

INTERIOR BOARD OF LAND APPEALS

Southern Utah Wilderness Alliance

160 IBLA 225 (December 11, 2003)

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SOUTHERN UTAH WILDERNESS ALLIANCE

IBLA 2002-40

Decided December 11, 2003

Appeal from a decision of the Utah State Office, Bureau of Land Management, denying protest of certain parcels within a competitive oil and gas lease sale. UT-924.

Affirmed.

1. Appeals: Generally--Rules of Practice: Appeals: Standing to Appeal

Under 43 CFR 4.410(a), a party to a case who is adversely affected by a BLM decision has a right of appeal to the Board. A party challenging a BLM decision to go forward with a lease sale is not adversely affected by BLM's failure to notify nominees of oil and gas leases of its decision 7 days prior to the sale, when the Instruction Memorandum requires notice to the nominee at that juncture only if BLM decides to suspend leasing of the nominee's chosen parcel. A party opposing the lease sale does not have standing to champion the rights of a nominee for a lease, particularly when those rights were not implicated by BLM.

2. Federal Land Policy and Management Act of 1976: Wilderness Act--Oil and Gas Leases

The Board may not exercise supervisory authority over BLM to compel it to re-inventory land for wilderness characteristics for purposes of amending existing land use plans, prior to making a decision to go forward with a lease sale. The manner and time of implementation of the statutory mandate to keep a current inventory of the public lands and their resource values is committed to the

discretion of the Secretary by section 201(a) of FLPMA.
43 U.S.C. § 1711(a) (2000).

APPEARANCES: Stephen H.M. Bloch, Esq., Moab, Utah, for appellant; Emily Roosevelt, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

The Southern Utah Wilderness Alliance (SUWA) appeals from a September 17, 2001, decision of the State Director, Utah State Office, Bureau of Land Management (BLM), denying SUWA's protest of BLM's inclusion of certain parcels within a competitive oil and gas lease sale held on September 6, 2001. On appeal, SUWA challenges BLM's denial of the protest with respect to 12 parcels. (UT 012 through 015, UT 062, UT 065, UT 068, UT 069, UT 071, UT 072, UT 087, and UT 088.) By order dated November 30, 2001, this Board denied SUWA's request for a stay.

On July 6, 2001, BLM posted a Notice of Competitive Lease Sale to be held on September 6, 2001. See Sept. 17, 2001, State Director Decision (SUWA Ex. 4; BLM Ex. A). The Notice identified 68 parcels on BLM lands potentially available for leasing. Id. On August 7, 2001, SUWA submitted a document to BLM proposing that BLM establish the Lockhart Basin Wilderness Unit, pursuant to the BLM Manual Handbook, Wilderness Inventory and Study Procedures, H-6310-1, Jan. 10, 2001. (SUWA Ex. 15, H-6310-1, Jan. 10, 2001; SUWA Ex. 16, SUWA Supplemental and New Information Re: Utah Wilderness Coalition's Lockhart Basin Proposed Wilderness Unit (Lockhart Basin proposal).) On August 20, 2001, SUWA protested BLM's inclusion of 65 of the 68 parcels within the competitive lease sale. Both parties agree that BLM determined to go forward with the lease sale on August 31, 2001. (SUWA's Notice of Appeal, Statement of Reasons, Request for Stay (SOR) at 5; BLM Response to Petition for Stay at 2.) Also on that date, BLM issued a decision evaluating the Lockhart Basin proposal and concluding that prior BLM inventories remained valid. (SUWA Ex. 17.)^{1/}

On September 6, 2001, BLM conducted the sale of all 68 parcels. According to BLM, it received competitive bids for 46 of the 68 parcels. On September 17, 2001, BLM issued its decision denying SUWA's protest.

^{1/} The Sept. 17, 2001, decision refers to a "DNA [Determination of National Environmental Policy Act Adequacy (NEPA)] worksheet" dated Aug. 31, 2001. A DNA Addendum dated Aug. 29, 2001, is attached to BLM's Evaluation of the Lockhart Basin proposal. (SUWA Ex. 17.)

This appeal followed. SUWA challenges the denial of the protest with respect to 12 of the parcels among those for which bids were submitted on September 6, 2001.

SUWA's challenge to the lease sale with respect to these parcels was originally based on five alleged BLM procedural errors in implementing the sale. However, on December 7, 2001, SUWA submitted a letter to the Board dismissing its second, third and fourth arguments relating to procedural challenges under the National Historic Preservation Act, 16 U.S.C. § 470f (2000), the National Environmental Policy Act, 42 U.S.C. § 4332(2)(C) (2000), and the Endangered Species Act of 1973, 16 U.S.C. § 1536 (2000). Thus, this decision focuses only on SUWA's originally numbered first and fifth arguments.

In its first argument, SUWA asserts that BLM violated Instruction Memorandum (IM) 2000-051 (SUWA Ex. 3), by relying on amended DNAs prepared subsequent to August 31, 2001, to justify the sale. (SOR at 5.) In its fifth argument, SUWA argues that BLM was arbitrary and capricious in going forward with a lease sale for parcels UT 063 and UT 065, and possibly others of the 12 parcels, without making a favorable determination on SUWA's Lockhart Basin proposal.^{2/} (SOR at 20-25.)

[1] Turning to the first argument, SUWA asserts that BLM's consideration of certain issues in amended DNAs violates IM 2000-051. (SUWA Ex. 3.) According to SUWA, IM 2000-051 requires the State Director "to determine no later than 7 days prior (August 31st) what parcels would be sold at the September 6th sale and to notify the * * * nominees of any parcels that would not be offered." SUWA's complaint is that, because the State Director relied on DNAs submitted after August 31, the date 7 days prior to the lease sale, the decision on August 31 was clearly made without the requisite knowledge and violated the IM. SUWA states that the IM compelled BLM to "determine no later than 7 days prior (August 31st) what parcels would be sold" at the sale. (SOR at 4 (emphasis SUWA's).) Because the DNAs were signed after August 31, see SUWA Ex. 6 (Sept. 5, 2001, DNA), SUWA reasons that the State Director "did not and could not have known whether the sale would '[a]ffect' historic properties." (SOR at 5.)

SUWA reads far more into IM 2000-051 than we find in it. The IM states, for purposes relevant here: "If a parcel is suspended from being offered, the nominee will be notified no later than 7 days prior to the lease sale." (SUWA Ex. 3.) SUWA's reading is premised on the notion that BLM must issue a decision 7 days prior to the lease sale setting out what parcels would be sold. The import of the quoted sentence

^{2/} BLM considered that portion of the Lockhart Basin proposal relevant to the lease sale, and deferred consideration of the remainder of the proposal.

is to protect the nominee by giving it a week's notice that BLM has decided to suspend leasing of the nominated parcel. Moreover, to the extent SUWA perceives IM 2000-051 to require DNAs to be signed 7 days prior to the lease sale, we find no basis for such a conclusion within the IM.

SUWA has no standing to champion the right of nominees to receive notice of a suspension. Under 43 CFR 4.410(a), a party to a case who is adversely affected by a BLM decision has a right of appeal to the Board. SUWA is not harmed by the failure of BLM to notify a nominee within 7 days. Reinforcing this point, SUWA's entire case is against the leasing of twelve parcels. SUWA's criticism is that BLM did not suspend the leasing of those parcels. Thus, it is only SUWA's desired outcome which would have implicated the requirement of notice to the nominees.

To the extent SUWA reasons that because BLM signed a DNA on September 5, 2001, it follows that BLM "could not have known whether the sale would '[a]ffect' historic properties" (SOR at 5), we cannot sustain such logic. We can infer from this record that on August 31, the date by which BLM would have been compelled to notify nominees of a decision not to move forward with a lease sale with respect to a particular parcel, BLM had reached its conclusion with respect to the Lockhart Basin proposal, was in the process of concluding its DNAs, and was aware of the information it was considering. See also SUWA Ex. 17 (Aug. 29, 2001, DNA addendum). SUWA's presumption that BLM or the State Director was in the dark on August 31 regarding information it was considering is simply not logical nor does the record provide a basis for this Board to make such an inference.

[2] SUWA's second argument relates to its claim that, prior to leasing, BLM should have included the lands on which particular lease parcels were located as part of a wilderness unit. SUWA argues that BLM's Evaluation of the Lockhart Basin proposal (SUWA Ex. 17) is inadequate and violates the terms of the BLM Manual Handbook, H-6310-1 (SUWA Ex. 16).

The clear import of the Manual Handbook provision is to permit the public to submit proposals for wilderness classification, based on new information, for purposes of BLM's land use planning under section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1712 (2000).^{3/} Likewise, 43 CFR 1610.5-3(a) requires that all future resource management authorizations and actions conform to approved plans. "Conformity or conformance" is defined in BLM regulations at 43 CFR 1601.0-5(b) to mean that "a resource management action shall be specifically provided for in the plan, or if not specifically mentioned, shall be

^{3/} Section 201(a) of FLPMA, 43 U.S.C. § 1711(a) (2000), requires the Secretary of the Interior to maintain an inventory of all public lands and their resource values.

clearly consistent with the terms, conditions, and decisions of the approved plan or plan amendment."

The cited Manual Handbook provision permits interested persons to propose changes to management plans on the basis of their contentions that "existing land use plans do not adequately identify public lands that have wilderness characteristics." BLM Manual Handbook, H-6310-1.06.E. If, as a result of its review, BLM determines that the "conclusion reached in previous BLM inventories remains valid, it should notify the persons submitting that information * * *." Id. Conversely, if BLM concludes that the public lands in question may have wilderness characteristics, and if actions are proposed that could degrade the wilderness values * * the BLM should, as soon as practicable initiate a new land use plan or plan amendment to address the wilderness values." Id. The Manual Handbook goes on to specify that the information derived from the analysis of such a proposal "should be used in the land use planning process" and "in the environmental analysis to address impacts on wilderness and other multiple resource values if a[n] inventory area * * * is not designated as a [wilderness study area (WSA)]." Id. at H-6310-1.23.A.

Though not directly stated in these terms, to the extent SUWA alleges a violation of the terms of the Manual Handbook, SUWA necessarily argues that BLM should have determined to proceed with a change in the land use plan. However, the Board is not free to review a land use plan, and does not have authority to order BLM to change or conduct a wilderness inventory. With respect to FLPMA land use plans or resource management plans (RMPs), it has long been settled that:

Challenges to the classification of public lands in the land-use planning process culminating in the RMP are decided by the Director, BLM, whose decision is final for the Department. 43 CFR 1610.5-2(b). Hence, review of such planning determinations is outside the scope of this Board's jurisdiction. See Joe Trow, 119 IBLA 388, 393 (1991); Hutchings v. BLM, 116 IBLA [55,] 61 [(1990)]; 43 CFR 1610.5-2.

Jane Delorme, 158 IBLA 260, 263-64 n.6 (2003).

Similarly, in other cases in which SUWA has directly challenged BLM decisions to approve various land use actions, the Board has expressly rejected SUWA's request that we reverse BLM because it failed to undertake a wilderness reinventory or to amend a land use plan for wilderness designation. In Southern Utah Wilderness Alliance, 159 IBLA 220 (2003), the Board considered SUWA's challenge to BLM's approval of an application for permit to drill (APD). One of SUWA's arguments derived from the fact that BLM had announced its intention to prepare multiple RMP amendments for a possible WSA designation of up to 136 wilderness inventory units on public lands within Utah. 64 FR 13439 (Mar. 18, 1999). This acreage included a

reinventory unit which covered the lands on which the oil and gas lease in question was located. SUWA argued that BLM had to alter the relevant RMP before approving the APD. We held:

To the extent SUWA argues that the existence of the 1999 wilderness reinventory unit required BLM to alter existing land use authorizations under the RMP, this construction is inconsistent with the governing law and regulations, Board precedent construing it, and the Solicitor's memorandum.^[4/] In 2003, we rejected a similar argument by SUWA that BLM was required either to inventory lands for wilderness characteristics or treat re-inventoried lands as wilderness before undertaking a land use decision authorized by the current RMP. Southern Utah Wilderness Alliance, 158 IBLA [212,] 215, 216-17 [(2003)]. There the Board noted that section 201(a) of FLPMA, 43 U.S.C. § 1711(a) (2000), not NEPA, controls the Secretary's wilderness inventory authority, and that the Board has no supervisory authority over BLM to compel a reinventory.

159 IBLA at 244 (footnote omitted).

In Southern Utah Wilderness Alliance, 158 IBLA 212 (2003), SUWA contended that BLM erred in “failing to conduct a current inventory of the wilderness characteristics of the land involved prior to approval” of a mineral material sale contract. Id. at 213. As SUWA argues here, it argued there that BLM improperly relied upon wilderness inventories conducted under FLPMA in the late 1970s and 1980s. As here, SUWA argued there that the land is part of a large area with potential for wilderness designation which had been identified in bills pending before Congress. The Board rejected SUWA’s argument:

Appellants also argue that the EA violated NEPA in failing to consider any potential adverse impacts APD approval might have on the area's eligibility for designation as a wilderness area within the National Wilderness System. * * * [F]inal administrative decisions relating to the designation of land as WSA's in Utah were completed in the 1980s. Southern Utah Wilderness Alliance, 123 IBLA 13, 18 (1992); Southern Utah Wilderness Alliance, 122 IBLA 17, 21 n.4 (1992). The lands in question were not included in a WSA. Therefore, BLM may administer them for other purposes, including the approval of drilling for oil and

^{4/} The reference is to an Apr. 15, 1999, Solicitor Memorandum to the Utah State Director, BLM, stating: “[I]f current land management plans have designated lands open for mineral leasing, they remain open for leasing. Management prescriptions may be changed only through amendment of the land management plans * * *.”

gas. Id. Southern Utah Wilderness Alliance, 128 IBLA 52, 65-66 (1993) (footnote omitted); quoted in, Southern Utah Wilderness Alliance, 151 IBLA 338, 341-42 (2000); Southern Utah Wilderness Alliance, 150 IBLA 263, 266-67 (1999). * * * Thus, contrary to appellant's argument, we find that the issue of the adequacy of the BLM's Utah Statewide Wilderness EIS is not before us in this case.

158 IBLA at 215. The Board went on to expressly note that compelling a reinventory is outside the authority of the Board.

The manner and timing of implementation of the statutory mandate to keep a current inventory of the public lands and their resource values is committed to the discretion of the Secretary by section 201(a) of FLPMA. 43 U.S.C. § 1711(a). This authority has been delegated to BLM. This Board has no supervisory authority over BLM and, hence, we must deny appellant's request to order a re-inventory. See Coalition for High Rock/Black Rock Emigrant Trail National Conservation Area, 147 IBLA 92, 100 (1998). We thus find no basis in FLPMA for requiring BLM to conduct a new inventory of the wilderness potential of the land prior to this material sale. The adequacy of the EA to support the material sale decision is properly distinguished from an obligation to conduct a re-inventory.

158 IBLA at 216-17.

Similarly, in Southern Utah Wilderness Alliance, 122 IBLA 165 (1992), we rejected SUWA's challenge to a BLM decision to approve an oil and gas exploration project on grounds that, within the governing RMP, BLM failed to consider designation as wilderness as an alternative land use. SUWA "can only object to the manner in which the RMP has been implemented, and they have not established that the seismic survey violates the RMP." Id. at 171, citing Albert Yparraguirre, 105 IBLA 245, 248 (1988). The Board went on to state:

Multiple use is generally considered in the context of BLM's land-use planning. See 43 U.S.C. § 1712(a) and (c) (1988). In fact, alternate uses of the land were considered when adopting the [RMP] * * *. They need not be considered anew each time BLM decides to lease the land or grant leave to undertake an activity.

122 IBLA at 172-73.

Considering this precedent and the terms of the BLM Manual Handbook, SUWA's contention here that BLM was required to undertake land use plan

amendments in favor of the Lockhart Basin proposal before conducting the lease sale is a restatement of claims that we rejected in the precedent cited above. The Manual Handbook does not compel agreement with such proposals. SUWA asks us to reverse BLM's August 31, 2001, decision that prior inventories are satisfactory. As noted above, land use planning decisions are committed to the discretion of the Director of BLM, and we have no supervisory authority to compel BLM to conduct a reinventory or to treat the lands on which the parcels are located as wilderness. Southern Utah Wilderness Alliance, 159 IBLA at 244; Southern Utah Wilderness Alliance, 158 IBLA at 216-17. When the Board can do nothing to afford an appellant its desired outcome, we dismiss the appeal. Von L. and Marian Sorensen, 155 IBLA 207, 216 (2001). Thus, to the extent SUWA requests us to reverse BLM's decision not to "initiate a new land use plan or plan amendment," we do not further consider this issue.

Moreover, as we noted in those cases, e.g., Southern Utah Wilderness Alliance, 159 IBLA at 216-17, the challenge to a particular decision document is "properly distinguished from an obligation to conduct a re-inventory." Thus, to the extent SUWA argues that BLM acted in an arbitrary and capricious manner under the BLM Handbook Manual, we can only consider such an argument in a direct challenge to the September 17, 2001, decision to the extent it determined that "there is no need to consider withholding these parcels from the lease sale for wilderness reasons." (Sept. 17, 2001, decision at 8.) Such a challenge is impossible to discern from SUWA's pleading. In the fifth argument in the SOR, SUWA does not mention, quote from, or identify any particular decision it is challenging. The entire argument relates to BLM's refusal to accept SUWA's new information in the context of implementing the Manual Handbook. While failing to refer to the September 17, 2001, decision, SUWA's references are to the Moab Field Office which rendered the August 31, 2001, decision determining that amendments to the RMP were not necessary. (SUWA Ex. 17.)

To the extent we were to fashion from SUWA's pleading a legitimate challenge to the September 17, 2001, decision of the State Director, see SUWA Ex. 4, we would find that SUWA has not met its burden. SUWA's arguments are that (a) the Moab Field Office was arbitrary in its definition of roads, and that the alleged Moab Field Office definition conflicted with that in the BLM Manual Handbook (SOR at 24); and (b) BLM arbitrarily used Global Positioning System data from other parties which is "arbitrary and capricious by definition." As best we can follow the logic of this point, SUWA contends that the Manual Handbook distinguishes roads from "vehicle routes" which may be maintained "solely by the passage of vehicles." Because BLM considered vehicle routes in making a decision on the Lockhart Basin proposal, SUWA argues that BLM acted arbitrarily. (SOR at 24-25.)

SUWA fails entirely to substantiate its presumption that BLM improperly defined “roads.” BLM’s September 17, 2001, decision which SUWA is allegedly challenging here expressly states that BLM observed “seismic lines, vehicle routes” and “other bulldozed routes.” (SUWA Ex. 4, Sept. 17, 2001, decision at 7.) BLM determined that the land on which the parcels numbered in the UT 060s are located had so many such offroad vehicle “routes” that it does not fit the requirements of wilderness designation, due to “cumulative, widespread and visible impacts of past human activity.” *Id.* at 7-8. SUWA’s argument necessarily suggests that the BLM Manual Handbook prohibits BLM from considering such routes. This presumption is not supportable. It is true that the Manual Handbook addresses roadless areas. (SUWA Ex. 15, BLM Manual Handbook, H-6310-1.13.A.) But it also explicitly describes “naturalness” in terms of evident impacts from humans. *Id.* at 1.13.B.2. (“Determine if the area ‘. . . generally appears to have been affected primarily by the forces of nature with the imprint of man’s work substantially unnoticeable.’”) In that discussion, the Manual Handbook states: “The presence or absence of naturalness (i.e., do the works of humans appear to be substantially unnoticeable to the average visitor?) is the question the Wilderness Act directs the review to assess.” *Id.*

The arbitrary and capricious standard derives from the Administrative Procedure Act which provides that courts must set aside those actions of an agency found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A) (2000). This Board has held that a BLM decision may be regarded as arbitrary, capricious, or inequitable only where it is not supportable on any rational basis. *Judy K. Stewart*, 153 IBLA 245, 251 (2000). The burden is on the objecting party to show that a decision is improper. *MacKenzie v. BLM*, 140 IBLA 192, 197 (1997). SUWA has failed to support its assertion that BLM’s consideration of bulldozed routes or vehicle routes is “by definition arbitrary” or in any way impermissible. SUWA fails to meet its burden of proof.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Lisa Hemmer
Administrative Judge

I concur:

R.W. Mullen
Administrative Judge