

SCOTT WILLIAMS, ET AL.

IBLA 95-50, 95-68, 95-69, and 95-70

Decided November 17, 1997

Appeals from a Decision Record/Finding of No Significant Impact issued by the Richfield District Manager, Bureau of Land Management, Utah, approving an Animal Damage Control Plan for the Richfield District. EA J-050-094-024.

Affirmed.

1. Animal Damage Control–Environmental Quality: Environmental Statements–  
National Environmental Policy Act of 1969: Environmental Statements

It is proper for BLM to decide to proceed with a Federally administered plan for controlling the depredation of livestock grazing on the public lands, by both nonlethal and lethal means, when it has taken a hard look at all of the environmental impacts of such action and appropriate alternatives thereto, including all relevant matters of environmental concern, and made a convincing case that no significant impact will result therefrom.

2. Animal Damage Control–Environmental Quality: Environmental Statements–  
National Environmental Policy Act of 1969: Environmental Statements

The BLM's implementation of a Federally administered animal damage control plan for controlling the depredation of livestock grazing on the public lands, which is based on statutory authority and a product of state and Federal cooperation and which emphasizes nonlethal means of animal control and administratively restricts the application of lethal means, will be affirmed when appellants critique facets of the plan but fail to show that the plan is in violation of any law or regulation or is not based on sound resource management and public interest considerations.

APPEARANCES: Scott Williams, pro se; Van Burgess, Deputy Commissioner, Utah Department of Agriculture, for the State of Utah; Paul Frischknecht, agent for the Manti LaSal National Woolgrowers Association and the Utah Woolgrowers Association; and Gary Hallows, for Security Ranches.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Scott Williams, the State of Utah Department of Agriculture, Paul R. Frischknecht, as agent for the Manti LaSal National Woolgrowers Association and the Utah Woolgrowers Association, and Security Ranches have each appealed a September 19, 1994, Decision Record and Finding of No Significant Impact (DR/FONSI) issued by the Richfield District Manager, Bureau of Land Management (BLM), Utah, approving an Animal Damage Control (ADC) Plan for the Richfield District. We have consolidated these appeals because they arise from the same BLM action.

The ADC Plan, issued under the authority of the Animal Damage Control Act of 1931 (ADCA), 7 U.S.C. §§ 426-426b (1994), was proposed by the Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture, to respond to the needs of livestock operators using public lands to resolve predation problems by coyotes and occasionally by mountain lions and bears. 1/ Animal damage control work in the State of Utah is conducted by APHIS under an August 23, 1988, Memorandum of Understanding (MOU) between APHIS and BLM. As stated in the ADC Plan, BLM's role is to determine if the program planned by APHIS would place predators or other animals in jeopardy and, as necessary, to develop mitigating measures to reduce the impacts to public land resources. 2/ (ADC Plan at 2.)

The ADC Plan, which is a combination of the proposed action in Environmental Assessment (EA) J-050-094-024 and the Ecosystem Nonlethal Emphasis Alternative addressed in the same assessment, is a 5-year plan and calls for the use of nonlethal animal husbandry and frightening devices to

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1/ The Secretary of Agriculture, acting through APHIS-ADC, is authorized and directed by § 1 of ADCA, 7 U.S.C. § 426 (1994), to conduct campaigns for the destruction or control of wild animals injurious to agriculture and livestock on national forests and other areas of the public domain. See Southern Utah Wilderness Alliance v. Thompson, 811 F. Supp. 635, 638 (D. Utah 1993). The ADC functions on public lands were transferred to APHIS-ADC from the U.S. Fish and Wildlife Service, U.S. Department of the Interior, on Dec. 19, 1985. See 51 Fed. Reg. 6290 (Feb. 21, 1986).

2/ In general, under the policy directives of §§ 102(a)(7) and (8) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701(a)(7) and (8) (1994), BLM is to manage the public lands for multiple use and in a manner so as to protect the quality of the resources.

ward off predators. The ADC Plan also permits lethal control methods. It also provides for "preventative control," i.e., the removal of predators from the public lands prior to the arrival of livestock. The approval and implementation of preventative control hinges on the presence of a number of criteria, including the finding that coyotes are feeding on sheep and that unacceptable livestock losses are occurring despite other forms of predator control. (ADC Plan at 6.)

Together with his appeal, Appellant Williams filed a petition for stay of the DR/FONSI in which he presented his objections to the ADC Plan. Williams contended that lethal control was inhumane and senseless, would exacerbate the predator problem, was inconsistent with the EA, and was the antithesis of the central theme of BLM's ADC Plan: nonlethal control.

In a November 22, 1994, Order, the Board denied Williams' petition for stay, stating that while Williams' arguments had a superficial appeal and might have had some merit if the preventative control program were unrestricted, as assumed by Williams' arguments, "our preliminary review of the record reveals that BLM has imposed very strict limitations on the preventative control program" (Order at 2.) We also noted that nonlethal control and documented predation were prerequisites to authorization of preventative control. Further review confirms the validity of our preliminary review.

In his Notice of Appeal, Williams alleges generally that the DR/FONSI is inconsistent with the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4321 (1994).

[1] Having reviewed the EA and the ADC Plan, we find that BLM has taken the requisite "hard look" at the impacts to domestic livestock and predators of undertaking a multiyear ADC Plan, employing both lethal and nonlethal control, in the Richfield District, and alternatives thereto, and properly found that there will be no significant impact requiring preparation of an environmental impact statement. Williams has presented opinions to the contrary but has made no showing of error in the ADC Plan or EA. Contrary opinions are not sufficient to overcome the reasoned analysis of BLM's experts in matters within the realm of their expertise. See Southern Utah Wilderness Alliance v. Thompson, 811 F. Supp. at 643; King's Meadow Ranches, 126 IBLA 339, 342 (1993). We conclude that BLM has acted in conformance with NEPA. See Humane Society of the United States v. Hodel, 840 F.2d 45, 62 (D.C. Cir. 1988); Oregon Natural Resources Council, 116 IBLA 355, 360 (1990); Southern Utah Wilderness Alliance, 114 IBLA 326, 332 (1990).

The remaining Appellants have filed objections to the DR/FONSI, contending that the ADC Plan provides for too little preventive control for cattle allotments, specifically those within the Henry Mountain

Eco-Region. <sup>3/</sup> They assert that preventive control is mandatory where it is requested by calf producers who have paid a designated Utah State tax. They assert that the ADC Plan requirement that sheep producers in the West Desert Eco-Region of the Richfield District utilize five nonlethal control measures before resorting to lethal measures may be contrary to the Administrative Procedure Act and is in conflict with Utah State statutes and policies. They contend further that the restrictions BLM has placed on the use of the M-44 sodium cyanide device are unnecessary, burdensome, and without basis. The Utah Department of Agriculture argues that the M-44 devices are "very important options" for State agriculture officers who utilize them in accordance with Environmental Protection Agency (EPA) rules, and that there should be no further need for BLM officials to monitor use of the devices. (Notice of Appeal at 2.) Finally, Appellants argue that the monitoring requirements in the DR/FONSI restrict legitimate ADC activities rather than protect the coyote population. The State argues that by State law, it, not BLM, has the responsibility for managing coyotes and that this responsibility should be recognized in the DR/FONSI.

[2] Responding to Appellants' arguments that the ADC Plan provides too little preventive control and conflicts with Utah State law and policies, we note again that the authority for the predator control project is derived from the ADCA, 7 U.S.C. §§ 426-426b (1994). As an additional authority, the EA cites the "Agricultural and Wildlife Damage Prevention Act, (Chapter 23 of Title 4, Utah Code Annotated 1953)," and indicates that Utah State law otherwise provides for the control of "Noxious Rodents or Predatory Animals." (EA at 5, 10.) Both the EA and ADC Plan indicate that the project is the product of cooperative work not only between Federal agencies, but also between those agencies and the State. The EA states on page 5 that a "state level MOU was signed by the BLM and APHIS on August 23, 1988," and that it was also signed by the "Utah Division of Wildlife Resources (UDWR) and the US Forest Service (USFS)." Moreover, the EA notes that several regional offices of the UDWR were consulted in compiling the EA. (EA at 46.) It appears, therefore, that Utah State officials collaborated with Federal officials in developing the ADC Plan. Appellants have not specifically cited any State law or policies that are contrary to the ADC Plan.

The ADC Plan "encourages permittees to conduct a progressive management program which would use a mixture of local population management, animal husbandry and behavior modification to avoid livestock losses to predators." (ADC Plan at 4.) The EA states that "[t]hose operators that

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<sup>3/</sup> Under the ADC Plan, the Richfield District is divided into three regions: the West Desert Eco-Region, the Mountain Valley Eco-Region, and the Henry Mountain Eco-Region.

are most successful use an integrated approach, combining good husbandry practices with guard dogs, good herders, mechanical scare devices, and shooting when necessary." (EA at 20.) The ADC Plan places on the livestock operators the responsibility to diligently employ nonlethal methods of predator control, either singly or in combination. While the ADC Plan requires nonlethal forms of control of all sheep operators in the West Desert Eco-Region as a prerequisite to lethal control, "should lethal control be requested the first year, APHIS would respond as needed." (ADC Plan at 4.) Lethal control is neither mandatory on "any cattle allotments nor within the entire Mountain Valley or Henry Mountains Eco-Region." Id. <sup>4/</sup>

The ADC Plan is not a device by which BLM seeks to "monitor" the coyote population of Utah, as Appellants have suggested. "Monitoring" the effects of predator control on target species is a responsibility of APHIS. (ADC Plan at 14.) As we have already noted, the purpose of the ADC Plan and BLM's role are clearly delineated. The purpose of the ADC Plan is to resolve predation problems on public lands administered by BLM. While the ADC Plan provides various alternatives for accomplishing this goal, it also provides that "APHIS does not report to BLM for each individual predator control action taken throughout the year." (ADC Plan at 2.) The ADC Plan recognizes that "[p]redator control \* \* \* is an option afforded to the UDWL by State law independent of this plan." (ADC Plan at 2-3.)

The EA, at Appendix 6, lists the conditions of use of the M-44 sodium cyanide capsules, as prescribed by applicable Federal, State and local laws. These conditions provide in part as follows:

5. The M-44 device shall only be used to take wild canids suspected of preying on livestock, poultry, or federally designated threatened or endangered species.
6. The M-44 device shall not be used solely to take animals for the value of their fur.
7. The M-44 device shall only be used on or within 7 miles of a ranch unit or allotment where losses due to predation by wild canids are occurring or where losses can be reasonably expected to occur based upon recurrent prior experience of predation on the ranch unit or allotment. Full documentation of livestock depredation, including evidence that such losses were caused by wild canids, will be required before application of the M-44 is undertaken.

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<sup>4/</sup> The EA states that under "Alternative One" lethal control within the Henry Mountain Eco-Region would be allowed "only on a case by case basis," after nonlethal methods applicable to cattle operations had been tried. (EA at 25.)

8. The M-44 device shall not be used: (1) In areas within National forests or other Federal lands set aside for recreational use, (2) areas where exposure to the public and family and pets is probable, (3) in prairie dog towns, or, (4) except for the protection of federally designated threatened or endangered species, in National and State Parks; National or State Monuments; federally designated wilderness areas; and wildlife refuge areas.

The ADC Plan requires that M-44 use be restricted to planned control areas and comply with EPA use restrictions. It also requires APHIS officers to notify BLM's area manager of the location, date of installation, and date of removal of the devices and to keep maps depicting the current status and location of all active devices. (ADC Plan at 12.)

In answer to Appellants' arguments, we point out that the thrust of the ADC Plan is to control predation by nonlethal means insofar as such means suffice to achieve the desired objective. A fair reading of the ADC Plan indicates that the circumscriptions attached to lethal forms of control are based on entirely reasonable considerations, not the least of which is the recognition of predators as a resource. The M-44 is a chemical device whose application is governed by EPA rules, and whose indiscriminate or irresponsible use could result in grievous consequences to members of the public, their pets, and other wildlife using the public lands. The fact that Utah State employees may be specialists in applying this device does not deprive the BLM of jurisdiction to monitor its use on the public lands. The interests served by the administrative checks on the use of this method of control outweigh those that would be served by its unrestricted use.

We conclude that Appellants have demonstrated no conflicts between Federal and State authority in the ADC Plan. Nor have they shown how the ADC Plan or the EA is contrary to Federal law or regulation, or that it in any way exceeds BLM's authority. Further, our review of the ADC Plan and EA does not bear out the arguments that the suggested methodologies for predator control restrict or foreclose predator management options to which livestock operators are entitled by some other authority. Appellants have presented critiques of the ADC Plan and differences of opinion. However, mere differences of opinion will not suffice to establish that BLM's EA analysis was inadequate, or that the ADC Plan was in any way flawed, or represents an action beyond BLM's authority. See Friends of the Bow, 139 IBLA 141, 147 (1997); Southern Utah Wilderness Alliance, 114 IBLA 326, 332 (1990).

Therefore, pursuant to the authority delegated to the Board of land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the DR/FONSI is affirmed.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur.

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David L. Hughes  
Administrative Judge

