

HIGH DESERT MULTIPLE-USE COALITION ET AL.

IBLA 91-435

Decided September 28, 1992

Appeals from a decision of the Bishop, California, Resource Area Manager, Bureau of Land Management, approving the High Desert Off-Highway Vehicle Project Management Plan. CA 931.6; 8300.

Affirmed in part; dismissed in part.

1. Environmental Quality: Environmental Statements--
Federal Land Policy and Management Act of 1976:
Land-Use Planning--National Environmental Policy Act of
1969: Finding of No Significant Impact

Activity planning implementing an off-highway vehicle project management plan, based upon an environmental assessment sufficient to support an informed judgment, may not be overcome by a mere difference of opinion.

APPEARANCES: Ron Schiller, Ridgecrest, California, for High Desert Multiple-Use Coalition; Steve Toomey, Bishop, California, pro se; Patrice Davison and Merwyn H. Hemp, Riverside, California, for California Association of 4WD Clubs, Inc.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

High Desert Multiple-Use Coalition (HDMUC), Steve Toomey, and the California Association of 4WD Clubs, Inc. (CA4WDC), have each filed appeals from a decision of the Bishop, California, Resource Area Manager, Bureau of Land Management (BLM), dated June 6, 1991, approving the High Desert Off-Highway Vehicle Project Management Plan (Plan). 1/ The Plan is the product

1/ We note that BLM's decision contains a paragraph granting the right of appeal to a person adversely affected and stating that such appeal must be received by July 17, 1991. The governing regulation provides that a notice of appeal must be filed within 30 days of the "date of service" of BLM's decision, that is, the date the person receives that decision. See 43 CFR 4.411. An exception is made only where a decision by BLM is published in the Federal Register and a person is not served with the decision (id.), which is not the case here. Thus, it was improper for BLM to establish a date certain for filing a notice of appeal. Instead, deadlines for filing notices of appeal should have been determined by reference to the dates that parties received BLM's decision.

No indication appears in the record when appellants received their copies of BLM's decision approving the Plan. Accordingly, it is impossible

of efforts by the Bishop Resource Area, BLM, Los Angeles Department of Water and Power, and the Forest Service, U.S. Department of Agriculture. Over 300,000 acres of land are within the Plan boundaries, much of it within the Inyo National Forest.

The purpose of the Plan is to provide guidance for managing off-highway vehicle (OHV) use in the High Desert. The Plan emphasizes semi-primitive motorized opportunities, long touring routes, dispersion of users in the area, and few, if any, developed facilities. Appendix A of the Plan identifies numerous routes within the Plan area and designates each either as open, closed, or limited to vehicle use. 2/

HDMUC appeals from BLM's decision because it contends that the Plan shows a "blatant preference toward off-highway vehicle (OHV) usage over casual recreational opportunities" (HDMUC Statement of Reasons (SOR) at 1). It charges that BLM's technical review team (TRT), an advisory body assisting the agency, "lacked representation of the majority of moderate semi-primitive recreation enthusiasts." HDMUC opposes the closure of various dead-end routes, arguing that there appears to be no justification for such actions. Such routes, HDMUC asserts, often provide opportunities for dispersed recreation (HDMUC SOR at 3). Appellant also objects to closure based upon cultural or wildlife considerations and regards as BLM's "most absurd proposal" the closure of roads due to hazards (HDMUC SOR at 5).

CA4WDC objects to changes that the agency made in the draft Plan without the concurrence of the TRT. The draft Plan (September 1990) was accepted by the TRT, CA4WDC states. Specifically, appellant objects to the Plan's statement of project issues, which reads at 1-6: "Maintain

fn. 1 (continued)

to determine whether the notices of appeal were timely filed. In view of the failure of the record to establish otherwise, we will regard the appeals as timely.

We also note that, on Mar. 10, 1992, appellant Steve Toomey filed with the Board a document withdrawing his appeal. Toomey's appeal is, accordingly, dismissed.

On Mar. 20, 1992, CA4WDC filed a conditional withdrawal of its appeal, stating that its withdrawal was dependent on BLM's acceptance of certain "Clarification Statements" evidently formulated through negotiation. Appellant has not provided any documentation or indicated whether those statements have in fact been approved. In view of its failure to make its position clear as to its desire to maintain its appeal, we shall consider it on its merits.

2/ Appendix A inartfully refers to the route designations as "recommendations" at page A-1. It is apparent from the record, however, that all parties attach greater significance to these designations, whose implementation will proceed as funds are available. Thus, the Plan states that "[a]ctions identified for implementation will be carried out on a priority basis" (Plan at 1-7). Activity planning that constitutes implementation is appealable to this Board. Wilderness Society, 90 IBLA 221, 225 (1986).

OHV access to all traditional areas while respecting the rights of private land owners." (Emphasis added.) The draft Plan did not use the word "traditional," appellant states, but read instead "Maintain OHV access to all areas * * *." (Emphasis added.) Appellant contends that no explanation appears for the narrower scope adopted by the Plan (SOR, July 22, 1991, at 3). CA4WDC also finds fault in the Plan statement that reads, "Actions identified for implementation will be carried out on a priority basis." (Emphasis added.) In the draft Plan, appellant states, the word "proposed" appeared instead of "identified." It was the draft's "built-in flexibility" that proved attractive to CA4WDC (SOR at 4). Moreover, those actions proposed for implementation were to be reviewed "by the agencies and the TRT," appellant states. It is clear that the role of the TRT has changed, making it "an outside party with limited ability to respond," rather than "an ongoing partner." Id. at 5.

In answer to HDMUC's statement that the Plan shows a bias toward OHV usage, BLM states that the Plan serves as an activity plan for implementing the land-use objectives of the Bishop Resource Management Plan (RMP). This RMP (in preparation) calls for motor vehicle use to be limited to designated roads and trails.

With respect to route closures, BLM states that many dead-end routes have, in fact, been left open to meet camping, hunting, hiking, and other recreational needs. Routes designated as closed were the product of input from the TRT and resource specialists. These designations are subject to change based on data gained by monitoring and periodic review by the TRT and public, BLM states.

Answering CA4WDC's arguments regarding changes in certain draft Plan language, BLM remarks that the use of the term "traditional" was requested by the Forest Service to clarify areas where historical or ongoing access has been occurring. No substantive impact on the OHV management direction results by the use of this term, the agency states.

Addressing CA4WDC's complaint that BLM had lost certain "built-in flexibility" by substituting in the Plan the word "identified" for "proposed," the agency replies that until the Appendix A designations are implemented on the ground, they are subject to review and revision. ^{3/} Through periodic review, BLM states, these designations are subject to change in collaboration with the TRT and interested public and based upon resource monitoring, new information, and agency program success.

The record contains an environmental assessment (EA) prepared by BLM to examine the impacts of its decision. The EA states that 1,500 miles of routes are dispersed within the Plan's 302,000 acres. This "route proliferation" created the need for the Plan (Record of Decision, May 31, 1991, at 1). In the EA, BLM examined the impacts of its action on native plant

^{3/} At least some of those designations appear to have been slated for immediate implementation, however. See n.2, supra.

and wildlife communities, soil groupings, air and water quality, riparian habitats, cultural resources, and wilderness lands. The EA acknowledges, as HDMUC maintains, that OHV use is just one of many types of dispersed recreational activities within the Plan boundaries (EA at 2-10).

[1] BLM has the authority, pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C § 1701 et seq. (1988), and other acts and Executive Orders, to regulate the use and operation of ORVs on the public lands. See 43 CFR Part 8340 (Off-road Vehicles). In cases in which we have reviewed BLM decisions relating to its authority to authorize ORV use through the permitting process, this Board has noted that absent compelling reasons for modification or reversal, a BLM determination will be affirmed if the decision is supported by the record. Stan Rachesky, 124 IBLA 67 (1992); American Motorcycle Association, District 37, 119 IBLA 196, 199 (1991) and case cited therein. We see no reason to deviate from such a standard in reviewing the decision appealed from in this case.

Appellants' arguments are more in the nature of comments. Rather than pointing out error in BLM's action, appellants question BLM's priorities. Rather than identify a regulation or statute that BLM is said to have violated, appellants express disagreement with BLM's emphasis on OHV use or express their preference for greater flexibility in decisionmaking. The EA makes clear that BLM was required to weigh numerous considerations in arriving at its Appendix A designations. A difference of opinion is insufficient to overcome a BLM determination for which there is abundant support in the record. See Curtin Mitchell, 82 IBLA 275 (1984). No error is demonstrated by the fact that the Plan departs from the TRT-approved draft.

Oregon Shores Conservation Coalition, 83 IBLA 1, 8 (1984), offers support for the action we take here. In that case, appellant objected to BLM's limitation of hang gliding to certain "historically-used sites" at Yaquina Head Outstanding Natural Area. Therein, the Board held: "Management of an area to provide for consideration of various interests necessarily involves a balancing and weighing process. * * * A determination regarding user-group regulation which reflects a careful, conscientious, thorough consideration of all interests will not be disturbed on the basis of an expressed difference of opinion by one user."

The record reveals that the Plan at issue was 3 years in preparation. Three agencies contributed to its preparation, and considerable public participation is evident from the record. An environmental assessment of 29 pages accompanies the Plan. Appellants' differences of opinion are insufficient to demonstrate error in the record so assembled. 4/

4/ We note that the record contains three requests for intervention that merit mention. One request, filed by the State of California, Department of Parks and Recreation, was addressed to the Bishop Area Manager, BLM. Any request for intervention in an appeal must be filed with this Board, not BLM. Another request, filed by Keith Collins, president of the Ridgecrest Motorcycle Club, offered no basis for a grant of intervention.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Bishop Resource Area Manager is affirmed, and the appeal of Steve Toomey is dismissed.

David L. Hughes
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge

fn. 4 (continued)

The grounds for seeking intervention are set forth in United States v. United States Pumice Co., 37 IBLA 153 (1978); United States v. Pittsburgh Pacific Co., 30 IBLA 388, 84 I.D. 282 (1977), aff'd, South Dakota v. Andrus, 462 F. Supp. 905 (D. S.D. 1978); and United States v. Kosanke Sand Corp., 12 IBLA 282, 80 I.D. 538 (1973) (rev'g 3 IBLA 190, 78 I.D. 285 (1971)), and any request should set forth supporting reasons. The third and final request, a joint request filed by Donald W. Sada and James Wilson, two members of the TRT, endorses certain Plan policies and qualifies Sada and Wilson for amicus status. Their comments have accordingly been considered.