

INTERIOR BOARD OF LAND APPEALS

Owen Severance

145 IBLA 70 (July 15, 1998)

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OWEN SEVERANCE

IBLA 95-470, 96-380

Decided July 15, 1998

Separate appeals from decisions of the Price River Resource Area Manager, Bureau of Land Management, approving a cultural and recreational activity management plan (UT-066-93-23) and offering a 5-year Recreation and Public Purposes lease (UTU-71845) to the Carbon County Commission.

Decisions affirmed.

1. National Historic Preservation Act: Generally

Where the evidence establishes that, prior to the adoption of a cultural and recreational activity management plan, the authorized officials notified the Advisory Council on Historic Preservation with reference to the plan, solicited its advice, and modified the plan to accommodate suggestions made, a subsequent challenge premised on an assertion that inadequate consultation occurred will be rejected.

2. Rules of Practice: Appeals: Dismissal—Rules of Practice: Appeals: Standing to Appeal

Absent an evidentiary showing by an appellant that he or she has been adversely affected by an alleged violation of the American Indian Religious Freedom Act, 42 U.S.C. § 1996 (1994), the appellant has failed to establish standing to raise the issue before the Board.

3. Administrative Practice—Environmental Quality: Generally—Federal Land Policy and Management Act of 1976: Land-Use Planning

Adoption of a cultural and recreational activity management plan will be affirmed where the evidence establishes that relevant areas of environmental concern have been identified and the resulting determination represents a reasonable response given the evidence of record.

APPEARANCES: Owen Severance, pro se.

## OPINION BY ADMINISTRATIVE JUDGE BURSKI

Owen Severance has filed two appeals from decisions of the Price River Resource Area Manager, Bureau of Land Management (BLM). The first of these two decisions, dated March 31, 1995, approved the Nine Mile Canyon Recreation and Cultural Area Management Plan (Management Plan) and accompanying environmental assessment (EA) UT-066-93-23 and finding of no significant impact (FONSI). Severance's appeal from this decision has been docketed as IBLA 95-470.

The second decision, dated April 10, 1996, offered a 5-year lease under the provisions of the Recreation and Public Purposes (R&PP) Act, 43 U.S.C. § 869 (1994), to the Carbon County Commission (Carbon County) for the purpose of establishing a rest area within the Management Area. The appeal of this decision has been docketed as IBLA 96-380. For reasons set forth below, we reject both appeals.

In his first appeal (IBLA 95-470), Severance, who describes himself as an avocational archaeologist and a recreational user of the lands in the area, challenged BLM's adoption of a Management/Activity Plan for Nine Mile Canyon. This Management Plan covered a 127,167-acre Special Recreation and Cultural Management Area (SRCMA) consisting of public lands administered by BLM as well as private lands and lands owned by the State of Utah which embraced not only the Nine Mile Canyon Scenic Backcountry Byway and its viewshed, 1/ but also included the proposed Nine Mile Canyon Archaeological District and the Nine Mile Canyon Area of Critical Environmental Concern. The area included within the Nine Mile SRCMA contains "one of the finest Native American rock art 'galleries' in the world, comprised of petroglyphs and pictographs from the Fremont and Ute peoples." (Management Plan at 1.)

As described in the Management Plan, the focus of management activities in the Nine Mile SRCMA was on the management of visitor-based recreation and the preservation and interpretation of cultural resources. The Management Plan noted that, in recent years, Nine Mile Canyon had become a recreational destination and that the growing number of visitors which it was drawing, together with the general lack of amenities and management controls presently existing, had led to increased pressures on and dangers to the cultural resources found in the SRCMA. See Management Plan at 22-24. To effectuate the management goals of both improving the recreational experiences of visitors while increasing protection of the cultural resources which were drawing them to the area, the Management Plan proposed a number of actions. Among the actions recommended was the acquisition of a property to serve as a visitor contact station, as well as the development of other parcels to serve as interpretive sites or to provide access to specific cultural resources. 2/

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1/ The Backcountry Byway, itself, runs a total of 78 miles, of which approximately 56 percent is located on Federal lands. See Management Plan at 2. This area had been dedicated as a scenic byway in 1991. Id. at 4.

2/ The Management Plan noted, however, that these properties would be acquired only if the present owners were willing to sell, exchange, or donate the lands in question.

A total of 12 sites were proposed for development as recreational/ interpretive sites. See generally Management Plan at 29-32. These sites were designed for a variety of purposes. Thus, some would provide toilet facilities, while others would explain the historic and cultural significance of resources and also convey information as to rules, regulations, and what constituted appropriate visitor behavior. <sup>3/</sup>

Finally, the Management Plan adopted a number of proposals specifically designed to protect existing cultural resources. Among the proposals were the creation of a National Historic District which would include all of the areas in Federal ownership which had a high concentration of cultural sites, the selection of some of the sites, on a prioritized basis, for ruin stabilization, and the initiation of routine patrols, including aerial patrols, to reduce incidents of vandalism and trespass.

Severance had filed comments with respect to the proposed management plan generally outlining certain objections which he had to the plan. Chief of these was a concern that the Management Plan failed to provide adequate protection for existing cultural resources in the Nine Mile SRCMA and failed to provide for an adequate cultural resource inventory of the area. Upon issuance of the final Management Plan, Severance filed an appeal with this Board.

In his statement of reasons for appeal (SOR), Severance asserts that the Management Plan and associated EA violate the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470f, 470h-2 (1994), the American Indian Religious Freedom Act (AIRFA), 42 U.S.C. § 1996 (1994), the Archaeological Resources Protection Act, 16 U.S.C. §§ 470aa to 470mm (1994), and the provisions of the BLM Manual relating to cultural resource management. <sup>4/</sup> We will review these allegations seriatim.

[1] First, to the extent that Severance asserts that BLM violated provisions of the NHPA, the record does not bear him out. The record discloses that BLM duly consulted with the Advisory Council on Historic Preservation (Council). After an initial contact was made by the Council, a series of letters were exchanged which culminated in an on-site visit by a member of the Council's staff. While the Council had initially expressed

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<sup>3/</sup> It was also noted that various vulnerable sites would not be promoted to avoid damage which might ensue due to large-scale visitation and that, with respect to some of these sites, positive action would be undertaken to discourage visitation. See Management Plan at 32.

<sup>4/</sup> While Severance couched this last charge as a violation by BLM of its own regulations, this Board has noted many times in the past that the provisions found in the BLM Manual, while providing guidelines for the actions of the BLM State Offices, are not regulations and do not have the force and effect of law. See, e.g., Lassen Motorcycle Club, 133 IBLA 104, 108 (1995); Pine Grove Farms, 126 IBLA 269, 276 n.6 (1993).

a number of strong concerns and reservations with respect to the draft Management Plan, subsequent clarifications from BLM as well as alterations in the draft plan greatly eased the Council's fears.

To be sure, the Council expressed the hope that BLM would attempt to gain the expert advice and assistance of a nationally known rock art organization in formulating its program and would endeavor to include Native Americans in this input, but the Council's response is a far cry from Appellant's claim that the Management Plan violated the NHPA. Indeed, the Council expressly noted that "[o]nce the Plan is completed, BLM, the Council, and the Utah State Historic Preservation Office can begin to work toward the development of a Programmatic Agreement, using the Plan as a basis for mitigating the effects of this undertaking on historic properties." (Letter of Dec. 21, 1994, at 2.) The record of response by the Council simply does not support Severance's claim that BLM's actions herein violated the NHPA.

[2] Severance also claimed that BLM's actions violated the provisions of AIRFA. However, not only has Severance failed to delineate the manner in which BLM failed to comply with AIRFA, he has also failed to establish his standing to raise the issue of compliance with AIRFA. We have noted a number of times in the past that any party challenging a BLM decision must establish standing with respect to each aspect of the decision the individual seeks to challenge. See, e.g., Save Our Ecosystems, 85 IBLA 300, 302 (1985). While Severance's claims are adequate to show that he could be adversely affected with respect to his avocational interest in archaeology and recreational use of the land, he has not alleged that he is a Native American and, therefore, he has failed to establish the predicate nexus between the asserted BLM failure to comply with AIRFA and injury to him. His appeal on this issue is dismissed.

While Severance raises the issue of BLM compliance with the provisions of the Archaeological Resources Protection Act, supra, he fails to explicate in what fashion BLM's actions have allegedly violated this statute's mandates. What is clear, however, is that Severance believes that the failure of BLM to conduct a complete cultural resources inventory has fatally compromised the Management Plan. We do not agree.

[3] It is undisputed that "[l]ess than ten percent of the area has been inventoried." See Management Plan at 10. But this is not a situation in which the failure to have a complete inventory could lead to an underappreciation of the value of the cultural resources contained in the area. On the contrary, it is the sheer volume of cultural resources found in the Nine Mile SRCMA which has constrained the ability of BLM to fully inventory the cultural resources situated on Federal lands, much less throughout the entire SRCMA. Moreover, given the cultural resources already shown to exist in the area, only a class III cultural resource inventory, i.e., a complete surface inventory, would be efficacious for

Appellant's purposes.<sup>5/</sup> Not only would such an inventory covering such an expanse be expensive, it would take a considerable period of time. Yet the problems already being generated by increased visitor pressures would not abate in the interim; rather, unless action is immediately taken to control the visitor influx, permanent damage to the cultural resources could result.

In his comments to the proposed plan, Severance opined that "[t]he best way to protect the cultural values in Nine Mile Canyon is to erect a six foot high chain link fence with razor wire on top the length of the canyon on both sides of the road." (Letter of Dec. 27, 1993, at 10.) BLM, however, has chosen a different management strategy, one which attempts to manage the visitor influx while at the same time tries to deal with cultural site deterioration. While we do not doubt the sincerity of Appellant's objections to BLM's plan, he has failed to establish that it is violative of any laws or Departmental policies. As we have noted many times, mere differences of opinion provide an inadequate basis for disturbing decisions of authorized officers of BLM. The adoption of the Management Plan is affirmed.

In his second appeal (IBLA 96-380), Severance challenges issuance of an R&PP lease to Carbon County of a 10-acre parcel, known as the Christensen Ranch, for construction of a rest area. This R&PP application had been specifically referenced in the Management Plan. Thus, the Plan had noted that:

BLM will support in principle Carbon County's application for a recreation and public purposes (R&PP) lease on the Christensen Ranch site. \* \* \* Carbon County Recreation has applied to develop a group staging area at this site that provides for reserved group camping, a service and amphitheater area, restrooms, individual picnic/camping sites and parking available for casual use. If acquisitions of the Harmon House or Nutter Ranch are not forthcoming in a reasonable time frame, the BLM will locate its visitor contact station at the Christensen Ranch site.

(Management Plan at 38.)

Subsequent to the adoption of the Management Plan, BLM undertook consideration of the R&PP application. An EA was prepared for the R&PP proposal (EA UT-066-95-26). As analyzed in the EA, the proposed development consisted of two separate phases. Phase I, which was scheduled for

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<sup>5/</sup> We would point out that, normally, a class III cultural resource inventory is only required for site specific cultural clearance of an area which is scheduled for management activities (such as timber harvesting) which might result in the destruction of any previously undiscovered cultural resources. See generally In re Lick Gulch Timber Sale, 72 IBLA 261, 315-17, 90 I.D. 189, 219-20 (1983).

commencement in the spring of 1996, included the establishment of a gravel parking area for recreational vehicles and buses and a large undeveloped area for dispersed camping. Toilet facilities would be provided in the parking area. An amphitheater and pavilion would also be constructed and wire fencing would be placed around the historic buildings of Christensen Ranch (except the cabin) pending their stabilization or restoration in Phase II.

The EA noted that among the advantages of this proposal was that it would concentrate visitors, while picnicking and camping, in an area removed from the petroglyphs and other archaeological sites in the Nine Mile SRCMA. (EA at 3.) Moreover, the EA noted that "[w]hen sufficient campsites are developed at the rest area, dispersed camping in the Nine Mile Historic District would be prohibited." Id. Based on the analysis provided by the EA, the Price River Area Manager concluded that the environmental effects of the proposal had been adequately reviewed and issued a FONSI. He further determined that the proposal was consistent with the Management Plan for the Nine Mile SRCMA. See Decision Record/FONSI, approved Apr. 10, 1996. By separate decision the same date, the Area Manager offered Carbon County the R&PP lease.

Severance had submitted comments opposing the proposed R&PP lease. Upon receipt of the Decision Record and FONSI, he filed a formal appeal with this Board. The majority of Severance's objections to the proposed R&PP lease are replications of complaints made with respect to the adoption of the Management Plan. These general assertions have been dealt with above and will not be reexamined herein. More particularly, however, Severance complained that "[t]he area surrounding the proposed development should be completely inventoried for cultural resources." (SOR at 5.) In point of fact, however, in response to an earlier inquiry as to whether or not a cultural resources inventory had been conducted on the parcel in question, BLM had responded that "[a] Class III cultural resource inventory was completed for the project area." (EA at 27.) While this inventory may not have been as physically extensive as Appellant desired, it did serve to provide assurances that the development of the site would not adversely affect the cultural resources found on the site. 6/

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6/ While it is true that the class III cultural resource inventory only inventoried surface areas, the R&PP lease specifically provided that:

"Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Lessee shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values."  
(Attachment A at 1.)

Much of Appellant's concern is directed to what he perceives as the failure of BLM to assess, much less ameliorate, the indirect impacts of increased visitation in the area. He had raised this issue in his protest to the proposed R&PP lease. In response, BLM had noted that:

The commentee is unsatisfied with both this EA and the general management plan which address cultural resource protection along the entire byway in Nine Mile Canyon. However, the commentee does not offer alternative cultural resource protection strategies or solutions. Both this EA and the general Nine Mile Canyon Cultural and Recreational Management Plan have been produced in order to control further natural and cultural resource damage to the canyon. This has been a lengthy public process in which numerous entities and individuals have been involved. The BLM has solicited ideas and solutions from everyone and anyone and is open to review and analysis of any reasonable and workable suggestions. Until these suggestions are received, BLM will implement the actions approved through the public decision-making process. "No action" in Nine Mile Canyon has been identified as the cause, and not the solution, of the resource problems identified in the Canyon. [7]

(EA at 28 (emphasis supplied).)

Ultimately, this appeal, as is true with the previous one, resolves itself into a conflict between BLM, as a land management agency which is attempting to reconcile all of the competing interests which come into play in managing the Federal lands, and Appellant, who believes very strongly that BLM has not put sufficient emphasis on immediate intervention to prevent resource degradation. This Board is always very reluctant in such circumstances to substitute its judgment for that of the authorized officer in the field. As we noted in Oregon Natural Desert Association, 125 IBLA 52, 60 (1993), "[s]o long as the consequences of the various options are fairly analyzed, this Board must give considerable deference to the ultimate policy selections of the resource managers."

From our review of the records before the Board, we can find no adequate basis for substituting our judgment for that of the BLM officials in the field. Accordingly, both appeals are denied.

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<sup>7/</sup> Indeed, this Board has also noted in other appeals that "selection of the 'no action' alternative \* \* \* may, itself, involve the acceptance of adverse environmental consequences." In re Bryant Eagle Timber Sale, 133 IBLA 25, 29 (1995).

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 decisions appealed from are affirmed.

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James L. Burski  
Administrative Judge

I concur.

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John H. Kelly  
Administrative Judge