Management Plan and Environmental Assessment. OR-035-00-4333-02.

Affirmed.

1. Public Lands: Administration--Wild and Scenic Rivers Act

A BLM decision to approve a wild and scenic river management plan will be affirmed on appeal if the decisionmakers considered the relevant factors, and the decision is supported by the record and is in accord with statutory directives. The Board will not substitute its judgment for that of the experts employed by the Department to analyze the facts and make recommendations in their particular fields of expertise in the absence of a showing that the decision is contrary to the evidence of record or otherwise arbitrary or capricious.

2. National Environmental Policy Act of 1969: Finding of No Significant Impact--Wild and Scenic Rivers Act

In reviewing the adequacy of an EA and a FONSI in the context of a challenge to a river management plan for a wild and scenic river, the FONSI will be affirmed on appeal if the record shows that a careful review of environmental issues has been made, relevant environmental concerns have been identified, and the final determination is reasonable.

APPEARANCES: Marilyn A. Heiken, Esq., Portland, Oregon, for Appellant; Donald P. Lawton, Esq., Assistant Regional Solicitor, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE TERRY

This case involves an appeal from the August 30, 1994, Decision of the District Manager, Vale, Oregon, District Office, Bureau of Land

Management (BLM), denying a protest of the April 1994 Decision of the BLM Baker Resource Area Manager approving the Powder River Final Management Plan (Plan)/Environmental Assessment (EA) and BLM's finding of no significant impact (FONSI) relating to that Decision.

As related in the EA, on page 2, an 11.7-mile segment of the Powder River in Oregon between Thief Valley Dam and the Highway 203 bridge has been designated by Congress as a Wild and Scenic River (WSR) with a "scenic" classification under the Wild and Scenic Rivers Act (WSRA or the Act), 16 U.S.C. §§ 1271-1287 (1994). The Oregon National Desert Association (Appellant or ONDA) asserts that BLM is under a statutory duty pursuant to the WSRA to prepare a management plan adequate to protect the outstanding remarkable values (ORV's) which led to inclusion of the designated portion of the river in the WSR System. 16 U.S.C. §§ 1274(d)(1), 1281(a) (1994). Appellant contends that protection of these values is a statutory priority, with protection of other uses allowed only to the extent consistent with protection of the ORV's. See Statement of Reasons (SOR) at 9, 11. Appellant argues that under the Act, grazing permits can be allowed to continue only where there is no inconsistency between grazing and protection and enhancement of the ORV's, and where grazing does not substantially interfere with public use and enjoyment of river values. (SOR at 12.) Further, the ONDA claims that by failing to find that grazing is inconsistent with protection and enhancement of the ORV's, the Plan places the grazing permits in an illegal position of priority over protection and enhancement of these values. (SOR at 12.)

Appellant asserts that the Plan improperly defers decisions concerning grazing and other degrading uses pending results of monitoring, despite evidence that the ORV's are now being degraded. See SOR at 10. Further, ONDA contends that the specific grazing standards in the Plan are inadequate to protect and enhance ORV's related to riparian areas. (SOR at 12.) Similarly, Appellant claims that livestock grazing in the Powder River corridor will degrade prehistoric cultural ORV's in the area and that the Plan's stated goal of protecting only a representative sample of prehistoric resources is a clear violation of section 1281(a) of the WSRA. See SOR at 13. Finally, Appellant contends that there are major inconsistencies in the Plan objectives, proposed management actions, and monitoring standards, resulting in inadequate protection for ORV's. (SOR at 15, 16.)

Appellant also argues that the adoption of the Plan with its FONSI violates the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4332(2)(C) (1994), in that BLM failed to take a hard look at the environmental consequences of its Plan. The Plan, ONDA contends, includes an inadequate description of the environmental impacts of each of the alternatives. More specifically, Appellant claims BLM's response to its protest fails to identify any detailed information that could inform the decisionmaker "on the obvious gaps in the river plan's inadequate description of grazing management." See SOR at 17.

In responding to the arguments raised by ONDA, BLM sets out the criteria for WSR designation and notes that the WSRA makes it clear that livestock use is not incompatible with designation as a WSR, and that in the present case, Congress intended to grandfather such use. See Answer at 3. Noting that the Congress specifically permitted "a limited amount of livestock grazing" within areas designated under the Act, BLM also cited the 1988 comments of one of the Act's principal supporters, Senator Hatfield:

The act does not attempt to undo developments which are already in place, nor does it attempt to interfere with activities which already exist in the designated river area. For example, timber harvesting, mining, agriculture, grazing, and recreational uses are all grandfathered uses in the act and are allowed to continue to the extent they are currently practiced.

For example, if a rancher has cattle grazing in a designated river corridor - even in a wild river corridor - that grazing would be allowed to continue. In fact, with our programs designed to enhance and restore riparian areas from overgrazing, I can envision the day when it would be possible for grazing units to increase with improved riparian management.

See Answer at 5, quoting 134 Cong. Rec. S15243 (Oct. 7, 1988).

In response to Appellant's allegation that the Plan is not sufficiently comprehensive because it did not adequately address various alternatives, BLM urges that the Plan is comprehensive and that the three alternatives considered effectively address the impact of livestock on the river. (Answer at 6, 7.) Respondent explains that Alternative 1 would involve the monitoring of the existing grazing use within the corridor to determine and correct adverse effects. See Answer at 6; see also Plan at 42. Alternative 2 would eliminate livestock grazing in the canyon corridor, thus involving "the modification of the existing RPS [Rangeland Program Summary] for the Baker Resource Area and appealable decisions under the Taylor Grazing Act. (43 U.S.C. § 315h)." (Answer at 7.) Alternative 3 would execute current management actions and administer livestock in the corridor through the implementation of the Allotment Management Plan. See Answer at 7; Plan at 44.

In explaining its choice of Alternative 1 as the most reasonable, BLM states that the careful monitoring inherent in this alternative will ensure that impacts on riparian plant communities are within the standards established in the Plan. See Answer at 7; Plan at 32. Other elements of this alternative include education efforts, recreation use supervision, and effective grazing management. The BLM explains that this alternative is consistent with the understanding of Congress "that existing grazing would continue to be permitted within a Wild and Scenic River corridor unless it conflicts with the policies and purposes of the Act." (Answer at 7.)

Further, Respondent cites to page 25 of the Plan, which provides that if monitoring indicates that livestock grazing is interfering with ORV's, livestock grazing shall be managed or restricted such that these impacts are eliminated.

Finally, in response to Appellant's concern that prehistoric and other cultural values are not sufficiently considered, BLM explains that the protection of cultural resources is addressed under all three alternatives and that both the Plan and EA provide for the protection and enhancement of cultural resources. See Ex. 1 to Answer. Respondent also provided Appellant with a copy of a letter from the State Historic Preservation Officer which concurs with BLM's selection of Alternative 1.

[1] Under the WSRA, BLM is required to protect and enhance those values that were responsible for the designation of the rivers and surrounding corridor as components of the national WSR System. See 16 U.S.C. § 1281(a) (1994). A decision by BLM approving a WSR management plan and an associated FONSI will be affirmed on appeal if the decision is based on the consideration of all relevant factors (including an evaluation of the impact on ORV's within the river corridor), is in accord with statutory directives, and is supported by the record, absent a showing by a preponderance of the evidence that the factual predicate of the decision is in error. See The Steamboaters, 131 IBLA 223 (1994), aff'd, The Steamboaters v. U.S. Forest Service, No. 95-6251-H0 (D. Or. Aug. 16, 1996). In this case, the record reflects that BLM carefully considered the impact of grazing on the other important values and resources within the Powder River Canyon. While the actions identified within the Plan do not go as far as desired by Appellant in restricting grazing within the river corridor, ONDA has not established that the Plan and its approved actions within Alternative 1 are not reasonably calculated to protect those environmental, cultural, and related values in accordance with statutory requirements. Although this Board possesses de novo review authority, as a general rule we will not substitute our judgment for that of experts within the Department who have made recommendations within their particular areas of expertise, absent a showing that the decision is contrary to the evidence of record or otherwise arbitrary or capricious. Deschutes River Landowners Committee, 136 IBLA 105, 110 (1996); see Eason Oil Co., 24 IBLA 221, 225 (1976). No such showing has been made with respect to the EA or Plan in this case.

[2] With respect to Appellant's claim that the EA and the FONSI predicated thereon were inadequate, we find that the impacts of each of the considered alternatives were carefully reviewed in the EA. For example, it was noted in the EA for Alternative 1 that BLM would "[m]aintain and enhance wet meadows, seeps and bogs within the corridor[, c]ontinue riparian surveys[, and p]lant shrubs where needed to enhance riparian and fisheries habitat." See Plan/EA at 42. Similarly, the EA stated with respect to livestock grazing management that BLM will "[e]valuate existing

grazing systems within the corridor," and that "[s]hould monitoring identify areas of riparian degradation, gap fencing and/or seasons of use may be designed through the development of grazing plans." See Plan/EA at 42.

With regard to fish and wildlife management, BLM will "[d]evelop grazing systems that enhance habitat for fisheries[, and d]evelop and implement Wildlife Habitat Plan consistent with this river management plan." Further, the "Plan may include shrub and tree planting, fencing, prescribed burn and stream structures." See Plan/EA at 41. Moreover, with respect to cultural resources, the Plan provides that "[r]ecreation use and livestock grazing would be managed or restricted to reduce impacts on historical or archaeological resources by signing and fencing where damage to sites is occurring. Livestock grazing would be managed to reduce impacts on archaeological sites from trampling, impacts would be mitigated." Id.

This Board has previously had occasion to review the adequacy of a FONSI in the context of a challenge to a river management plan for a WSR, holding that a FONSI will be affirmed on appeal if the record shows that a careful review of environmental issues has been made, relevant environmental issues have been identified, and the final determination is reasonable. National Organization for River Sports, 138 IBLA 358, 364 (1997); The Steamboaters, *supra*, at 228. We determine that Appellant has failed to carry the burden of showing error in the FONSI in this case with respect to a course of action which is designed to reduce the adverse impacts of grazing within the Powder River corridor.

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

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

James P. Terry
Administrative Judge

I concur.

David L. Hughes
Administrative Judge