

HAROLD GILLIS

IBLA 75-124

Decided March 25, 1976

Appeal from a decision of the Eugene District Office, Bureau of Land Management, dismissing a protest of a decision not to file an environmental impact statement for the Shotgun Creek Recreation Area, Project 110.

Vacated and remanded.

1. National Environmental Policy Act of 1969: Generally -- Rules of Practice: Appeals: Generally -- Rules of Practice: Appeals: Motions -- Rules of Practice: Protests

The Board of Land Appeals may entertain and, where appropriate, grant a motion by the Bureau of Land Management to remand a case to it for further consideration on the question of whether an environmental impact statement must be filed, even though an appellant, who has protested against a negative declaration that no impact statement is required, objects to the remand.

APPEARANCES: Harold D. Gillis, Esq., pro se; Donald P. Lawton, Esq., Office of the Regional Solicitor, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

In 1973, a team of Bureau of Land Management officials prepared an Environmental Analysis Record (Report) (EAR) concerning a proposed development by the Bureau of the Shotgun Creek Recreation Area, Project 110. The EAR recommended that an Environmental Impact Statement (EIS) was not necessary but suggested further analysis before a second phase to the project was initiated. Local newspaper publicity and other publicity discussed the proposed project. By a letter dated July 30, 1974, Harold D. Gillis objected to the project,

primarily asserting that an EIS should be prepared before any further action was taken by the Bureau on the project, and that present construction should be discontinued. On August 7, 1974, the District Manager of the Eugene Office replied to Gillis' letter informing him that no EIS was necessary. The crux of the reply was that the Bureau "believe[s] that adverse effects [of the project] have been mitigated to the point that the net residual impacts are insignificant and preparation of an environmental impact statement is not necessary." On August 14, 1974, Gillis appealed that decision.

Gillis' appeal essentially challenges the determination that an EIS is unnecessary. The Bureau, by its counsel, responded, and also raised questions concerning Gillis' standing on appeal.

[1] It is unnecessary to discuss or resolve the questions raised on appeal, in view of our determination that a "Motion to Remand" filed in behalf of the Bureau on March 8, 1976, should be granted. The Motion requested the remand in order to permit the Bureau "to reexamine the question of whether an Environmental Impact Statement is required for the Shotgun Creek recreation development." Mr. Gillis has filed a motion in opposition to the Bureau's request for a remand. He asserts he has complied with Departmental regulations for taking an appeal and that there is no basis for a motion to remand in the regulations governing administrative appellate procedures.

In considering this Motion and appellant's objections, we note that, at most, his letter to the Bureau's District Office in Eugene, Oregon, constituted a protest against the proposed recreational site development and the negative declaration that an EIS is not required. Regulation 43 CFR 4.450-2 provides that such action on a protest "will be taken as is deemed to be appropriate in the circumstances." This includes consideration of an appeal from the denial of a protest.

Departmental regulations expressly provide for representation of the Bureau by Departmental counsel. 43 CFR 4.3(b). Although the regulations do not expressly provide for motions to remand to the Bureau for reconsideration, there is no reason why the Bureau may not request that a decision by it be vacated and a case be returned to it for further consideration. This Board has remanded cases, sua sponte, for further consideration by the officer making the decision being appealed where it has deemed it to be appropriate. E.g., United States v. McKenzie, 20 IBLA 38 (1975); Rio Blanco Natural Gas Co., 16 IBLA 243 (1974); Nuclear Corporation of New Mexico, 14 IBLA 341 (1974); United States v. Wells, 11 IBLA 253 (1973). It is clearly within the ambit of authority of this Board to entertain a motion in behalf of the Bureau, and to grant it where deemed appropriate.

Alan Winter, 23 IBLA 343 (1976); Village of Tularosa, New Mexico, 6 IBLA 503 (1972). Such action may be taken even in the face of opposition by the appellant. Alan Winter, supra.

While we appreciate that a remand may occasion delay on issues raised by appellant's appeal and protest, it may well be that action taken by the Bureau on remand could moot his objections. The mere filing of appellant's appeal is not a sufficient reason to deny the request by the Bureau to consider the question of the EIS further. We find a remand is appropriate in this case. Appellant's objections as set forth in his protest and appeal should be considered by the Bureau, and he should be informed of any further decision concerning the Shotgun Creek Recreation Area Project.

Accordingly, 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 vacated and the case is remanded to the Director, Bureau of Land Management, for reconsideration.

Joan B. Thompson  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Joseph W. Goss  
Administrative Judge

