

INTERIOR BOARD OF LAND APPEALS

Coeur d'Alene Audubon Society, Inc., et al.

146 IBLA 65 (October 8, 1998)

Title page added by:
ibiadecisions.com

COEUR D'ALENE AUDUBON SOCIETY, INC. ET AL.

IBLA 95-645

Decided October 8, 1998

Appeal from a Decision Record/Finding of No Significant Impact, issued by the Emerald Empire Resource Area Manager, Bureau of Land Management, approving the Blackwell Island Recreation Site Development. ID-060-95-12.

Affirmed.

1. Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact

BLM's decision to approve the development of a boat launching facility and attendant facilities on Blackwell Island, based on the preparation of an environmental assessment and finding of no significant impact, will be affirmed when, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4332(2)(C) (1994), BLM has taken a hard look at the environmental consequences of such a project, has considered reasonable alternatives thereto, and there is no objective proof that BLM failed to consider a substantial environmental problem of material significance or otherwise failed to abide by the Act.

APPEARANCES: Mike Mihelich, Conservation Chair, Coeur d'Alene Audubon Society, Inc., Coeur d'Alene, Idaho, Denise L. Clark, President, Rural Kootenai Organization, Inc., Coeur d'Alene, Idaho, Wesley R. and Gertrude J.G. Hanson, Coeur d'Alene, Idaho, pro sese; Kenneth M. Sebby, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Boise, Idaho, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

The Coeur d'Alene Audubon Society, Inc. (Audubon Society), the Rural Kootenai Organization, Inc. (RKO), and Wesley R. and Gertrude J.G. Hanson (Hansons) have each appealed from a Decision Record/Finding of No Significant Impact (DR/FONSI) of the Area Manager, Emerald Empire Resource Area,

Idaho, Bureau of Land Management (BLM), dated July 14, 1995, approving the "Blackwell Island Recreation Site Development." In the DR/FONSI, the Area Manager approved the construction, maintenance, and operation of a five-lane boat launching facility, along with a parking lot, picnic facilities, and a wildlife observation trail, on public land on Blackwell Island.

Also, relying on Environmental Assessment (EA) ID# 060-95-12, the Area Manager made a finding that no significant impact would result from development, and that, therefore, the preparation of an environmental impact statement (EIS), in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4332(2)(C) (1994), was not required.

The area in question is located on what is known locally as Blackwell Island, which contains both public and private land. The island is situated at the confluence of the Spokane River and Coeur d'Alene Lake in sec. 14, T. 50 N., R. 4 W., Boise Meridian, Kootenai County, Idaho, less than a mile from the city of Coeur d'Alene, Idaho. The entire island, which is bordered by the Spokane River, Lake Coeur d'Alene, and a narrow man-made canal, is generally level and low-lying with scattered clumps of trees and dense patches of shrubs, contains wetlands and dry uplands, and supports many wildlife species, including a large variety of waterfowl, songbirds, pheasants, and other migratory and nonmigratory birds, deer, beaver, and other small mammals, which use the site for feeding, nesting, breeding, and other purposes.

On March 31, 1994, the United States purchased approximately 32 acres of private land at the north end of Blackwell Island. That land is bounded on the north and east by the river, on the west by a narrow man-made canal, and on the south by U.S. Highway 95, which cuts across the entire island. The main purpose for the acquisition was to build a boat launching facility on a portion of the tract to improve public access to the lake and help alleviate congestion at public boat launches at the north end of the lake. A secondary purpose was to protect wetlands and associated riparian and wildlife values for public enjoyment.

In order to assess the environmental impacts of developing the site and determine whether to prepare an EIS, BLM specialists in the areas of wildlife, hydrology, soil, archaeology, and recreation, in consultation with representatives of various State and local agencies, prepared the EA. BLM solicited public comment regarding development options, and a no-action alternative, at two public meetings held on July 13, 1994, and January 24, 1995, and also during a 30-day public comment period following each meeting. BLM completed its EA in June 1995, offered it for public comment for 30 days, and on July 14, 1995, the Area Manager issued the DR/FONSI, selecting alternative 1 (the proposed action) from the EA, as the preferred alternative.

Under that alternative, BLM would construct a five-lane boat launching facility. A concrete boat ramp would be built, extending out into a short offshoot of the main canal. For boarding and short-term moorage purposes,

floating boat docks with access ramps would be anchored to pilings set in the canal adjacent to each launch lane and extending along the south bank of the canal. A short access road leading from the highway to the parking lot, with spaces for 140 vehicles with trailers and 54 vehicles without trailers, would be asphalt paved and bordered with concrete curbs and gutters, directing drainage to interspersed grassy collection areas. The total area impacted by the road, parking, and drainage areas would be approximately 6 acres.

In addition, a wildlife observation trail, with three viewing platforms, would be built, running about 800 feet east from the parking lot to and along the wetlands bordering the river. Picnic facilities, consisting of one group shelter with multiple tables and grilles, and 19 individual picnic units, each with a table and grille, would be built near the trailhead. Until city water and sewer service become available, a newly drilled on-site well would provide water and sewage would be contained in sealed vault toilets and hauled away.

Most of the project area would be open to daytime public use during much of the year (excluding the winter (i.e., from around March through November)). However, use of the boat launch area would be restricted to the summer, from the Memorial Day weekend through September, depending on the water level in the canal. Overall, the recreation site is expected to be visited each year by 35,000 persons, 90 percent of whom will come during the peak summer season, from Memorial Day through Labor Day. The site is designed to accommodate 485 persons at any one time, given a parking capacity of 194 spaces and assuming an average of 2.5 persons per vehicle, and the parking lot is expected to experience low to moderate turnover. At the site's projected use level, BLM estimates that traffic along U.S. Highway 95, which is a two-lane roadway, will increase each day by an average of 228 vehicles (i.e., 114 vehicles entering and leaving the site), or less than 4 percent of the current daily traffic (6,400 vehicles). Most of those using the site (85 percent) are expected to be boaters. The boat launching facility is said to be capable of handling 250 boats each day, but actual use is expected to be a daily average of 200 boats on weekends and 80 on weekdays.

In the DR/FONSI, the Area Manager modified the alternative slightly, deciding that a proposed foot bridge providing access to a small island to the north of Blackwell Island and a proposed nature trail on that island would not be built in order to lessen the impacts on wildlife. He accepted most of the mitigation measures recommended in the EA, except he declined to endorse the erection of a fence to exclude dogs from the wetlands habitat. He found that to be an "administrative measure which at this time is unnecessary." Instead, he indicated that the situation would be monitored and "appropriate measures" taken, if needed. Overall, the Area Manager concluded that the adopted alternative would help satisfy the "growing demand" for public boat access to the lake for recreational pursuits, and "provide for continued wildlife viewing opportunities while protecting the wetland and riparian values on the island." Id.

RKO and the Hansons each requested a stay of BLM's DR/FONSI. Audubon Society did not request a stay. BLM opposed a stay. In an Order dated January 23, 1996, the Board denied the requests for stay.

Appellants contend that BLM violated section 102(2)(C) of NEPA by failing adequately to assess the impact of the planned project on various aspects of the human environment and consider reasonable alternatives thereto. They conclude that there will be a significant impact and that BLM should have prepared an EIS.

Appellants fear that the proposed development will adversely affect recreational enjoyment of the natural setting and wildlife on the island. They argue that construction of the boat launching and nearby parking facilities, including building a five-lane ramp into the canal, widening the canal, and excavating 14,000 square feet for a boat basin, and their intensive utilization thereafter will, as articulated by the Hansons, "critically reduce the habitat" for many wildlife species and "negatively affect the region's water quality." (Hansons' Statement of Reasons (SOR) at 2.) The Hansons also fear that development will increase traffic on the adjacent "high-speed, congested" major interstate highway, thus leading to the risk of injury and death for them and other travelers. Id.

[1] It is well established that a BLM decision to proceed with a proposed action, absent preparation of an EIS, will be affirmed and held to be in accordance with section 102(2)(C) of NEPA where the record demonstrates that BLM has, considering all relevant matters of environmental concern, taken a "hard look" at potential environmental impacts, and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. Powder River Basin Resource Council, 144 IBLA 319, 321 (1998), Cabinet Mountains Wilderness v. Peterson, 685 F.2d 678, 681-82 (D.C. Cir. 1982). An appellant seeking to overcome such a decision must carry its burden of demonstrating, with objective proof, that BLM failed to or did not adequately consider a substantial environmental question of material significance to the proposed action or otherwise failed to abide by section 102(2)(C) of NEPA. Southern Utah Wilderness Alliance, 127 IBLA 331, 350, 100 I.D. 370, 380 (1993).

Appellants assert that BLM failed to fully evaluate the impacts that construction of the boat ramp, paving of the parking area, and increased human activity generally might have on wildlife from reduced habitat and the stress caused by such activity, or to show that it will properly mitigate any impacts. Specifically, the Audubon Society is concerned with avian species. It contends that the Biological Assessment attached to the EA only discusses the impact on bald eagles. It states that there is a small discussion concerning the possible impact on trout in the text of the EA, but that the remainder of the 90 species noted in the EA are dealt with in "a few cursory comments." (Audubon Society SOR at 2.)

The record demonstrates that BLM was well informed regarding the presence of wildlife on the public land portion of the island. See EA

at 8. Also, BLM concluded that the total amount of wildlife habitat that will be "lost" as a result of the project is about 6 acres, or 18 percent of the total acreage of the public land tract. See EA at 12. While BLM regarded this as an "irretrievable loss," it concluded that, given a planned "enhance[ment]" of the remaining available habitat by replacing noxious weeds with native shrubs and trees, "the increased quantity and quality of food and nesting cover for wildlife should compensate the anticipated loss." (EA at 12.) As noted in BLM's Answer at 5: "By this fall, we will have planted over 1,000 native shrub and tree species on the island to provide food and shelter for wildlife." BLM points out that development "will be largely confined to upland portions of the site currently void of significant vegetation," and thus wildlife habitat. (Answer at 18.) Appellants have not shown that the impact will be greater than that anticipated by BLM.

Appellants also assert, as noted by the Hansons, that wildlife will be "negatively" stressed because there will be a "great deal of human activity," which they estimate might amount to over 500 people per day on a "sunny holiday weekend." (SOR at 5.) BLM stated that the proposed facility would accommodate 485 people based on the parking capacity. It explained, however that "there will never be that many people on! site at the same time because the facility will be used primarily for boat launching. It is estimated that 85% of the use will be by boaters. They will remain on! site only for short periods while launching and retrieving boats." (EA at 13.) Thus, the vast majority of people would limit their use of the facility to the boat launching and related parking areas, away from the wetlands. Further, while originally proposed to open around May, the Area Manager adopted the mitigation measure of keeping the boat launching facility closed until the Memorial Day weekend, which would minimize the impact during the nesting/breeding season. According to BLM, only a limited number of people would remain at the site for any length of time and venture outside the developed area. Although BLM expected some displacement of wildlife as a result of this activity, it did not regard the impact as significant. See EA at 12, 15. We find BLM adequately assessed the impacts of the proposed project caused by human activity.

Appellants assert that BLM failed to properly evaluate the impacts the following might have: (1) excavation of the boat basin on water quality, fish, and wildlife, (2) flush toilets and associated sewer lines on ground water quality in the event of a rupture, (3) increased numbers of boats in the river and lake on the safety of boaters, (4) pilings driven for the project on the underlying aquifer, (5) construction on archaeological sites, and (6) increased traffic on the interstate highway on the safety of local residents and others traveling on it. See Hansons' SOR at 6-7; RKO SOR at 2-6. We are persuaded that BLM properly either considered these potential impacts or regarded them as not likely to result from the project, thus not meriting consideration. See EA at 9, 11! 12, 17 (excavation), 6, 13 (boater safety), 9, 15 (archaeological resources), 3, 13 (highway traffic); Answer at 9 (boater safety), 9! 10 (pilings), 10 (highway traffic), 10 (archaeological resources), 16! 17 (toilet/sewer).

In the latter respect, we note that it is well established that BLM is not required to consider remote and highly speculative impacts, such as some of those advanced by Appellants. See Trout Unlimited v. Morton, 509 F.2d 1276, 1283 (9th Cir. 1974).

Hansons and RKO also contend that BLM failed to properly evaluate the impact that the large number of cars parking at the recreation site on a daily and yearly basis might have on surface and ground water quality in the event of spills of gasoline, oil, and anti-freeze in the parking lot and attendant runoff into the designated grassy collection areas. They assert that these areas may fail to filter these pollutants, and that, in any case, the island has periodic high groundwater, which may receive the pollutants, spreading them into the local aquifer. They also state that the island is subject to periodic flooding, which, they assert, may carry pollutants into nearby surface waters. Thus, they contend that the proposed action could result in degraded surface and ground water.

BLM recognized in the EA that "[t]he parcel is a wide floodplain of the Spokane River with relatively low relief" (EA at 7.) It stated that a 100-year flood could result in flooding depths of 2 feet or less over the existing topography of the proposed project site. BLM rendered no conclusion regarding the impact of periodic flooding of the parking lot; however, it did conclude that any runoff from that lot, which would contain "petroleum-related wastes" and other "motor vehicle fluids," would be directed to the grassy swales, which would "provide effective filtering for pollutants." Id. at 7, 12.

RKO refers to material provided by the local health district, which sets forth certain limitations that may hamper the proper functioning of grassy infiltration areas. (RKO SOR, at Ex. H.) This material states that such areas are the "preferred stormwater management practice due to their ability to effectively treat runoff" Id. at 1. However, it further states that this ability depends on a number of site characteristics, including depth to water table and base flood elevations. Id. As such, infiltration areas must be located "at least three feet above the seasonal high water mark" and "above the base flood elevation." Id. at 2. Those standards are satisfied for the site in question. Appellants have offered no evidence that periodic flooding, which would be a highly infrequent occurrence, would contribute any significant amount of pollutants to the surface or ground water.

Next, Appellants contend that BLM failed in its duty, under NEPA, to consider reasonable alternatives to the proposed action. The Hansons assert that BLM should consider a "scaled down project consisting of a maximum of 1 or 2 launching lanes, perhaps for nonmotorized craft" with appropriately sized parking. (Hanson' SOR at 5; see also RKO SOR at 8.) They indicate that BLM could protect wildlife and related recreational activity and still achieve its objective of facilitating public recreational boating use on the nearby lake with such a facility. They argue that a limited facility is preferable because the county already owns a

boat launching facility, with parking, on a small tract of land at the south end of the island, with existing boat ramps running into the main canal 150 feet upstream from the planned BLM development. They assert that these existing facilities have been abandoned by the county and are largely unused.

Appellant Audubon Society claims that BLM had settled on a predetermined use of the site and, thus, limited its range of alternatives. It contends that BLM should have considered an alternative with wildlife observation and environmental education as its primary purposes.

Section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (1994), requires a Federal agency to describe "appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." See 40 C.F.R. § 1501.2(c). An EA is required to include a "brief" discussion of "alternatives." 40 C.F.R. § 1508.9(b).

As the Circuit Court stated in Headwaters v. BLM, 914 F.2d 1174, 1181 (9th Cir. 1990), citing Northern Plains Resource Council v. Lujan, 874 F.2d 661, 666 (9th Cir. 1989), "NEPA does not require a separate analysis of alternatives which are not significantly distinguishable from alternatives actually considered, or which have substantially similar consequences." Thus, an agency's consideration of alternatives is sufficient to meet the requirements of NEPA if it considers an appropriate range of alternatives, even if it does not consider every available alternative. Id. Appellants have failed to show that BLM did not consider an appropriate range of alternatives, given the intended purpose of the proposed action. 1/

As explained by BLM in its Answer, during the planning stage, which was prior to a January 1995 public meeting, BLM developed five management alternatives ranging in scope from a large scale development, including campgrounds and recreational vehicle (RV) facilities, to no development. One alternative, BLM stated, included the development of a small nonmotorized boat launch site on the west side of the tract, with six parking spaces. "There was very little support for, and a great deal of opposition against, the non-motorized boat launch proposal due to concerns about increased vehicle traffic in an area where homes currently exist. This alternative was dropped from further consideration." (Answer at 15.)

1/ In a document styled "Pre-Plan Analysis Blackwell Island Recreation Project Plan," updated and approved on Dec. 19, 1994, by the Area Manager, BLM explained:

"Blackwell Island was identified and subsequently acquired specifically for development of boat launching facilities to help alleviate launching and parking congestion on the north end of Coeur d'Alene Lake. A dual objective for acquiring the island is to protect wetlands and their quality riparian and wildlife values to ensure continued wildlife viewing opportunities."

(Pre-Plan Analysis at 1.)

In addition, BLM specifically considered the alternative of a "[m]id scale" development, with a 2¹ lane boat launching facility and a smaller parking lot. (EA at 6.) Under this alternative, the canal offshoot would not be widened, but a smaller boat basin would be created. BLM estimated, under that alternative, that 26,000 people would visit the site each year, with 198 possible at any one time and that the boat launching area would accommodate 100 boats each day, with an average of 100 expected on weekends and 80 on weekdays. BLM also assessed the various environmental impacts of this alternative. Id. at 10, 11, 13, 14. According to BLM, the selected alternative would not only help meet the present demand by the public for lake access, but also accommodate expected future growth. Id. at 1.

Regarding the Hansons' assertions concerning a publicly¹ owned boat launching facility, BLM states:

The county boat launch facility the appellant refers to is a 60-foot wide road right-of-way presently owned by the Worley Highway District, located on the east side of Highway 95 adjacent to property owned by the Yacht Club. Ownership of this parcel has been in question for several years as the Yacht Club has also claimed ownership of the property. Presently, the Yacht Club has this parcel fenced and gated and charges boaters for using the small boat launch within the right-of-way. A road right-of-way is not a public recreation area and a 60-foot wide strip of land hardly provides adequate space to accommodate the local community's identified need.

(Answer at 7-8.)

Thus, even if that area were opened to public use, it is not duplicative of the boat launching/parking facilities proposed by BLM under either its preferred or scaled¹ down alternative. In addition, regarding Audubon Society's proposed alternative with wildlife observation and environmental education as its primary purpose, BLM stated in its Pre-Plan Analysis at 2:

Secondary recreation objectives to provide facilities for RV camping and environmental education may not be achievable. Space may limit development opportunities for these other activities given the primary objectives to provide boating facilities and preserve wildlife habitat. The need for providing environmental education facilities at Blackwell Island is contingent on other land acquisitions. Cougar Bay may be better suited as an environmental education area to interpret riparian and aquatic habitats. [2¹] The development of two sites in such close proximity to each other for the same purpose is not warranted.

^{2/} "BLM owns 11-12 acres of lakefront property in Cougar Bay, a shallow section of the lake about 1-2 miles from Blackwell Island * * *." (Audubon Society SOR at 3.)

Thus, the record shows that BLM considered environmental education in the preplanning stage, but determined that consideration of that as a primary use for the project was not warranted at that time. The failure to include in the EA the alternative suggested on appeal by Audubon Society is not error.

Hansons and RKO also argue that BLM failed to consider the alternative of permitting only "non-motorized boating activities." (Hansons' SOR at 10; RKO SOR at 8.) According to BLM, this alternative was briefly considered, with public input, during the initial planning process, but later dropped in the absence of public support. See Answer at 15. We find no error.

Hansons and RKO also assert that BLM did not regard the No-Action Alternative as viable, and thus did not properly consider it. This is belied by the record. See EA at 7, 10, 11, 13, 15. Although the analysis of this alternative is brief, BLM points out that the No-Action Alternative "received little support during the public participation process." (Answer at 15.) Moreover, the No-Action Alternative was inconsistent with the management objectives for the area. We find no error.

Appellants further assert that BLM failed to evaluate the potential cumulative impacts of the planned recreation site in conjunction with proposed private development on Blackwell Island of a 40-acre tract of land, immediately south of U.S. Highway 95, for a 220-pad RV park, as well as other commercial and residential use.

BLM concluded, in its EA at 15, that no significant cumulative impacts were anticipated. However, it did not expressly discuss the potential cumulative impacts of the project together with the proposed private development in the EA. We find no error for the following reasons.

At the time of BLM's preparation of the EA and subsequent approval of this project in the summer of 1995, the city council of Coeur d'Alene had already declined, on March 21, 1995, to approve "annexation" of the private land tract on Blackwell Island. Annexation would have permitted the extension of municipal water and sewer services to that area. Thus, private development could not go forward.

However, BLM asserts that it intensively considered the possible cumulative effects of development of the private lands during EA team meetings, visits to the site, and the EA preparation process, and that, even after the city council declined to annex the private lands, it nevertheless

reviewed the preliminary plans for the proposed RV park and determined that there would be no significant cumulative impacts relative to the natural components of the environment (wildlife, water quality, soils, etc.). Development of two recreational facilities on either side of US Highway 95 will increase the number of vehicles entering and leaving

the sites from the highway. It is the responsibility of the Idaho Department of Transportation (IDT) to analyze ingress and egress requirements and design appropriate acceleration and deceleration lanes. Both BLM and the private land owner have been assured by IDT that the portion of Highway 95 adjacent to both properties can easily accommodate the expected increases in use in a safe manner. Based on the above information, BLM concluded in its EA that "No significant individual or cumulative impacts are anticipated." (EA page 15)

(Answer at 12.)

Subsequently, on September 19, 1995, however, the city council did approve annexation. BLM's position is that because it had already reviewed the proposed plans for the private property and determined that no significant impacts would result, it is not required to amend its EA.

Thus, circumstances and the absence of a final plan of development for the private lands rendered it impractical for BLM, prior to approving its own proposal, to assess the full nature and scope of potential cumulative impacts of the private development. It appears that BLM gave adequate consideration to the development of the private lands and determined that there would be no significant cumulative impacts. We find no error.

Finally, the Hansons and RKO contend that any development of the planned recreation site must be preceded by preparation of an EIS because of significant impacts on the environment, particularly cumulative impacts in conjunction with the proposed private development. However, they present no objective evidence that there is likely to be any significant impact. Thus, we conclude that BLM was not required to prepare an EIS prior to approving the current action. See Oregon Natural Resources Council, 116 IBLA 355, 361! 63 (1990).

Overall, the record supports the conclusion that BLM took a "hard look" at all of the likely environmental consequences of proceeding with development of the proposed recreation site, considered all relevant matters of environmental concern based on the best available scientific information, and made a convincing case that, given the mitigation measures imposed by it, no impact will be significant, thus requiring preparation of an EIS. Therefore, we find no violation of NEPA. See Humane Society of the United States v. Hodel, 840 F.2d 45, 62 (D.C. Cir. 1988); Howard B. Keck, Jr., 124 IBLA 44, 50 (1992). Appellants have failed to carry their burden to provide objective proof of the inadequacy of BLM's environmental review. See Oregon Natural Resources Council, 116 IBLA at 360; Coy Brown, 115 IBLA 347, 357 (1990). That they would prefer that this area of the public land be put to a different use does not demonstrate a failure by BLM to comply with NEPA.

To the extent Appellants have raised additional issues in this case, 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 C.F.R. § 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur.

C. Randall Grant, Jr.
Administrative Judge