

CASCADE HOLISTIC ECONOMIC CONSULTANTS
AND OREGON WILDERNESS COALITION

IBLA 80-42

Decided October 16, 1981

Appeal from a document issued by the Coos Bay, Oregon, District Manager setting forth management framework alternatives for land use allocation in the Coos Bay District. 1608.

Appeal dismissed.

1. Environmental Policy Act--Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements

An appeal seeking review of an informational BLM handout containing a proposal for various land uses because the proposal was made without the filing of an Environmental Impact Statement will be dismissed where the document in question implements no policy or action, does not adversely affect appellant, and where it appears that an EIS is being, or will be prepared in connection with any BLM recommendations or reports based on land use proposals for the Coos Bay District, as required by the National Environmental Policy Act of 1969.

APPEARANCES: Cameron La Folette, Eugene, Oregon, for appellants; Donald P. Lawton, Esq., Office of the Regional Solicitor, Portland, Oregon, for Bureau of Land Management; Jim Geisinger, Roseburg, Oregon, for intervenors. 1/

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

On October 3, 1979, at a public meeting held by the Coos Bay District Manager, Bureau of Land Management (BLM), a handout was

1/ Mr. Geisinger is the Executive Director of Douglas Timber Operators, Inc., a trade association which represents itself and the other following intervenors: Roseburg Lumber Company, Bohemia, Inc., International Paper Company, Sun Studs, Inc., Moore-Mill, Inc., Rogge Lumber Company.

distributed which is the subject of this appeal. The handout is entitled "Bureau of Land Management -- Coos Bay District, Some Planning System Issues." It discusses questions with respect to the balancing of visual, wildlife, recreational, forestry, and fisheries components used in BLM's Management Framework Plan (MFP) for the public lands. The handout was accompanied by a chart which lists three major land use alternatives (A, B, and C), for the management of the above components. Of the three alternatives set forth, alternative B is labelled "proposal." On October 10, 1979, the Cascade Holistic Economic Consultants (CHEC) and the Oregon Wilderness Coalition (OWC) filed a notice of appeal. 2/

2/ This "notice of appeal" clearly should have been treated by BLM as a protest in accordance with 43 CFR 4.450-2. That regulation provides that "any objection raised by any person to any action proposed to be taken in any proceeding before the Bureau will be deemed a protest and such action thereon will be taken as is deemed to be appropriate in the circumstances." The regulation governing notices of appeal, 43 CFR 4.410, permits appeals only by "any party to a case who is adversely affected by the decision." The distinction between an appeal and a protest and the reasons therefor were set forth in California Association of Four Wheel Drive Clubs, 30 IBLA 383 (1977). Therein we stated:

"[T]he purpose of the requirement that an individual be a 'party to a case' before a notice of appeal to this Board will lie is not to limit the rights of those who disagree with Bureau actions, but to afford a framework by which decisionmaking at the departmental and State Office level may be intelligently made.

"If an individual has been a 'party to a case' and seeks review of the Bureau's actions, it is presumed that the Bureau had the benefit of that individual's input when the original decision was made; thus the BLM was fully aware of the adverse consequences that might be visited upon such an individual as a result of its actions. On the other hand, when an individual appears for the first time to object to proposed actions, treatment of this person's objections as an 'appeal' effectively forecloses any consideration by the local authorized officer of the merits of the objection, since this Board has consistently held that upon the filing of a notice of appeal the State Office loses all jurisdiction over the matter being appealed. In this latter situation, the Board is, in effect, forced to make an initial decision, even though it is vested with appellate authority." Id. at 385. See also Elaine Mickels, 41 IBLA 305 (1979); Duncan Miller (On Reconsideration), 39 IBLA 312 (1979).

However, given the state of the record in this case it would be an unreasonable administrative exercise in futility to remand the case to BLM for consideration of the "protest." See Julie Adams, 45 IBLA 252 (1980).

It should also be noted that when the final proposed resource management plan is transmitted by the District Manager to the State Director, all adversely affected parties who participated in the planning process will have a right of protest which is ultimately reviewable by the Director, BLM, under 43 CFR 1601.6-1.

The CHEC and OWC are nonprofit environmental consulting groups with interests in wilderness, wild rivers, natural area preservation, and good forest management. They state in their notice of appeal that they object to the district manager's "proposal" because it was made without the filing of an Environmental Analysis Report (EAR) or Environmental Impact Statement (EIS) and prevented them, as members of the public, from actively participating in BLM's land use planning process.

In their statement of reasons appellants assert that an EIS or an EAR should have preceded the making of the district manager's proposal. They contend that the proposal is a major Federal action significantly affecting the environment and that an EIS is required under the National Environmental Policy Act (NEPA). 42 U.S.C. § 4321 (1976). Appellants contend that in making his proposal the district manager rejected "alternative proposals without properly considering the impacts in an EIS." They cite 40 CFR 1506.1 "Limitations on actions during NEPA process," which provides in part as follows: "(a) Until an agency issues a record of decision as provided in § 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would: (1) Have an adverse environmental impact; or (2) Limit the choice of reasonable alternatives." Appellants further state that under 40 CFR 1508.23 an EIS must be prepared as close as possible to the time the agency is developing a proposal. ^{3/} Appellants allege that the district manager deliberately postponed the development of an EIS until the available options had been narrowed. For relief, appellants request (a) that an order be issued preventing an action (such as BLM's processing of timber sale contracts) which would have an adverse impact, and (b) that an EIS or an EAR be prepared.

In its answer BLM states that the proposal to which appellants object is nothing more than a proposal, and that no decision implementing land use alternatives will be made until an EIS has been completed. According to BLM such EIS is scheduled for completion during fiscal 1981. BLM explains that in October 1979, appellants filed a protest against BLM's 1980 timber sale program for the district. In response to the protest, BLM, on January 2, 1980, issued a decision with right

^{3/} This regulation provides:

"§ 1508.23 Proposal.

"'Proposal' exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (§ 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists."

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of appeal. That decision deleted six parcels so as to "completely eliminate any overlapping of timber sales with the proposal to be analyzed in the EIS" (BLM Exh. F). BLM also stated that 10 other sales would be allowed to proceed in view of their minor impact" on any of the wildlife or other land use planning options." Appellants took no appeal from the January 2 decision. BLM contends that its current timber sale program will have an insignificant impact on land use options. BLM stresses that no land use decision has as yet been made, and that at present there is only a proposal for purposes of analysis in a full scale EIS.

Intervenors are opposed to the district manager's proposal because they consider the allocations for wildlife habitat excessive. Their concerns, they say, lie with maximizing the amount of lands available for commercial forest production. They agree with BLM, however, that the district manager's decision is not an implementation of any particular alternative and look forward to providing input for the NEPA mandated decisionmaking process.

Since appellants have not challenged BLM's determinations to allow certain timber sales to proceed with a showing of how these sales would be adverse to their interests, their general request for an order enjoining timber sales is denied. When appellants took no timely appeal from BLM's January 2 decision revising the timber sale program, the BLM determination as to these sales became a final administrative ruling on this matter. An appeal must have been filed within 30 days of service of the decision to invoke the review jurisdiction of this Board. 43 CFR 4.411. Accordingly, we may not now review the merits of this sale program in this later proceeding.

[1] Under the terms of NEPA, an EIS is required to be included "in every recommendation or report on proposals for legislation and other Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332 (1976). However, the handout appealed from cannot properly be characterized as the type of action contemplated by the Act which, by itself, would require preparation of an EIS. This is clearly an interim step in the planning process which is more gathering of information than decision making. Moreover, the record shows that at the time appellant raised this objection BLM was concurrently preparing the South Coast and Curry Sustained Yield Unit Timber Management EIS which includes the overall areas and management alternatives in question. In similar circumstances involving consideration of individual timber sales this Board has held that where a detailed program EIS has been prepared for a sustained yield unit, there is no need to also prepare a separate EIS for a management project before that project is finalized. See Harold P. Canady, 29 IBLA 69 (1977). We have repeatedly pointed out that a unit-wide EIS is more appropriate than individual impact statements for individual timber sales to prevent duplication of efforts. See also Preserve Our Scenic Environment, 47 IBLA 276 (1980); George Jalbert, 39 IBLA 205 (1979).

The same approach holds true for the case before us. It is clear that the South Coast EIS is being prepared and there is no reason to believe that it will not include the various BLM alternatives when a "recommendation or report" is made. There is, therefore, no need for the duplication of a separate EIS at this stage of the planning process. Nor is there any need for the less comprehensive Environmental Assessment Report (EAR) where a full EIS is being prepared. It appears, therefore, that appellants' major concern is resolved by the state of the facts. Appellants have suggested, however, that BLM was lethargic in initiating the process and that NEPA regulations were violated. We see no evidence in the record to reinforce these allegations. On closer scrutiny appellants' arguments do not withstand the logic of causality. An environmental impact analysis cannot exist prior in time to a contemplated action which will cause the impact. The natural chronological sequence is that data, *e.g.*, plans or proposals, must be formulated before the environmental consequences of such plans or proposals can be evaluated.

Appellants have not demonstrated that BLM is failing to support and implement the national policy expressed in NEPA (42 U.S.C. § 4331 (1976)). The file contains the affidavit of a BLM official who is responsible for the preparation of EIS's for the Oregon State Office. He states that the EIS calls for analysis of the proposed action and several alternatives. This is the individual to whom appellants' questions and substantive concerns should be taken. See 40 CFR 1508.22.

We conclude that the document appealed from does not implement any action adverse to appellants but rather is informational in nature. Since no action has been taken or policy implemented, the appeal is premature and will be dismissed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Gail M. Frazier

Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge

