

INTERIOR BOARD OF LAND APPEALS

Owen Severance

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OWEN SEVERANCE

IBLA 95-10      Decided October 21, 1997

Appeal from a decision of the Moab, Utah, District Manager, Bureau of Land Management, implementing the Sand Flats Recreation Area Management Plan based on environmental assessment UT-068-94-015.

Affirmed.

1. Environmental Quality: Environmental Statements--Federal Land Policy and Management Act of 1976: Land-Use Planning--National Environmental Policy Act of 1969: Environmental Statements

A BLM decision to implement a resource management plan will be affirmed on appeal if the decision is based on a consideration of all relevant factors and is supported by the record, including an environmental assessment which establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination is reasonable in light of the environmental analysis. A party challenging the BLM decision must show that it was premised on an error of law or fact or that the analysis failed to consider a material environmental question. Unsupported differences of opinion provide no basis for reversal.

APPEARANCES: Owen Severance, Monticello, Utah, pro se.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Owen Severance (Severance) has appealed from an August 18, 1994, Decision by the District Manager, Moab District, Bureau of Land Management (BLM), implementing the Sand Flats Recreation Area Management Plan based on environmental assessment (EA) UT-068-94-015.

The Sand Flats Recreation Area (Recreation Area) is a broad, gently sloping upland mesa located adjacent to the community of Moab, Utah. The Recreation Area is bordered on the north by the Negro Bill Canyon Wilderness Study Area (WSA) and the Colorado River, and on the south by the Mill Canyon WSA. The eastern boundary is located at Little Spring, near the western boundary of the Manti-LaSal National Forest. Little Spring is also located at the trailhead for the Porcupine Rim Trail. The western boundary

is along the rim of Spanish Valley above Moab, bordering state and private lands adjacent to Moab.

Long-range management of public lands within this area was first addressed in the Grand Resource Area Resource Management Plan (RMP), initiated in 1981 and approved June 21, 1985. It was written at a time when recreational use was relatively stable, and was expected to grow at moderate rates throughout the region. Recreational planning issues in the RMP are concerned with providing recreational opportunities to meet the increasing demand while protecting the existing natural resource base.

Over the intervening years, mountain biking within the recreation area has grown significantly, and as the area has become increasingly popular, other types of "non conventional" uses have been proposed. In 1990, the Moab BLM District Manager approached the mayor of Moab, the Grand County Commission, the Governor of Utah, Utah's congressional delegation, the dean of the College of Fine Arts at the University of Utah, and several Moab residents to consult on planning for the "Slickrock" area. The Slickrock Area Planning Committee was subsequently established and identified a planning unit of 40,000 acres. The Sand Flats area was at the core of the planning unit.

In 1991, the Committee presented its recommendations to BLM, Grand County, and the city of Moab. The goal the committee developed was to manage the Slickrock Planning Area to protect and enhance its natural resources, while allowing for traditional, existing, and new uses.

In 1992, as a result of the alarming rate of visitor use increases and resultant impacts to this area, the Slickrock/Sand Flats Recreation Emergency Plan was initiated and implemented by BLM. The emergency plan concentrated on specific areas which were experiencing serious impacts. This plan, established by publication in the Federal Register on July 24, 1992, resulted in implementation of the following restrictions for the area: (1) camping limited to designated campsites; (2) vehicle and mountain bike travel limited to designated routes; (3) campfires restricted to designated campfire rings and fire grills; and (4) no woodcutting permits issued. In support of this action, the Utah State Land Board approved Predesignation Order No. 25, on October 26, 1992, which allowed BLM to implement the same restrictions on State lands located in the planning area.

A Federal Register Notice officially designated the Slickrock Planning Area as a "special recreation area" on April 2, 1993. This designation allowed for initiation of a program to charge for and collect user fees and to require a use permit for recreational use of the area. In order to implement this program, BLM entered into a Cooperative Management Agreement with Grand County on June 27, 1994, to allow for the collection and use of such fees, along with identifying operational and management responsibilities.

With the dramatic overload of visitors to the Sand Flats area in the spring of 1993, it was apparent that the preparation of a comprehensive

management plan could not wait further on what the State might or might not choose to do with its lands located in this area. Immediate management action was required to get certain facilities built and developed to reduce impacts from the increasing recreational demand in this area. Such management action required a management plan and environmental analysis as a prerequisite.

A generalized Draft Management Plan and Draft Environmental Assessment (DEA) for the Sand Flats area was released by BLM in December 1993, for public review and comment. Comments were received from eight sources, including Appellant. Many of these comments were incorporated into the final Management Plan and final EA. The proposed action as drafted would help to reduce impacts to other resources, except grazing, from the anticipated increased recreational use. This would be accomplished through actions such as limiting camping and vehicle/mountain bike travel to designated locations, expanded day-use facilities, and visitor education and contacts. Recreational users would benefit from the proposed action due to the enhanced facilities, maintenance of the visual quality, and increased safety. See DEA at 20.

The BLM therefore determined to proceed with a management plan that would identify the overall recreational development objectives and actions for the area, yet build in options and needed flexibility to adjust to whatever the State of Utah determined its ultimate action would be in the area regarding State lands. The EA, that was prepared under the guidelines for the National Environmental Policy Act, thoroughly analyzed management alternatives for the area and determined that "no significant impact" would result from implementation of the Plan. The State of Utah concurred in this analysis. The Management Plan was then finalized and approved on August 18, 1994.

In his Statement of Reasons (SOR) on appeal filed with this Board on September 28, 1994, Appellant Severance claims that BLM "did not adequately address the issue of indirect impacts to cultural resources in the Environmental Assessment. Additional cultural resource inventory and mitigation of impacts to cultural resources must be done in order to meet the requirements of Federal law." (SOR at 1.) Appellant charges that the 150- to 300-foot buffer surveyed around each of the campsites by BLM is insufficient to protect from destruction or disturbance whatever cultural artifacts might exist or be present in the Sand Flats area. Appellant further claims in his appeal that the Advisory Council on Historic Preservation was not given sufficient opportunity to comment on the Management Plan as required under section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f (1994). (SOR at 1.)

Appellant thereafter requests the following specific relief and that BLM be required to take the following specific actions:

1. I am requesting that the BLM be required to do a Class III cultural resource inventory of all of the area within ½ mile of each of the designated camping areas.

2. I am requesting that the BLM be required to consult with the Advisory Council on Historic Preservation concerning the mitigation measures that will be necessary for all cultural resources eligible for the National Register found during the additional survey.

3. I am requesting that the BLM be required to consult with the Advisory Council on Historic Preservation to determine the adequacy of the Plan. In addition, if the Advisory Council determines that the plan does not adequately protect cultural resources in the Sand Flats Management Area, I am requesting that the BLM be required to do the additional cultural resource identification and mitigation specified by the Advisory Council.

[1] The BLM has responsibility for administration of the public lands and must be allowed sufficient discretion to discharge that duty effectively. Southern Utah Wilderness Alliance, 128 IBLA 382, 389 (1994); William R. Franklin, 121 IBLA 37, 40 (1991). When an RMP is implemented by a BLM decision that considers all relevant factors and is supported by a record that includes an EA, it will be affirmed on appeal absent a showing of clear reasons for modification or reversal. Lands of Sierra, Inc., 125 IBLA 15, 20 (1992). An appeal which represents a mere difference of opinion regarding proper management of public lands will not overcome an amply supported BLM management decision. High Desert Multiple-Use Coalition, 124 IBLA 125, 128 (1992).

An EA and subsequent finding of no significant impact (FONSI) provide sufficient basis for a BLM management decision if the record establishes that a careful review of environmental issues has been made, all relevant environmental concerns have been addressed, and the final determination that plan implementation will cause no significant environmental impacts is reasonable in light of the analysis undertaken. A challenge to that determination must show that it was premised on an error of law or fact, or that the environmental analysis failed to consider a substantial environmental issue of material significance to the proposed action. See, e.g., Southern Utah Wilderness Alliance, *supra*, at 390; Southern Utah Wilderness Alliance, 122 IBLA 334, 338 (1992), and cases cited therein. Differences of opinion, unsupported by any real objective proof, are insufficient to overcome a BLM decision for which there is abundant support in the record. *Id.* Our review of the record leads us to conclude that the Decision to approve the challenged Sand Flats Recreation Area Management Plan was based on a consideration of all relevant factors and is supported by the record.

Appellant first contends that BLM has paid inadequate attention to cultural resources and their protection, arguing that BLM must engage in an additional cultural resource inventory and mitigate the impacts to cultural resources to meet the requirements of Federal law. Contrary to Appellant's claims, the Management Plan and accompanying EA reflect that an extensive cultural resource survey was conducted in the area in February and March 1994, with a total of 258 acres surveyed. (EA at 4.) All potential campsite locations were surveyed, including a reasonable buffer zone around

each site where disturbance could occur. Id. Other areas were surveyed where surface disturbance would occur in association with parking lot expansion and the proposed visitor contact station. While some minor cultural artifacts were located, only one, not located at a campsite or road, was deemed eligible for inclusion in the National Register and is therefore qualified as a historic property. Id. In a field visit on August 2, 1994, the Utah State Historic Preservation Office concurred in this finding. The EA provides that no development will occur at the eligible site. (EA at 4.)

Appellant, however, requests that this Board go further and require BLM to "do a Class III cultural resource inventory of all the area within ½ mile of each of the designated camping areas." We note first that pursuant to section 106 of the NHPA, 16 U.S.C. § 470(f) (1994), and the regulations promulgated pursuant thereto, the Department through BLM is required when approving an undertaking to seek to identify any property eligible for inclusion in the National Register 1/ that is located within the area of the project's potential impact and that may be affected by the project. The BLM has carefully done this in its cultural resource survey completed in early 1994. See EA at 22. The BLM located a total of 13 recorded archeological sites within the entire planning area. Of the limited areas where disturbance of the land would result from activities related to the project, only one cultural site, not located at a campsite or road, was deemed eligible for inclusion in the National Register and was therefore qualified as a historic property. As noted above, BLM has ensured that no development will occur at this eligible site.

The Department through BLM is also obligated pursuant to statute to provide for the preservation of archeological data (including relics and specimens) which might otherwise be lost as a result of alteration of the terrain associated with a Federally approved project. 16 U.S.C. §§ 469-469(c)(2) (1994). In this regard, although the Management Plan will ensure no impact on historic properties through avoidance in the development of campsites and facilities identified in the proposed action, further mitigation measures have been implemented in the Management Plan to account for indirect impacts by including information in the resource interpretation program advising visitors not to disturb any artifacts that may be found. (EA at 22.)

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1/ Efforts to identify historic properties follow the Secretary's "Standards and Guidelines for Archeology and Historic Preservation," 48 Fed. Reg. 44716 (Sept. 29, 1983), and agency programs to meet the requirements of section 110(a)(2) of the NHPA. 16 U.S.C. § 470h-2 (1994), 43 C.F.R. § 800.5(c)(1).

Appellant also contends that the Advisory Council on Historic Preservation was not accorded a reasonable opportunity to comment, as required in section 106 of the NHPA, prior to implementation and approval of the Management Plan and the accompanying EA. Again contrary to Appellant's claims, notification for the preparation of the EA for the Management Plan was made through the Electronic Environmental Notification Board on November 9, 1993. The DEA and Management Plan were also made available for a 30-day comment period on December 9, 1993. The public comment period ended January 10, 1994, and comments were received from eight separate sources, including Appellant. Appellant's specific concerns, as in the case of the other commenters, were addressed in detailed responses from BLM. In the case of Appellant, a copy of the response was provided to the Advisory Council on Historic Preservation. See Attachment No. 3 to EA. Further, a public open house was held on July 14, 1994, to solicit comments on the final proposed Management Plan, with a second comment period of 14 days allowed until July 28, 1994. Additionally, the information on the availability of the DEA and Management Plan and the subsequent open house for the final proposed plan were published in the local newspaper. See EA at 1.

This extensive effort on the part of BLM to ensure all possible commenters were accommodated was further enhanced by modifications to the Draft Management Plan before it became final. The modifications incorporated various changes resulting from review of the public comments to ensure the Sand Flats Recreation Area Management Plan corresponded to objectives described in the EA. We must conclude that cultural considerations were carefully addressed within the August 18, 1994, Management Plan. See also Appendix No. 5 to Management Plan.

An expressed preference for additional planning and a more exhaustive cultural resource inventory study does not establish that the efforts taken to ensure compliance on the part of BLM are insufficient to fulfill the cultural resource objectives established by the Management Plan, or that these actions fail to comply with the statutory or regulatory cultural resource protection requirements applicable to the Recreation Area. See Southern Utah Wilderness Alliance, supra, at 391. We find that BLM adequately addressed the cultural resource aspects of the management plan.

Objections raised to BLM's Management Plan and its FONSI, including indirect cultural impacts, seek to substitute a judgment by Appellant for that of BLM and fall short of demonstrating that BLM's judgment is unreasonable or that its actions fail to meet the requirements of the NHPA. Although Appellant contends that BLM's Management Plan for the Recreation Area was not sufficiently coordinated with the Advisory Council on Historic Preservation, the implementing regulations specifically state that when the Federal undertaking will have no effect on historic properties, as here, and the state concurs, "the Agency Official is not required to take any further steps in the section 106 process." 36 C.F.R. § 800.5(b). We find

that the record taken as a whole contains adequate support for the challenged decisions made in the plan and that unsupported differences of opinion with BLM's management determinations are insufficient to overcome them.

Appellant has included within his SOR a number of allegations which, he contends, support his claim that approval of the Management Plan, without further review, will adversely impact cultural resources in the Recreation Area. To the extent not specifically addressed herein, any such arguments made by Appellant 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.

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James P. Terry  
Administrative Judge

I concur:

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Bruce R. Harris  
Deputy Chief Administrative Judge