

Appeal from a decision of the Butte District Manager, Montana, Bureau of Land Management, rejecting protest against environmental assessment. EA MT-076-90-013.

Affirmed.

1. Environmental Policy Act—Environmental Quality: Environmental Statements—  
National Environmental Policy Act of 1969: Environmental Statements

A determination that a proposed action will not have a significant impact on the environment will be affirmed on appeal where the record establishes that environmental problems have been considered, relevant areas of environmental concern have been identified, and the determination is reasonable.

APPEARANCES: Bill Armstrong, pro se.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Bill Armstrong has appealed a March 5, 1991, decision by the Butte District Manager, Montana, Bureau of Land Management (BLM), rejecting appellant's protest to the establishment of the Big Sheep Creek/Medicine Lodge Back Country Byway and Watchable Wildlife Area.

In April 1990, BLM issued the Big Sheep Creek/Medicine Lodge Back Country Byway Environmental Assessment (EA), EA MT-076-90-013 for a project called "Big Sheep/Medicine Lodge Back Country Byway/Watchable Wildlife Plan of Operation." The EA concerned BLM's proposed designation of the 50.5-mile Big Sheep Creek/Medicine Lodge Road (Beaverhead County, Montana) as a back country byway and portions of that road as a watchable wildlife area. The project includes signing of the route, distribution of a self-guided interpretive pamphlet, and construction of four interpretive sites. In May and June of 1990, the EA was reviewed and approved by BLM land use and environmental specialists.

On June 28, 1990, the Dillon Resource Area Manager reviewed the EA, issued a finding of no significant environmental impact, and decided to proceed with the plan as proposed with various amendments relating to

mitigation measures. While this decision issued at the end of June, public notification apparently did not occur until August 1 and 3 when details of the plan were published in local newspapers. Appellant con-tacted the District office on August 10, and met with representatives of BLM on August 17. On September 4, Armstrong requested that BLM withdraw the decision pending preparation of an amended EA and, on September 25, he filed a document, styled an "appeal," reiterating his view that the EA was inadequate. BLM determined to treat this appeal as a "protest" and thereafter, following supplementation by appellant of his objections to the EA, the Butte District Manager issued a detailed decision denying his protest on March 7, 1991.

In his decision, the District Manager addressed 22 issues raised by appellant. He found that the EA met the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4321 (1988), and adequately analyzed potential impacts. He concluded that the area had been properly designated as a back country byway.

[1] This Board has held numerous times that a determination that approval of a proposed action will not have a significant impact on the quality of the human environment will be affirmed on appeal 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 impacts will occur is reasonable in light of the environmental analysis. See, e.g., Southern Utah Wildemess Alliance, 122 IBLA 334, 338 (1992); G. Jon & Katherine M. Roush, 112 IBLA 293, 297 (1990); Hoosier Environmental Council, 109 IBLA 160, 172-73 (1989); Glacier-Two Medicine Alliance, 88 IBLA 133, 141 (1985); Utah Wildemess Association, 80 IBLA 64, 78, 91 I.D. 165, 174 (1984). A party challenging the determination must show that it was premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Hoosier Environmental Council, supra at 173; United States v. Husman, 81 IBLA 271, 273-74 (1984). The ultimate burden of proof is on the challenging party. G. Jon & Katherine M. Roush, supra at 298; In re Blackeye Timber Sale, 98 IBLA 108, 110 (1987). Mere differences of opinion provide no basis for reversal. Id.; Glacier-Two Medicine Alliance, supra at 144. See Cady v. Morton, 527 F.2d 786, 796 (9th Cir. 1975).

In his statement of reasons appellant largely reiterates the questions submitted in his protest. Those questions were fully and comprehensively addressed in the District Manager's decision. Many of the concerns raised by appellant involve items he feels should have been included in the EA. Having reviewed the decision, the decision record, and appellant's statement of reasons, we conclude that the EA is adequate and that the decision denying the protest should be affirmed. Some additional comments are warranted, however, on several items in the statement of reasons.

The requirements of an EA are covered in 40 CFR 1508.9. Among other things, an EA must provide "sufficient evidence and analysis" for determining whether an environmental impact statement (EIS) should be prepared

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or to support a finding of no significant impact. An EA must also "aid an Agency's compliance with NEPA when no EIS is necessary." It must include a brief discussion of the need for the proposal and alternatives and of the impacts of the proposal and alternatives.

It is apparent that the regulation does not dictate the precise contents of an EA. Rather, it speaks generally to the purposes that must be served by the data assembled in an EA. So long as those purposes are served, the degree of specificity in an EA's table of contents is of secondary importance. As we have already noted, we conclude that the EA is adequate and meets regulatory requirements.

Appellant objects that the EA failed to disclose the criteria used in selecting suitable travelways for possible designation as back country byways. As is conceded in the decision, the EA does not specifically list these criteria. However, the decision does set out five criteria used by BLM managers in determining the suitability of the designation. These include, among others, scenic value, cultural features, legal public access, safety considerations, and consistency with BLM, state, and local land-use plans.

Appellant raises the concern of safety in relation to increased use of the byway by the public. The decision states that a safety plan has been prepared and approved. Among the safety features listed are warning signs to advise travellers of road conditions, speed limit signs, and safety messages at each of the interpretive kiosks and in the brochure. Appellant disagrees that these measures are sufficient to protect a public "unaccustomed to rural driving."

While appellant's evaluation of safety features may differ from BLM's, that difference of opinion is insufficient to demonstrate that BLM's evaluation is ill-conceived or erroneous. Moreover, BLM's safety plan appears to be based on consideration of relevant factors. The decision record indicates that individuals knowledgeable in their fields contributed input to the designation and the Secretary is entitled to rely on their expertise. A mere difference of opinion will not overcome the reasoned opinions of the Secretary's technical staff. American Gilsonite, 111 IBLA 1, 96 I.D. 408 (1989); William R. Franklin, 121 IBLA 37 (1991).

Appellant asserts that there are plant species along the road and in the riparian areas which should have been considered in conjunction with the National Heritage Project of the State of Montana. Since the decision appealed from contains no reference to plants, it appears that this item has been newly raised on appeal. In any event, the EA refers in general terms to areas in which no impacts are anticipated. Among these are threatened and endangered species, areas of critical environmental concern, riparian areas, and wetlands. See EA at 3. In order to call into question BLM's omission of plants from its consideration, appellant would, at a minimum, have to identify affected plants and present some argument as to how they would be impacted by BLM's project. Appellant has not done so. Appellant's

sumise that plants which exist along the roadway should have been the subject of consultation is insufficient to demonstrate error in the decision process.

To the extent not discussed, appellant's remaining concerns 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.

L. Hughes

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Administrative Judge

David

I concur:

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James L. Burski  
Administrative Judge