

SOUTHERN UTAH WILDERNESS ALLIANCE ET AL.

IBLA 93-384, 93-385, 93-386

Decided March 11, 1994

Appeals from a decision of the Acting San Juan, Utah, Resource Area Manager, Bureau of Land Management, implementing the Grand Gulch Plateau Cultural and Recreation Area Management Plan based on environmental assessment UT-069-93-01.

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 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: Scott Groene, Esq., Moab, Utah, for the Southern Utah Wilderness Alliance; Owen Severance, Monticello, Utah, pro se; Ken Sleight, Pack Creek Ranch, Moab, Utah, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

The Southern Utah Wilderness Alliance (SUWA), Owen Severance, and Ken Sleight, d.b.a. Pack Creek Ranch, have filed separate appeals from a March 30, 1993, decision of the Acting Area Manager, San Juan, Utah, Resource Area, Bureau of Land Management (BLM), implementing the Grand Gulch Plateau Cultural and Recreation Area Management Plan based on environmental assessment (EA) UT-069-93-01. On June 24, 1993, the appeals were consolidated and the BLM decision was stayed pending issuance of this decision. We now cancel the stay and affirm the March 1993 decision.

The Grand Gulch Plateau Cultural and Recreation Management Area (CRMA) lies within San Juan County in southeastern Utah. It includes the Grand

Gulch Plateau Special Recreation Management Area, which includes seven wilderness study areas (WSA's) and one Instant Study Area (ISA) and has special value for primitive and semiprimitive nonmotorized recreation;

the Cedar Mesa Area of Critical Environmental Concern (ACEC), containing significant cultural resources; and portions of the Scenic Highway Corridor ACEC, which displays high scenic quality values. Each of these areas was

so designated in the March 1991 Resource Management Plan (RMP) for the San Juan Resource Area that also established specific management objectives for the areas and directed that management plans implementing these objectives be prepared.

To comply with the RMP's directives, BLM began planning for the Grand Gulch Plateau CRMA by preparing a preliminary draft recreation and cultural resource activity plan and holding a public meeting in Blanding, Utah, in April 1992 to receive public comments on the plan. After reviewing comments made by participants at the meeting, BLM circulated for comment a draft plan, EA, and finding of no significant impact (FONSI) in November 1992. BLM addressed the comments received on the draft plan and EA in the final EA for the plan, and modified both the EA and the plan to incorporate some of the comments. BLM issued the revised plan and EA, including the Acting Resource Area Manager's March 30, 1993, decision to implement the plan, on April 14, 1993. The April 14, 1993, revision defines the plan's purpose and scope:

This plan is to provide the management direction for the Grand Gulch Plateau CRMA and the Cedar Mesa ACEC over a ten year period. The plan focuses on the management of recreational values and cultural resources. This plan will define visitor and resource management objectives consistent with the San Juan RMP and will describe the actions needed to meet these objectives.

(Plan at 4). It is explained that management of livestock grazing does not fall within the scope of the plan, but will be addressed instead during preparation of allotment management plans (Plan at 10, 15).

The plan acknowledges that different and overlapping designations of portions of the management area require differing management priorities, and it identifies five major recreation and cultural resource management issues developed through the scoping process. Id. at 15-16. Using management objectives found in the San Juan RMP, the plan lists objectives for the planning area, and establishes that the cultural resource management objective is to reduce as far as possible the loss of important and nonrenewable resources by assigning all known and anticipated cultural resources to one of six defined use categories and preventing the loss of the qualities of the cultural resources that caused them to be assigned to the specific use category. Id. at 17-18. The plan's recreation management objectives provide for managing intensive recreation use or special recreation values, dispersing recreation use throughout the resource area with permits required for commercial use, requiring permits for private use in special areas where needed to protect resource values, administering the Grand Gulch Plateau to preserve primitive and protect semiprimitive nonmotorized Recreation Opportunity Spectrum (ROS) class areas, and developing

or improving five specified recreation sites. Id. at 18-19. The plan also outlines special management conditions described by the RMP that limit management options in the Cedar Mesa and the Scenic Highway Corridor ACEC's, primitive and semiprimitive nonmotorized ROS class areas, developed recreation sites, and floodplain and riparian/aquatic areas. Id. at 20-23.

Chapter III of the plan describes the management program designed to implement the RMP's objectives for the Grand Gulch Plateau CRMA and discusses both planning area-wide management actions and specific management unit programs. Planning area-wide management actions include continuing consultation with Native American groups, assignment of known cultural resources to use categories, establishment of priorities for further archaeological survey and inventory, and designation of the order in which deteriorating ruins will be stabilized. Id. at 27-31. The plan summarizes a permit, reservation, and use allocation system to be used throughout the planning area to control recreation impacts and to gather information on use patterns. This program requires private, noncommercial recreation users to obtain special recreation permits under certain circumstances; requires permits and reservations for overnight noncommercial use in Grand Gulch and Fish and Owl Canyons during specified high use seasons; requires permits for all commercial recreation use, and limits overnight commercial use to 20 percent of total recreation use in Grand Gulch and its tributaries and Fish and Owl Canyons during heavy use seasons; restricts saddle and pack stock use to reduce conflicts between stock users and other user groups and to limit the number of private and commercial parties starting each day from trailhead entrance points for Grand Gulch and Fish and Owl Canyons from March through October; and controls the direction of travel in Grand Gulch between Kane Gulch and Bullet Canyon in order to disperse use and insure a primitive recreation experience. Id. at 32-36.

In the EA prepared for the plan, BLM identified Chapter III of the plan as the proposed action and defined its scope so as to cover general impacts of both area-wide and unit-specific management actions, while acknowledging that additional project plans and EA's would be required for site-specific developments and other management actions that were as yet undetermined. The EA explained that analysis was confined to the effects of the management program and the no action alternative, although other alternatives had been considered and rejected for various reasons. After discussing the affected environment, including vegetation, riparian and aquatic habitat, wildlife, water resources, cultural resources and Native American concerns, wilderness values, visual resources, and recreation, BLM evaluated the effects the management plan would have on those resources. It was initially determined that the proposal would not affect floodplains and wetlands, archaeological resources, prime and unique farmland, wild and scenic rivers, hazardous or solid wastes, livestock management, woodland products harvest, and mineral leasing and disposal.

The EA evaluated potential impacts to vegetation from the program, including negative impacts from recreation use and site development, and considered positive effects of use restrictions, reductions in dispersed camping, and improvement of parking areas. The EA concluded that the program would reduce impacts to riparian and aquatic habitat by limiting

use, prohibiting campfires in the canyons, designating campsites away from riparian and aquatic habitat, controlling stock use, and educating visitors about such habitat and the use of minimum impact practices. The

EA addressed effects the proposed management program would have on cultural resources and Native American concerns, and concluded that the plan would have a positive effect on cultural resources by limiting use, promoting minimum impact practices, and increasing visitor education on the promotion of cultural resources while also boosting attention to Native American concerns through specific consultation requirements.

The EA found that implementation of the plan would give greater management control of recreation, resulting in decreased recreation impacts and attainment of ROS objectives for the area. Use limits, minimum impacts practices, pet restrictions, maximum group size reductions, and campsite designations for large groups and groups travelling with saddle/pack stock, the EA found, would enable primitive and semiprimitive nonmotorized ROS class goals to be met and would reduce user conflicts. The EA recognized that use allocations and restrictions in some areas would increase the public's commercial recreation opportunities in Grand Gulch while slightly reducing such opportunities in Fish and Owl Canyons and would also decrease opportunities to obtain permits for those areas. Such restrictions, the EA noted, would direct additional recreational use to other areas within and outside the CRMA, causing those areas to fail to meet appropriate ROS objectives, and could shift some recreation use in the restricted areas to the off season. While restrictions on saddle and pack stock use in some areas would displace those users, the EA determined that, even with the restrictions, stock use above present levels could be accommodated if users were flexible in locating and scheduling their trips, and that recreational stock use would increase in some currently little-used areas.

The EA concluded that provision of kiosks, signs, and brochures, and improvement of facilities at the Kane Gulch Administrative Area would provide a framework for increasing public knowledge and appreciation of recreation opportunities, resource values, safety, and minimum impact practices and would enhance the recreation experience while raising public involvement in resource protection. Increased day-use opportunities and interpretation along heavily traveled roads would meet ROS standards for natural class areas, the EA found, while directing day hikers to areas without heavy overnight use would reduce group encounters and help meet ROS goals for primitive and semiprimitive nonmotorized areas. It was also decided that development of facilities and trails accessible to disabled persons would enhance recreation for this user group.

The EA addressed mitigation measures to reduce potential impacts and evaluated residual impacts of the proposed management plan after mitigation measures had been implemented. In analyzing the cumulative impacts of the project, the EA outlined major past and present human uses of the Grand Gulch Plateau such as grazing of domestic livestock, mineral exploration activities, firewood cutting, and construction and use of transportation corridors and communication sites. The EA explained that, when added to existing impacts to vegetation caused by surface disturbances associated

with livestock grazing, mineral exploration, road construction and maintenance, communication site development, and recreation facility development and use, the proposed action would diminish vegetation on less than

50 acres. According to the EA, recreation related impacts to riparian and aquatic habitat, wildlife, surface water quality, and cultural resources would be decreased by implementing the proposed action, and understanding of cultural resources throughout the CRMA would be enhanced through additional inventory and research. The proposed action would be consistent with the interim management policy and guidelines for lands under wilderness review and would not impair the wilderness values of the WSA's within the CRMA,

the EA found. Although the proposed action would impact visual resources by disturbing vegetation and adding structures, the EA determined that the management program would help achieve management objectives for ROS primitive and semiprimitive nonmotorized class areas. The EA concluded that, when considered in conjunction with the existing impacts in the area, the proposed action would not result in appreciable negative effects on the affected resources.

In his March 30, 1993, decision, the acting San Juan Resource Area Manager determined that the plan, as modified to incorporate various changes resulting from review of the public comments evaluated in Appendix C of the EA, conformed to the San Juan RMP and corresponded to objectives described in the EA. He concluded that all environmental considerations had been adequately addressed in the EA and that the stipulations attached to and incorporated in his decision mitigated any adverse impacts which might result from implementation of the plan. He therefore decided to implement the revised plan.

On appeal, SUWA argues that the EA prepared by BLM does not meet the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(C) and (E) (1988), and 40 CFR Part 1508, and that BLM's approval of the management program does not comply with Federal law. SUWA maintains that BLM's refusal to address domestic livestock grazing, and BLM's decision to delay consideration of grazing management violate NEPA's mandate that all relevant environmental concerns be identified, that appropriate alternatives be considered, and that related actions be evaluated concurrently and not improperly segmented. SUWA contends that approval of various construction activities described in the plan violates NEPA because such approval was given without considering either site-specific environmental consequences of those activities or the cumulative impact of those projects and other specifically approved activities such as trail maintenance and road improvements. SUWA also asserts that BLM's decision approving various construction, maintenance, and improvement activities that will increase access to the area and attract additional recreational use is arbitrary and capricious and unsupported by the record because it conflicts with the management plan's recognition that excessive recreational use causes damage to the area and the stated goal of reducing that harm by limiting such use.

Severance challenges BLM's FONSI, arguing that the management program will result in significant impacts to the planning area and that BLM must,

therefore, prepare an environmental impact statement (EIS) before proceeding with any of the proposed management actions. He contends that many of the activities identified in the plan, including designating camping areas, expanding the Comb Wash campground and the facilities at the Kane Gulch Administrative Area, and relocating parking and camping areas at several trailheads, will cause indirect impacts to cultural resources, and that BLM's failure to propose any cultural resource inventory of, or mitigation measures for, cultural resources in areas adjacent to the proposed developments violates cultural resource protection laws and regulations. Severance asserts that the management plan's approval of development and improvement projects without providing site-specific environmental analyses for each of those projects improperly segments the plan, overlooks alternatives for the projects, and ignores potentially significant cumulative impacts resulting from the proposed activities.

According to Severance, changes in the commercial use of Grand Gulch create a major alteration in the existing system with possibly significant impacts to the planning area without identifying alternatives or adequately analyzing the new system's effects. Severance also objects to the EA's conclusion that the proposed action would decrease recreation related impacts to riparian and aquatic habitat, wildlife, and cultural resources, insisting instead that impacts to those resources would actually increase as a result of the plan. He further maintains that BLM's decisions concerning trailhead assignments, recreation permits and reservations, campfires, and saddle and pack stock use restrictions are arbitrary and capricious because the stated reasons for those decisions are inadequate and no reasonable alternatives to them were identified or analyzed. Since many of the decisions in the management plan are arbitrary and capricious, lack adequate documentation, rationale, and analysis, and will result in significant impacts to the planning area and its users, Severance concludes that BLM must prepare an EIS containing a range of alternatives and provide the opportunity for public comment before the plan is approved.

Severance appeals other aspects of the plan. He faults the plan's failure to include all the information that section 8131 of the BLM Manual requires in a cultural resource management plan, its omission of discussion of a need to salvage archaeological sites eroding from stream banks, its lack of criteria to establish an appropriate number of commercial users for the area, its failure to analyze each public comment and explain why that comment was or was not incorporated into the plan, its incomplete list of areas currently used for commercial multiday saddle and pack stock trips, its failure to conform to the discussion in Appendix C of the EA concerning elimination of signs from the ISA and WSA's, its silence on how designated camping areas will be determined, its lack of criteria for use in the Limits of Acceptable Change monitoring process and for determining when recreation impacts in the other Cedar Mesa canyons will require limiting recreation use and when Valley of the Gods will be closed to camping, and its absence of site-specific environmental analyses for various individual projects. All these deficiencies, he insists, must be cured before the plan can be approved.

Severance also objects to certain statements in the EA. He asserts that the EA grossly understates the number of site-specific EA's required by NEPA prior to implementation of the plan and repeats that these developments and their cumulative impacts must be addressed in an EIS. He disputes the EA's declaration that floodplains, wetlands, and riparian and aquatic habitat will not be affected by the proposed action, asserting that the Comb Wash campground expansion project is situated on a floodplain and that the plan locates an undeveloped campground and a trail on a floodplain. He reiterates that neither the plan nor the EA addresses a need to salvage eroding archaeological sites, and suggests that moving parking areas to undisclosed locations outside WSA's will not enhance wilderness values unless existing parking areas are rehabilitated. Severance further contests a discussion of the benefits of restricting saddle and pack stock use, repeating that no documentation supports the decision not to allow stock to continue to use areas that they are presently using. Severance requests that a new management program be developed to address all issues he has identified and that an EIS analyzing all significant impacts of the plan and providing a range of alternatives be prepared to allow the public a meaningful opportunity to discuss the management plans for the area.

In his appeal, Sleight challenges BLM's FONSI as unsubstantiated and asserts that, to the contrary, the management program and development projects may have devastating impacts on the region, so that preparation of an EIS is required. He contends that the EA and plan fail to offer the requisite alternatives, ignore public comments and recommendations, and provide no explanation for many of the decisions contained in the documents. As a commercial operator in the Grand Gulch Plateau, Sleight objects to a lack of justification for restrictions on saddle and pack stock use, arguing that many of these prohibitions conflict with authorizations in his current permit. He argues that limits on group size and prohibition of campfires would impair his business and suggests that further study and consultation with commercial operators in the area be undertaken prior to the imposition of such severe limitations. Sleight also questions the fairness of allowing noncommercial groups to use area resources without payment of use fees required from commercial outfitters and recommends that BLM clarify the definition of commercial use.

Sleight claims that the management plan contains inadequate information regarding cultural resources and fails to satisfy the cultural resource management provisions of the BLM Manual. He maintains that an immediate inventory of all endangered archaeological sites must be conducted in order to protect those sites from further damage. Sleight criticizes the plan's cursory treatment of Native American traditional cultural properties and urges that all Native American groups should participate in necessary studies and an EIS. He urges that Federal cultural preservation laws require studies that have not been made. He argues that the proposed actions might directly or indirectly affect many archaeological and traditional use sites in the CRMA and avers that an EIS is needed to adequately consider the broad spectrum and consequences of the management program.

Sleight submits that livestock grazing impacts should have been addressed in the EA. He also suggests that additional studies need to be

done to evaluate consequences of erosion. The EA's treatment of wildlife, Sleight contends, should be supplemented by additional study of wildlife on the plateau and conflicts and cumulative impacts among recreation, wildlife, and livestock grazing in the CRMA. According to Sleight, further studies must address water and waterways in the area, with no development activities occurring in those areas and areas of concentrated cultural resource sites; the location of critical habitat and rules designed to protect that habitat; natural and imported vegetation types; and the effect of the plan on natural scenic values. Sleight complains that although he raised all these issues in his comments on the proposed plan and EA, BLM never adequately responded to his concerns, nor has it justified a refusal to grant his request to extend the public comment period for the EA beyond 30 days.

Sleight avers that implementation of the major development projects planned for the CRMA would have vast negative and destructive consequences. He opposes expansion of the Kane Gulch ranger station, claiming that the station is situated on a rich concentration of archaeological sites which the planned construction would destroy. He urges that alternative locations for employee housing be considered and that the impact of additional housing on San Juan County be evaluated. Sleight insists that no campgrounds be developed and that any campsites be located away from concentrated archaeological sites. Because development activities disturb natural resources and processes, Sleight argues that further studies must be accomplished before those activities occur. He repeats proposals made during public meetings on the proposed plan that carrying capacities for components of the plateau be studied and that increased ranger staff be hired to protect the resources of the area, and asserts that BLM did not treat these comments fully in the EA. He contends that an extensive monitoring program must be used to evaluate critical resources and the changes to the area's ecosystem caused by natural forces and by human-use related activities. The EA and management plan are so deficient, according to Sleight, that they should be discarded and the entire process begun anew, commencing with preparation of an EIS that analyzes all relevant alternatives for protecting threatened critical resources in the CRMA, including the use of buffer zones surrounding wilderness and natural areas.

[1] BLM is responsible for administration of the public lands and must be allowed enough discretion to discharge that duty effectively. William R. Franklin, 121 IBLA 37, 40 (1991). A BLM decision implementing an RMP that is based on a consideration of all relevant factors and is supported by a record that includes an EA will be affirmed on appeal, absent a showing of clear reasons for modification or reversal. Lands of Sierra, Inc., 125 IBLA 15, 20 (1992). A statement of a 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 FONSI provide an adequate basis for a BLM management decision if the record establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination that no significant effects will occur is reasonable in light of the environmental analysis. A party challenging the determination must show that it was premised on an error of

law or fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. See, e.g., Southern Utah Wilderness Alliance, 122 IBLA 334, 338 (1992), and cases cited therein. Differences of opinion, unsupported by objective proof, are insufficient to overcome a BLM determination 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 plan implementing the San Juan RMP was based on a consideration of all relevant factors and is supported by the record.

All three appellants object to BLM's failure to consider the impacts of livestock grazing. We find no error in the decision to limit the scope of this plan to recreational and cultural resource management. In so doing, BLM followed the directive of the San Juan RMP that the area be administered jointly under cultural resource management and recreation/visual management programs (San Juan RMP at 87). The plan states that it deals only with recreation and cultural resource management and that issues related to livestock grazing management will be addressed when allotment management plans are made (Plan at 4, 14-15). Appellants have not established that consideration of livestock grazing impacts during the allotment management planning process will be inadequate or that failure to consider those impacts in the plan and EA results in an improper segmentation of a single project or an inappropriate narrowing of alternatives for achieving the recreation and cultural resource objectives of the plan.

Appellants also complain that the plan's identification and approval of various construction and improvement activities without detailed site-specific analyses of those projects violate NEPA. As explained by BLM,

the management program consists of three stages: an RMP, activity plans, and site-specific projects. The San Juan RMP lists the Kane Gulch Ranger Station and the Comb Wash campsite as recreation sites designated for development or improvement (San Juan RMP at 79). The plan further expands on the development plans for those sites and others, and the EA discusses the general effects these projects will have on the resources of the CRMA. BLM acknowledges that it must develop detailed plans for each of its construction and improvement projects and perform the required NEPA analysis before those projects can begin. Given the futility of requiring site-specific environmental analysis prior to the formulation of precise plans, and BLM's recognition that it must conduct that analysis before construction activities commence, we conclude that appellants have failed to demonstrate error in the approval of those actions by the plan. See Howard B. Keck, Jr., 124 IBLA 44, 49-51 (1992) (proposal for exchange of Federal for private lands was required, for NEPA purposes, to be evaluated in light of currently extant development plans).

SUWA also contends that BLM's decision is arbitrary and capricious because it will increase recreation use in the CRMA and thereby negate protective management objectives for the area. BLM acknowledges that one of the effects of its plan will be to shift recreation use from areas where there is overuse to lesser used areas, and has assessed the effects of this change in use pattern. Additional recreation use of the area is expected to occur regardless whether BLM's plan is implemented, and SUWA has offered

no evidence to support the claim that the plan's overall effect will be to increase, rather than decrease, the effects of unregulated recreational use. SUWA's unsupported difference of opinion with BLM over the consequences of the plan does not warrant overturning BLM's carefully considered decision.

Both Severance and Sleight challenge the FONSI, asserting that the plan will have a significant impact on resources so that an EIS must be prepared. Although they individually and collectively assume that floodplains, aquatic and riparian habitat, wilderness and scenic values, and cultural resources will be adversely affected by the plan, they fail to present any substantiating facts to support their claims. Their statements of potential harm do not explain how these resources will be impaired given the protective mitigation measures outlined in the EA, incorporated into the plan, and adopted in the decision approving the plan, nor do they specifically identify flaws in BLM's analysis of the plan's impacts on affected resources. Their bald assertions that BLM's environmental analysis is inadequate are insufficient to undermine that analysis. See, e.g., Coy Brown, 115 IBLA 347, 357 (1990), and cases cited. We find that the EA supports the decision to approve the plan.

Severance and Sleight disagree with BLM's handling of cultural resource inventory and protection concerns, insisting that BLM must conduct further studies, engage in additional consultation with Native American groups, and develop plans for salvaging eroding archaeological sites in order to comply with cultural resource protection laws, regulations, and BLM Manual provisions. The plan establishes a framework for identifying and protecting cultural resources, including regularly scheduled consultations with Native American groups, ongoing assignment of known cultural resources to designated use categories in accordance with the BLM Manual and the San Juan RMP, additional archaeological surveys ranked according to where such resources are likely to occur, and continuing ruins stabilization. An expressed desire for more planning activity does not establish that the actions taken and planned by BLM are insufficient to fulfill the cultural resource objectives established by the RMP, or that these actions fail to comply with the statutory or regulatory cultural resource protection requirements applicable to the CRMA. We find that BLM adequately addressed the cultural resource aspects of the management plan and that site-specific effects of proposed development projects will be further addressed in future site-specific EA's.

Objections raised to BLM's recreation permit and reservation system and limitations on stock use, campfires, group size, and trailhead assignments seek to substitute a judgment by appellants for that of BLM and fall short of demonstrating that BLM's judgment is unreasonable and should be overturned. Similarly, complaints that BLM failed to address each public comment received during preparation of the plan and did not adequately explain a refusal to adopt all of the offered recommendations do not establish error in the decisionmaking. Although appellants contend that BLM's decision contains insufficient explanation for each aspect of the management plan, we find that the record taken as a whole contains adequate support for

the decisions made in the plan and that unsupported differences of opinion with BLM's management determinations are insufficient to overcome them.

To the extent not specifically addressed herein, any other arguments made by appellants have been considered and rejected.

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.

Franklin D. Arness
Administrative Judge

I concur:

David L. Hughes
Administrative Judge