

CALIFORNIA ASSOCIATION OF FOUR WHEEL DRIVE CLUBS, INC.

IBLA 89-211

Decided April 3, 1989

Appeal challenging the "Desert Tortoise Habitat Management on the Public Lands: A Rangewide Plan" (November 1988).

Appeal dismissed.

1. Administrative Procedure: Administrative Review--Appeals:
Jurisdiction--Board of Land Appeals

The Board of Land Appeals does not have jurisdiction to review appeals of decisions to approve or amend a resource management plan. Because a resource management plan establishes management policy, its approval is subject only to protest to the Director of the Bureau of Land Management, whose decision is final for the Department. Nor does the Board possess authority to review land classification determinations made by BLM. However, actions on applications following classification of land and decisions which implement a management plan or amendment are appealable to the Board.

2. Administrative Procedure: Administrative Review--Appeals:
Jurisdiction--Board of Land Appeals--Environmental Quality:
Environmental Statements

The Desert Tortoise Habitat Management Plan is a document designed to guide and control future management actions and does not take specific action or implement a decision or action. The "management actions" it identifies are not the type of specific actions or land use decisions which are appealable to the Board.

APPEARANCES: Patrice Davison, Field Representative, California Association of Four Wheel Drive Clubs, Inc.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

On February 2, 1989, the California Association of Four Wheel Drive Clubs, Inc. (CA4WDC), filed an appeal challenging the "Desert Tortoise

Habitat Management on the Public Lands: A Rangewide Plan" (Tortoise Habitat Management Plan or Plan). A statement of reasons, including a request for a stay, accompanied the notice. Copies of several other documents were also provided. One is a copy of comments on the draft of the Tortoise Habitat Management Plan submitted by CA4WDC to Dr. Richard Olendorff at the California State Office, Bureau of Land Management (BLM). Another is the draft of a letter dated December 16, 1988, from CA4WDC to Robert Burford, Director of BLM, stating that it is a notice of appeal filed under 43 CFR Part 4 or, alternatively, a formal protest under 43 CFR 1610.5-2. 1/

No response to the notice of appeal has been received from BLM. Upon request, BLM has provided a copy of the Tortoise Habitat Management Plan.

[1] As a general matter, the Board of Land Appeals has authority to review all decisions by BLM relating to the use and disposition of the public lands. 43 CFR 4.1(b)(3); see 43 CFR 4.410(a). However, the Board does not have jurisdiction to review appeals of decisions to approve or amend a resource management plan (RMP). Such plans "are designed to guide and control future management actions" rather than implement decisions on actions that affect specific parcels of land or rights to use Federal lands. 43 CFR 1601.0-2, 1601.0-5(k); Idaho Natural Resources Legal Foundation, Inc., 96 IBLA 19, 23, 94 I.D. 35, 38 (1987); Oregon Shores Conservation Coalition, 83 IBLA 1, 2 (1984). Because an RMP establishes management policy, its approval is subject only to protest to the Director of BLM, whose decision is final for the Department. 43 CFR 1610.5-2. In Harold E. Carrasco, 90 IBLA 39 (1985), the Board concluded that the denial of a request to amend an RMP is also within the scope of the regulation providing for protests to the Director of BLM.

1/ The letter is labeled "copy of draft" and is unsigned. It states that it is a timely filed notice of appeal because a copy of the Tortoise Habitat Management Plan was not mailed to CA4WDC until Dec. 12, 1988. The record does not indicate whether the letter was mailed to BLM and, if so, whether BLM has reviewed the letter as a protest filed under 43 CFR 1610.5-2. A notice of appeal to the Board of Land Appeals must be transmitted so that it is filed "in the office of the officer who made the decision * * * within 30 days after the date of service" of the decision. 43 CFR 4.411(a); see 43 CFR 4.401(a). Absent a timely filed notice of appeal, the decision becomes final and the Board does not have jurisdiction to review it. Ahtna, Inc., 100 IBLA 7, 15 (1987). The cover to the Tortoise Habitat Management Plan is dated November 1988. The prefatory letter by the Director of BLM is dated Nov. 14, 1988. These dates suggest that the present appeal was not timely filed. However, the Plan does not bear a printing or publication date. Nor, other than the statement in CA4WDC's letter, is there any indication in the record when the Plan may have been distributed to the public. The absence of such dates is not unusual. In this case, the lack of a more definitive date by which to determine whether the notice of appeal of a decision is timely reflects the fact, discussed in this opinion, that the Plan is not a decision taking a specific action or implementing a decision or action.

Nor does the Board possess authority to review land classification determinations made by BLM. 43 CFR 4.410(a)(1). On the other hand, actions on applications following classification of land and decisions which implement a management plan or amendment are appealable to the Board. Harold E. Carrasco, supra at 41; Wilderness Society, 90 IBLA 221, 224 (1986); see 43 CFR 1610.5-3(b).

The Tortoise Habitat Management Plan is not itself an RMP. See 43 U.S.C. § 1712 (1982); 43 CFR 1601.0-5(k); Oregon Shores Conservation Coalition, supra at 2. Rather, it is "an element of BLM's Planning System" under which the categorization of land "will be accomplished through the resource management planning process" (Tortoise Habitat Management Plan at 13). It was prepared

to provide Objectives and Management Actions to be used by the Bureau to improve the status of the tortoise on the public lands, including efficient planning and research, cost effective on-the-ground implementation of plans and research recommendations, and appropriate awareness of the species in the land-use planning and decision-making processes relating to other public land resources.

Id. at 2. The key features of the Plan are that it (1) establishes criteria to serve as guidelines for identifying tortoise habitat areas as belonging to one of three categories (Plan at 11-12) and (2) defines 14 management objectives, each with a number of related management actions. Id. at 14-23.

[2] In Oregon Shores Conservation Coalition, supra, the Board considered whether appeals of a management plan decision (MPD) for the Yaquina Head Outstanding Natural Area were properly before the Board. Because issuance of the MPD was the final implementation decision by BLM for the actions addressed in the document, the Board concluded that it was subject to review. Id. at 3. In contrast to the document at issue in Oregon Shores, we find that the Tortoise Habitat Management Plan is a document "designed to guide and control future management actions" and does not take specific action or implement a decision or action. Compare 43 CFR 1601.0-2 with 43 CFR 1610.5-3. The Plan's introduction states:

There are also a few things this Rangewide Plan is not intended to do. It does not address site-specific, population-specific, or individual on-the-ground management actions. These are being or will be developed in individual site-specific activity plans, such as Habitat Management Plans for wildlife, Allotment Management Plans for livestock, Area of Critical Environmental Concern Management Plans for special areas, etc. Development of proposals for budget and work effort required to implement this Rangewide Plan are on-going through the normal annual work planning process and will be developed further following completion of state-level desert tortoise habitat management implementation strategies/plans. National Environmental Policy Act compliance will occur when individual actions are proposed.

(Tortoise Habitat Management Plan at 2).

Even though the Plan identifies "management actions," it is clear that they are not the type of specific actions or land-use decisions which are appealable to the Board. For example, the one of possibly greatest concern to appellants, 9A, states in part: "Where necessary to achieve Category Goals, close Category I and II tortoise Habitat Areas to off-highway vehicle use." Id. at 21. This "action" does not identify any parcel of land as belonging to category I or II; nor does it close any land to off-highway vehicle use. Instead, it identifies an action BLM may take in the future. This is consistent with the Plan's introduction quoted above.

Because the Tortoise Habitat Management Plan is not "the final implementation decision" for the actions it discusses, Oregon Shores Conservation Coalition, supra at 3, we conclude that it falls within the planning program regulations and does not address matters which are appealable to this Board. Therefore, the appeal must be dismissed. For the same reason we deny appellant's request for a stay.

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.

Wm. Philip Horton
Chief Administrative Judge

I concur:

Will A. Irwin
Administrative Judge.

