



JENNIFER J. WALT  
BOX D RANCH

172 IBLA 300

Decided September 21, 2007



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

JENNIFER J. WALT  
BOX D RANCH

IBLA 2006-4

Decided September 21, 2007

Appeal from a decision of Administrative Law Judge Harvey C. Sweitzer affirming decisions of the Ashland (Oregon) Resource Area Manager, Bureau of Land Management (BLM), denying two applications to graze cattle on lands within a national monument. OR-110-01-02 and OR-110-03-02, consolidated.

Affirmed.

1. Grazing Permits and Licenses: Adjudication--Grazing Permits and Licenses: Administrative Law Judge--Grazing Permits and Licenses: Appeals

BLM enjoys broad discretion in determining how to manage and adjudicate grazing privileges, and its adjudication of an application for grazing privileges will be upheld on appeal if it reasonably and substantially complies with the provisions of 43 C.F.R. Part 4100. Reversal of a grazing decision by an administrative law judge or the Board of Land Appeals as arbitrary, capricious, or inequitable is proper only if the decision is not supportable on any rational basis. The burden is on the objecting party to show by a preponderance of the evidence that the decision was improper.

2. Environmental Policy Act--Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements

A BLM decision to deny a grazing privileges does not require the preparation of an Environmental Assessment. Only when an agency reaches the point in its deliberations when it is ready to approve an action that may have adverse effects on the human environment is it

obligated to assess the environmental impacts of such action.

3. Environmental Policy Act--Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements--Grazing Permits and Licenses: Appeals

Where BLM chooses to exercise its discretionary authority to deny grazing privileges based upon environmental considerations presented in an Environmental Assessment which adequately assessed the impacts of four alternatives that included some form of a grazing scenario, absent objective proof of a clear error of law or demonstrable error of fact, or proof that the analysis failed to consider a substantial environmental question of significance to the proposed action, the Board properly finds that BLM's decision has a rational basis in the record and that it is not arbitrary and capricious.

APPEARANCES: David M. Ivester, Esq., and Anne C. Arnold, Esq., San Francisco, California, for Jennifer J. Walt and the Box D Ranch; Brad Grenham, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Portland, Oregon, for the Bureau of Land Management; Andrea K. Rodgers, Esq., and Peter M. K. Frost, Esq., Western Law Environment Center, Eugene, Oregon, for intervenor, the Soda Mountain Wilderness Council.

#### OPINION BY ADMINISTRATIVE JUDGE PRICE

The Box D Ranch and its owner, Jennifer J. Walt, have appealed from a decision of Administrative Law Judge Harvey C. Sweitzer, dated August 31, 2005, affirming decisions of the Ashland (Oregon) Resource Area Manager, Bureau of Land Management (BLM), in which he denied Walt's two grazing applications. The two applications, one for the 2001 grazing season and one for the 2003 grazing season, were filed by Walt for herself and the Box D Ranch, and sought permission to graze cattle on the lands of the former Box O Ranch acquired by BLM in 1995. The Box O Ranch adjoins the Box D Ranch. The Box O Ranch is within the boundaries of the Cascade-Siskiyou National Monument, established in 2000 by Presidential Proclamation. Rather than protesting the proposed decisions, Walt appealed. 43 C.F.R. §§ 4160.4 and 4.470. A hearing in the matter was conducted by

Administrative Law Judge William E. Hammett on June 14 through 17, 2004, in Medford, Oregon.<sup>1</sup>

### *Background*

The facts are not disputed. The lands in question, formerly the Box O Ranch, consist of approximately 1,200 acres situated in secs. 21, 22, 27, 28, and 33 of T. 40 S., R. 4 E., Willamette Meridian, in Jackson County, Oregon. Some 900 acres are considered dry uplands and the remaining 300 acres historically were irrigated. Jenny Creek flows through the middle of the irrigated portion for approximately 2.25 miles and has been the subject of “channel improvements” implemented by the Ranch’s owners over the course of many years. Although these lands had been used for grazing since the late 1800s, considerable testimony elicited at the hearing established that, by the early 1990s, the ranch was poorly managed. The irrigation system and fences were in need of maintenance and the stream channel and riparian areas had become the most degraded section of Jenny Creek. BLM unsuccessfully sought to purchase the ranch beginning in 1991. Cascade Ranch, Inc., subsequently interceded, purchased the ranch, and exchanged it for BLM lands elsewhere. BLM accepted title to the Box O Ranch in July 1995. At that time, BLM anticipated that grazing on the land would continue while BLM protected and improved the riparian zones.

In June 1995, BLM issued the Medford District Resource Management Plan (RMP) as its guideline for management of public lands within the Medford District. Although the Box O Ranch lands are within the Medford District, they were not Federally owned when the RMP was issued. However, the RMP addressed “Newly Acquired Lands” as follows:

Newly acquired or administered lands or interests in lands will be managed for their highest potential or for the purpose for which they are acquired. For example, lands acquired within “special management areas” with [C]ongressional or RMP allocation/direction will be managed in conformance with guidelines for those areas. If lands with

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<sup>1</sup> When the hearing commenced, the issue of grazing privileges for the 2001 and 2003 seasons was moot, as relief for those seasons could not be granted. Nonetheless, we consider appellants’ challenge on the basis of the long-standing principle that when an appeal raises issues which are capable of repetition, yet evade review, it is proper to adjudicate the appeal even though the relief sought by an appellant cannot be granted for the particular event. *See Randall G. Nelson*, 164 IBLA 182, 187 (2004), and cases cited.

Upon Judge Hammett’s death on Apr. 28, 2005, the case was assigned to Judge Sweitzer.

unique or fragile resource values are acquired, it may be appropriate to protect those values until the next plan revision.

RMP, Ex. G-27 at 98. In the RMP, BLM adopted an Aquatic Conservation Strategy (ACS) that was developed to meet nine objectives designed to improve or maintain watersheds and aquatic systems in the Resource Area. Among other things, the ACS directs BLM to “adjust or eliminate grazing practices that retard or prevent attainment.” *Id.* at 22, 28. The Jenny Creek watershed was identified as a key ACS target. *Id.* at 23.

In November 1997, pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4370f (2000), BLM prepared a “Draft Land Management Plan and Environmental Assessment for the Box O Ranch” (EA), which described several alternatives for managing the Box O Ranch lands. Ex. G-30. The preferred alternative would have allowed controlled grazing, though at the risk of compromising or sacrificing some of the ACS goals and objectives, and restoration of the existing gravity irrigation system. *Id.* at 53, 75. BLM issued a Decision Record and Finding of No Significant Impact (DR/FONSI) on July 6, 1998, which did not adopt any of the proposed alternatives. Instead, the DR/FONSI approved only actions relating to the irrigation system, explicitly providing: “This is not a decision for the entire Box O Ranch Management Plan.” *See* Ex. G-30.

On June 9, 2000, the Box O Ranch became part of the Cascade-Siskiyou National Monument established by Proclamation issued by President Clinton under the authority of section 2 of the Act of June 8, 1906, 16 U.S.C. § 431 (2000), known as the Antiquities Act. The Act authorizes the President,

in his discretion, to declare historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

16 U.S.C. § 431 (2000).

Describing the Monument as “an ecological wonder,” the Proclamation identified Jenny Creek as containing several objects of historic or scientific interest, including, for example, three endemic fish species and fresh water snails. Proclamation, Ex. G-1 at 1. The Proclamation specifically provided the following instruction with respect to grazing:

The Secretary of the Interior shall study the impacts of livestock grazing on the objects of biological interest in the monument with specific attention to sustaining the natural ecosystem dynamics. Existing authorized permits or leases may continue with appropriate terms and conditions under existing laws and regulations. Should grazing be found incompatible with protecting the objects of biological interest, the Secretary shall retire the grazing allotments pursuant to the processes of applicable law. Should grazing permits or leases be relinquished by existing holders, the Secretary shall not reallocate the forage available under such permits or for livestock grazing purposes unless the Secretary specifically finds, pending the outcome of the study, that such reallocation will advance the purposes of the proclamation.

*Id.* at 3.

A draft RMP and environmental impact statement were prepared for the Monument in May 2002. Ex. G-26.

#### *The Grazing Applications and BLM's Decisions*

By letter to BLM dated May 7, 2001, Walt indicated that she wanted to submit an application to graze cattle on the Box O Ranch lands during the 2001 grazing season and inquired about the status of grazing. Ex. A-1A. Richard J. Drehobl, formerly BLM's Ashland Resource Area Manager and later the Monument Manager, Medford District Office, responded on May 21, 2001, stating that he would deny such an application because the streambanks and riparian vegetation had not sufficiently recovered. Ex. A-2. He noted BLM's concern for several sensitive and special status species dependent on the aquatic environment of Jenny Creek. Pursuant to Walt's request for a formal decision, Drehobl issued a Notice of Proposed Decision on June 27, 2001 (2001 Decision). Ex. A-4. He stated that the damage inflicted on the riparian habitat by livestock grazing, timber harvest, and channelization had resulted in significant ecological consequences that require special attention. He concluded that, under the Presidential Proclamation establishing the Monument, grazing for purposes other than ecological restoration and maintenance of natural ecosystem processes should not be permitted. *Id.* He proposed to deny any application that might be submitted and stated that, in the absence of a protest, the decision would become final. *Id.* No protest was filed and when the proposed decision became final, Walt appealed pursuant to 43 C.F.R. § 4160. Ex. A-6.

BLM moved to dismiss the appeal on September 13, 2001, arguing that under the "plain terms" of the RMP and Proclamation, it could not allow grazing on the Box O Ranch lands. BLM also challenged appellants' standing, asserting that Walt

and the Box D Ranch were not harmed by the denial of the application, as she had received her full allocation of AUMs<sup>2</sup> under a grazing permit for the Soda Mountain allotment and had been authorized additional AUMs in that allotment for the 2001 grazing season. Ex. A-7. Walt responded in opposition. Ex. A-8. BLM replied, clarifying its position that the RMP did not allocate forage for the Box O Ranch lands and that the Proclamation did not authorize grazing within the Monument. BLM also objected to Walt's demand for an EA, asserting that an EA was not needed because BLM's actions were constrained by the RMP and Proclamation and noted that this argument had not been raised previously and should be rejected on that basis as well. Ex. A-9.

The Soda Mountain Wilderness Council (SMWC) moved to intervene and to dismiss the appeal.

By Order dated August 9, 2002, Judge Hammett granted SMWC's motion to intervene and partially denied the motions to dismiss. Ex. A-10. Among other things, Judge Hammett concluded that neither the RMP nor the Proclamation expressly prohibited livestock grazing on the Box O Ranch lands. He also concluded that a hearing was appropriate to resolve the several questions of fact raised by the parties. On October 22, 2002, he denied BLM's motion to dismiss for lack of standing, finding that Walt was indeed adversely affected when her application was denied. Her appeal was assigned case number OR-110-01-02 by the Hearings Division.

On February 7, 2003, Walt submitted a request for permission to graze cattle on the Box O Ranch lands during the 2003 grazing season.<sup>3</sup> Ex. A-13. BLM requested more information regarding the grazing request and Walt submitted a grazing application on May 9, 2003, seeking 50 AUMs for the period from May 24 to June 24. Ex. A-15. Drehobl issued a Notice of Proposed Decision on June 6, 2003, denying the application as a request for a temporary nonrenewable grazing lease on the Box O Ranch lands (2003 Decision). Ex. A-16. He cited the Department's grazing regulations, the RMP, and the Presidential Proclamation as grounds for his decision. He stated that the RMP provides that BLM-administered lands in the Jenny Creek

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<sup>2</sup> An "AUM" is an animal unit month, or the amount of forage necessary for sustenance of one cow or its equivalent for one month.

<sup>3</sup> BLM issued a decision denying an application by Walt to graze cattle on the Box O Ranch lands in 2002 that was not appealed and is not material to the present appeal. When Walt submitted her February 2003 request, Drehobl responded on Feb. 23, 2003, explaining that the 2002 decision was final. Walt challenged this determination on Mar. 31, 2003, clarifying that her request was not intended as an appeal of the 2002 decision, but as an application for a nonrenewable grazing permit for the 2003 season.

area, including the Box O Ranch lands, will be managed as an Area of Critical Environmental Concern. He also noted that the Monument was established to protect identified resources. He concluded that “[b]ased upon on our current knowledge, reintroducing livestock would not be an action consistent with assuring natural ecosystem function and ecological integrity.” 2003 Decision, Ex. A-16 at 4. He described other potential impacts of grazing and their incompatibility with restoration of the environment. No protest was filed and the decision became final. Walt appealed on July 24, 2003, and that case was assigned case number OR-110-03-02 by the Hearings Division.<sup>4</sup>

### *The Hearing and the Administrative Law Judge’s Decision*

Nine witnesses testified over the course of the 4-day hearing, five for Walt and four for BLM. Judge Sweitzer’s decision carefully summarized the testimony of each witness. *See* Decision at 14-43. Briefly, the testimony was as follows. Tom Jacobs, a former BLM Rangeland Management Specialist, was the first of appellants’ witnesses. He testified regarding BLM’s best management practices (BMPs) for repairing riparian habitat, and fences erected to exclude livestock. Sheila Barry, a Natural Resources Advisor for the University of California Cooperative Extension, testified regarding how cattle grazing can help recovery of riparian areas. Sue Kupillas, a Jackson County Commissioner, testified regarding communications with BLM concerning continued “commodity production” and BLM’s commitment that grazing would be allowed on the Box O Ranch lands after it was acquired. Steven Leonard, a range management consultant, testified regarding BMPs practices and whether grazing could coexist with riparian reclamation measures, such as planting trees. John Menke, a retired professor and a range ecologist, testified regarding “passive management,” possible weed infestation, and the negligible impacts of livestock grazing when using BMPs.

BLM’s first witness was David P. Squyres, a BLM hydrologist who testified regarding BLM’s improvements to Jenny Creek and the resulting changes in the environment. Paul Hosten, a BLM range ecologist, testified regarding the effects of grazing on weed control, the effects of restricted periods of grazing, and whether livestock could play a role in achieving the desired management objective. Jeannine Rossa, a BLM Fisheries Biologist, testified regarding the aquatic environment and the several “vulnerable” species found in Jenny Creek. Drehobl testified regarding BLM policy and concerns in acquiring and managing the Box O lands.

After setting forth his conclusions regarding the witnesses and exhibits, Judge Sweitzer cited principles of the Antiquities Act, 16 U.S.C. § 431 (2000), and NEPA,

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<sup>4</sup> The appeals were later consolidated under Hearings Division docket number OR-0110-01-02.

42 U.S.C. § 4332(2)(C) (2000). He discussed the principal arguments presented by Walt: that BLM was required to prepare an EA pursuant to NEPA prior to issuing its decisions; that the grazing decisions were not issued in accordance with statutory and regulatory provisions governing land exchanges; that BLM failed to consider its statutory mandate to manage lands for multiple use; and that the grazing decisions were arbitrary and capricious because BLM failed to consider the benefits of livestock grazing on ranch lands. Judge Sweitzer rejected all of Walt's arguments, which are renewed before us.

### *Arguments on Appeal*

Appellants first raise NEPA arguments. They assert that the denial of their applications to graze the Box O Ranch lands constituted a proposed action to abandon the grazing historically allowed on the property, which thus required the preparation of an EA. SOR at 9-14. As support, they further argue that the Medford RMP "provides that BLM should '[t]hrough a planning and environmental analysis process appropriate to the action, adjust or eliminate grazing practices that retard or prevent attainment of [ACS] and riparian reserve objectives.'" *Id.* at 11. Appellants next object to Judge Sweitzer's conclusion that the status quo for the Box O Ranch lands is no grazing. *Id.* at 11-14. Instead, they characterize the situation as a case in which BLM had neither allowed nor disallowed grazing. *Id.* at 13. Appellants contend, moreover, that Judge Sweitzer's determination is not consistent with Judge Hammett's conclusion that the Proclamation does not prohibit grazing (*see* Aug. 12, 2002, Order Granting Request for Intervention; Partially Denying Motions to Dismiss; and Requiring Further Information at 5). *Id.* at 12.

Appellants' second group of arguments concerns compliance with the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701-1785 (2000), and the charge that BLM has failed to manage the public lands according to principles of multiple use and sustained yield. *Id.* at 14-18. They agree with the Judge that these principles do not require BLM to use every acre for every purpose, but they claim BLM nevertheless ignored those principles. *Id.* at 15-16. Appellants further contend that BLM failed to consider local needs and determine the public interest when it entered into the land exchange by which the Box O Ranch was acquired. *Id.* at 16-18. Central to this argument is appellants' conviction that BLM "made specific unconditional guarantees to local government entities that grazing would continue on the Box O after it was in federal ownership." *Id.* at 17. Appellants' final FLPMA argument is that the Medford RMP "expressly provides for grazing on the Box O Ranch under its provisions for 'newly acquired lands.'" (Ex. G-27)." *Id.* at 19.

Appellants' third principal argument is that Judge Sweitzer erred in weighing the evidence to reject the conclusion that grazing can be beneficial to the riparian areas within the Box O Ranch lands. In support, they complain that he erroneously

accorded Hosten's testimony greater weight than was warranted, *id.* at 21-23; that the evidence clearly established that BMPs for grazing cattle are possible and effective, *id.* at 23-25; that cattle are an effective means of controlling non-native invasive plant species, *id.* at 25-29; that cattle are an effective management tool in reducing wildfire risks through fuel reduction, *id.* at 29-31; and that use of BMPs will enhance wildlife values, *id.* at 31-32.

For the foregoing reasons, appellants contend that BLM's decisions denying grazing privileges were arbitrary and capricious, and that Judge Sweitzer erred in affirming them.

Relying on its post-hearing briefs, BLM disputes every argument advanced by appellants and urges the Board to affirm Judge Sweitzer's decision. Intervenor SMWC joins BLM in urging the Board to sustain the Judge's decision.

### *Analysis*

#### *1. Standard of Review*

[1] Citing *Thomas E. Smigel*, 155 IBLA 158, 164 (2001), Judge Sweitzer correctly stated the standard of review to be applied to decisions regarding grazing privileges:

While compliance with the provisions of the Taylor Grazing Act, *as amended*, 43 U.S.C. §§ 315, 315a-315r (1994), is committed to the discretion of the Secretary of the Interior, implementation is delegated to his duly authorized representatives in BLM. *Kelly v. BLM*, 131 IBLA 146, 151 (1994); *Yardley v. BLM*, 123 IBLA 80, 89 (1992) and cases cited. The Bureau enjoys broad discretion in determining how to manage and adjudicate grazing privileges. *Yardley v. BLM*, 123 IBLA at 90. Under 43 [C.F.R. §] 4.[480](b), BLM's adjudication of grazing preference will not be set aside on appeal if it is reasonable and substantially complies with Departmental grazing regulations found at 43 [C.F.R.] Part 4100. In this manner, the Department has considerably narrowed the scope of review of BLM grazing decisions by both an administrative law judge and by this Board, authorizing reversal of such a decision as arbitrary, capricious, or inequitable only if it is not supportable on any rational basis. *Yardley v. BLM*, 123 IBLA at 90. This scope of review recognizes the highly discretionary nature of the Secretary's responsibility for Federal range lands. *Kelly v. BLM*, *supra*; *Claridge v. BLM*, 71 IBLA 46, 50 (1983).

The standard of proof to be applied in considering an appeal of a grazing decision issued by BLM is the preponderance of the evidence test. *Kelly v. BLM, supra; Eason v. BLM*, 127 IBLA 259, 162-63 (1993).

Decision at 44. That standard of review has been affirmed numerous times. *See, e.g., Gino Foianini v. BLM*, 171 IBLA 244, 251 (2007); *Tabor Creek Cattle Company v. BLM*, 170 IBLA 1, 15-16 (2006); *Ross v. BLM*, 152 IBLA 273, 282 (2000); *West Cow Creek Permittees v. BLM*, 142 IBLA 224, 235-36 (1998); *Klump v. BLM*, 124 IBLA 176, 182 (1992); *Fasselin v. BLM*, 102 IBLA 9, 14 (1988); *Webster v. BLM*, 97 IBLA 1, 4 (1987).

## 2. An EA Was Not Required Before BLM Could Deny the Grazing Applications

Appellants contend that the decision to deny their grazing applications required the preparation of an EA, because BLM effectively adjusted or eliminated grazing use on the Box O Ranch when historically it had been open to such use. SOR at 11. Judge Sweitzer rejected that argument, finding that BLM had taken no action, but had merely maintained the status quo as it had existed since 1995. Appellants plainly misconstrue NEPA.

As an initial matter, we do not agree with the suggestion that BLM's determination to deny grazing privileges to appellants for the immediately foreseeable future is tantamount to a decision to permanently close the Box O Ranch lands to grazing. BLM's 2001 decision stated:

Upon completion of the livestock grazing impact study, grazing management will be analyzed. If livestock grazing is found to be a viable tool in protecting or enhancing the biological interest in the Monument then it may be used on the area now recognized as the former Box-O Ranch. If it is deemed a viable tool for meeting management objectives, livestock grazing specific to this area would be addressed through a future activity management plan.

2001 Decision, Ex. A-4 at 1-2.

The 2003 Decision stated:

Based on existing information, BLM finds that your proposed grazing would be inconsistent with protecting monument "objects of biological interest" and "sustaining the natural ecosystem dynamics." Grazing the former Box-O could jeopardize the natural ecosystem processes that are currently being reestablished and could potentially affect special status species. At this time, BLM is not willing to risk the ongoing restoration of the former Box-O Ranch.

2003 Decision, Ex. A-16 at 5-6. BLM thus proposed to deny appellants' applications for the reasons detailed in the 2001 and 2003 Decisions, specifically based on restoration of various resources and conditions as set forth in the RMP, Proclamation, and ACS. Clearly, the denial of grazing privileges was premised upon an orderly sequence of actions and results, and the development of the information necessary to achieve and ensure sufficient progress within the Ranch lands to withstand grazing.

[2] Appellants believe that, to deny their applications for grazing privileges, BLM was required to first prepare an EA. This is not correct. Only when an agency reaches the point in its deliberations when it is ready to approve an action that may have adverse effects on the human environment is it obligated to assess the environmental impacts of such action in an EA or EIS. See 40 C.F.R. §§ 1500.2(e), (f), 1501.3(b), 1501.4, and 1502.4. Where no action is proposed, no NEPA obligation is triggered. See *Sabine River Authority v. U.S. Department of the Interior*, 951 F.2d 669, 679 (5th Cir. 1992) (no EIS is required when an action neither alters the environment nor causes any change in the physical environment), and cases cited; *Defenders of Wildlife v. Andrus*, 627 F.2d 1238, 1243 (D.C. Cir. 1980) (Congress did not intend an agency to prepare an impact statement where there is to be no action); *Bear River Development Corp.*, 157 IBLA 37, 48 (2002) (NEPA applies to actions an agency proposes to take; an EA is not required to reject a right-of-way application). As one Court has stated it, a contention that a decision not to approve an action constitutes "action" for NEPA purposes mischaracterizes the nature of the agency's decision and "trivializes NEPA by seeking to implicate its mandate in everyday decisions." *Minnesota Pesticide Information and Educ. v. Espy*, 29 F.3d 442, 443 (8th Cir. 1994).

Appellants' attempt to refashion BLM's decisions into approval of an action that may have adverse effects on the human environment is simply not plausible. Regardless of the historic use of the Box O Ranch in past decades, it is undisputed that for the last 12 years there has been no grazing on the lands in question. The effect of BLM's decisions is obviously to maintain that status. The cases cited by appellants are thus inapposite. The decision to maintain the prior 12 years' status and disallow grazing is not comparable to the decision in *Confederated Tribes & Bands of the Yakima Nation v. Federal Energy Regulatory Comm'n*, 746 F.2d 466, 475 (9th Cir. 1984), cited by appellants. In that case, the decision was to re-license a dam for a second 40-year period, when the initial license was granted prior to the enactment of NEPA and without environmental review. The former preserves the status quo, while the latter maintains or continues activities that use some resources while impacting others, directly affecting the human environment. We find the Ninth Circuit Court of Appeal's determination in *Douglas County v. Babbitt*, 48 F.3d 1495, 1505 (9th Cir. 1995), to provide far better guidance for the situation presented here. The Court held: "When we consider the purpose of NEPA in light of Supreme Court guidance on the scope of the statute, we conclude that an EA or an EIS is not

necessary for federal actions that conserve the environment.” Judge Sweitzer properly concluded that no further environmental analysis was required by NEPA as a condition precedent to a decision to deny grazing on the Box O Ranch lands.<sup>5</sup>

[3] Moreover, appellants overlook the fact that an EA was prepared for the Box O Ranch Management Plan. Ex. G-30. That EA examined four alternatives in detail, all of which included some form of a grazing scenario, as well as what essentially constitutes a no action alternative that was considered, but not analyzed in detail. We have reviewed the EA and find that it adequately analyzed the environmental consequences of the actions proposed therein. Where BLM chooses to exercise its discretionary authority to deny an application for grazing privileges based upon environmental considerations presented in an EA that adequately assessed the impacts of the alternatives considered, absent objective proof of a clear error of law or demonstrable error of fact, or proof that the analysis failed to consider a substantial environmental question of significance to the proposed action, BLM’s decisions will be found to have a rational basis in the record and will not be held arbitrary and capricious. See *Rainier Huck*, 168 IBLA 365, 401-02 (2006), and cases cited. For the reasons stated in the previous section, however, BLM had no obligation to prepare another EA simply to maintain the course of action selected as a result of this EA.

### 3. *BLM’s Decisions Did Not Violate FLPMA*

In his decision, Judge Sweitzer stated his understanding of appellants’ argument that “BLM at some point changed *from* a position of managing the land for riparian recovery in conjunction with grazing, *to* a position of managing the land for riparian recovery first, with grazing as a possibility only after riparian recovery was achieved.” Decision at 49. He concluded that such a shift in policy was the necessary consequence of the Proclamation, stating that “[t]he grazing decisions are better read as following the terms of the Proclamation, rather than as establishing some sort of de facto ‘no grazing’ plan independent of the Proclamation.” *Id.* at 50. The Medford RMP direction for acquired lands is to manage lands for their “highest potential or for the purpose for which they are acquired.” RMP, Ex. G-27 at 98. Appellants contend BLM’s decisions violated FLPMA because the “highest potential” for the Box O Ranch

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<sup>5</sup> Nor is Judge Sweitzer’s ruling inconsistent with Judge Hammett’s determination that the Proclamation does not absolutely prohibit grazing. See Aug. 12, 2002, Order Granting Request for Intervention; Partially Denying Motions to Dismiss; and Requiring Further Information, Ex. A-10 at 5. The one is unrelated to the other, because the question of whether an EA was required before BLM could deny a grazing application arises under NEPA alone.

lands is grazing use, and that the ranch was acquired for the purpose of continuing grazing while the lands were rehabilitated. SOR at 19.<sup>6</sup>

We think it clear that the Box O Ranch was acquired for several purposes, and that the restoration of riparian conditions in the highly degraded segment of Jenny Creek that flows through the Ranch is a priority. *See, e.g.,* Ex. G-28 at 2; G-32. Even assuming that BLM originally intended to allow grazing while it pursued attainment of the ACS, riparian rehabilitation, and other objectives, the Proclamation has since declared a different emphasis. As Judge Sweitzer recognized, the language of the Proclamation does not strictly proscribe livestock grazing privileges, nor does it compel BLM to grant any grazing application it receives. The Secretary is to study the impacts of grazing on the objects of biological interest “with specific attention to sustaining the natural ecosystem dynamics,” and existing grazing permits or leases may continue with appropriate terms and conditions. However, the Proclamation also explicitly stated that “[s]hould grazing be found incompatible with protecting the objects of biological interest, the Secretary shall retire the grazing allotments pursuant to the processes of applicable law.” Proclamation, Ex. G-1 at 3. The

<sup>6</sup> Appellants cite in part the RMP’s management prescription for livestock grazing. However, the full prescription provides as follows:

**Objectives**

Provide for livestock grazing in an environmentally sensitive manner, consistent with management objectives and land use allocations.

Provide for rangeland improvement projects and management practices, consistent with management objectives and land use allocations.

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**Management Actions/Direction - Riparian Reserves**

Through a planning and environmental analysis process appropriate to the action, adjust or eliminate grazing practices that prevent attainment of [ACS] and riparian reserve objectives.

Locate new livestock handling and/or management facilities outside riparian reserves. For existing livestock handling facilities inside riparian reserves, ensure that [ACS] and riparian reserve objectives are met. Where these objectives cannot be met, require relocation or removal of such facilities.

Limit livestock trailing, bedding, watering, loading, and other handling efforts to those areas and times that will ensure [ACS] and riparian reserves are met.

RMP, Ex. G-27 at 91-92. The RMP thus explicitly recognizes that grazing practices that impede or prevent attainment of ACS and riparian objectives can be reduced or eliminated.

Proclamation thus requires BLM to protect the objects of interest identified therein, and we agree with Judge Sweitzer that, to the extent BLM reasonably found that grazing at this time would jeopardize those objects of interest to be found on or within the Box O Ranch lands, BLM could, in accordance with its regulations, deny the grazing applications. Decision at 52.<sup>7</sup>

Appellants next assert that BLM is no longer managing the Box O Ranch property under the principles of multiple use and sustained yield, as required by FLPMA. We find no merit to this position. BLM has no authority to ignore the Proclamation, and as Judge Sweitzer recognized, “the lands within the Monument are now to be managed primarily for the protection of the objects of interest identified in the Proclamation.” *Id.* at 53. Appellants’ argument amounts to a complaint that grazing on Monument lands should not be subordinated to other resource priorities. Nothing in FLMPA requires or envisions that the balance among competing uses shall be struck one way or another. *See* 43 U.S.C. § 1732(a) (2000). No violation of FLPMA is shown where BLM exercises its discretionary authority under FLPMA in a manner that complies with the priorities established by a duly issued Presidential Proclamation. Appellants have simply failed to show error in this conclusion.

Appellants attempt to buttress their FLPMA argument by arguing that BLM failed to give consideration to local needs, as required by 43 U.S.C. § 1716 (2000), when it conducted the land exchange by which the Box O Ranch was acquired. *See also* 43 C.F.R. § 2200.0-6. As Judge Sweitzer observed, appellants rely on perceived “specific unconditional guarantees to local government entities and area residents that grazing would continue on the Box O after it was in federal ownership.” Decision at 51, *quoting* Appellants’ Opening Brief at 10. Even assuming *arguendo* that BLM’s public representations regarding future grazing were indeed the single critical factor in gaining support for the acquisition of the Box O Ranch, a proposition we question given the highly degraded status of the Box O Ranch’s segment of Jenny Creek and the importance of the Jenny Creek watershed to attainment of ACS objectives, it is not correct that such representations would bind BLM to allow grazing or otherwise estop the agency from denying an application for grazing privileges where the Proclamation’s priorities have since intervened. We need not belabor the matter, however, because appellants’ belated challenge to that

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<sup>7</sup> Judge Sweitzer recognized that the Proclamation left open the possibility that these lands could be allocated for grazing under the proper conditions. Decision at 50. He noted that the Proclamation required the Department to prepare a management plan for the Monument and, as part of the project, that BLM was currently undertaking a grazing study to determine whether and under what circumstances grazing should be allowed on the Box O Ranch in the future. BLM so informed appellants in its 2003 Decision. Ex. A-16 at 5-6.

land exchange in the 1990s is untimely. The land exchange was not the subject of the decisions appealed to Judge Sweitzer and it is therefore not the subject of his decision, which is the only matter before us. On that basis, this line of argument must be rejected.

### 3. *There Was No Error in the Weight Accorded the Evidence*

Appellants' final claim is that Judge Sweitzer erred in finding that BLM could properly conclude that livestock grazing is harmful to the riparian reserves contained within the Box O Ranch lands. SOR at 21. In reaching his conclusion, Judge Sweitzer held that "[i]n general, BLM's experts had more specific and direct experience with the Box O Land and had studied it more carefully than Appellants' experts." Decision at 56. Appellants attempt to impeach and discredit Hosten, one of BLM's primary witnesses at the hearing, in order to elevate the stature of their chief witness, Menke. They argue that Hosten's credentials and credibility were wrongly evaluated by the Judge.<sup>8</sup> While appellants believe Menke's testimony should have been more compelling, Judge Sweitzer was free to find otherwise. Though he did not conduct the hearing in this case, Judge Sweitzer's decision detailed the evidence adduced at the hearing and the basis for his findings. Our review confirms that the record provides a more than adequate basis upon which to conclude that Hosten's knowledge of the land and conditions in question was more persuasive. We accordingly find no reason to disturb the Judge's findings and conclusions regarding Hosten or Menke.

We find that Judge Sweitzer's decision reflects a reasoned analysis of the law and the facts established in the hearing. He properly determined that BLM's decisions should be upheld because they have a rational basis in the record.

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<sup>8</sup> Appellants assert, for example, that Hosten's "neutrality is readily impeachable" because "he is a charter member of the World Wildlife Fund and is employed by the BLM who has made no qualms about expressing its desire to altogether prohibit grazing on BLM Lands," noting he did not submit a resume. SOR at 21. Yet they argue that Menke's testimony was entitled to greater weight because "BLM readily accepted Dr. Menke's qualifications as an expert and *in fact funded his doctorate.*" *Id.* (Emphasis in the original.)

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 decision appealed from is affirmed.

\_\_\_\_\_/s/\_\_\_\_\_  
T. Britt Price  
Administrative Judge

I concur:

\_\_\_\_\_/s/\_\_\_\_\_  
Lisa Hemmer  
Administrative Judge