

REX KIPP, JR.
JUSTIN KIPP

IBLA 88-569

Decided May 30, 1990

Appeal from a decision of the Las Cruces District Office, New Mexico, Bureau of Land Management, denying protest of right-of-way grant NM NM 67594.

Set aside and remanded.

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

An environmental assessment must take a hard look at the issues, identify the relevant areas of environmental concern, and make a convincing case that environmental impacts are not significant. A finding of no significant impact will not be affirmed on appeal where the record suggests possible impacts on the environment, but the environmental assessment contains no discussion of environmental impacts of either the proposed action or the alternatives.

APPEARANCES: Rex Kipp, Jr., and Justin Kipp, pro sese.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Rex Kipp, Jr., and Justin Kipp have appealed a July 15, 1988, decision of the Las Cruces District Office, Bureau of Land Management (BLM), denying their protest of right-of-way grant NM NM 67594. 1/ The Kipps graze cattle on the site of the grant, which is in secs. 1, 12, 13, 24, 25, 26, and 35, T. 25 S., R. 17 W., New Mexico Principal Meridian, Hidalgo County, New Mexico. The July 12, 1988, right-of-way grant, issued pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1982), authorizes Hidalgo County to construct 5.3 miles of highway on Federal land in order to connect two existing roads and provide a shorter route between the cities of Lordsburg and Playas.

1/ The BLM decision also denied the protest of William L. Merrill, who did not appeal the denial to this Board.

Prior to granting the right-of-way BLM prepared environmental assessment (EA) No. NM-036-87-77, which is dated June 27, 1988. Section A of the EA describes three possible routes, including the proposed route, and mentions the alternative of granting no right-of-way. Section B states that the proposed action is consistent with the applicable management framework plan. Section C is entitled "environmental documentation"; however, the text is virtually identical to that found in Section A and it does not mention threatened or endangered species or their habitat, wilderness values, impacts on prime and unique farmland, floodplains, cultural and paleontological resource values, visual resources, areas of critical environmental concern, or wetlands. Section C does not refer to field reports or expert opinions concerning any of these matters. A second Section C, entitled "environmental consequences" states, in its entirety:

The stipulations attached to the Decision Record are included as part of the Proposed Action.

There are no significant impacts to threatened or endangered species and their habitat, wilderness values, impacts on prime and unique farmland, floodplains, cultural and paleontological resource values, visual resources, areas of critical environmental concern or wetlands.

(EA at 5). Section D states that Tom Anderson, Hidalgo County Manager, was consulted concerning the proposed action. A second Section D recommends adoption of the proposed action.

The National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321-4370a (1982), and the regulations at 40 CFR Part 1500 require preparation of the EA. A finding of no significant impact (FONSI) will be affirmed if the agency (1) took a hard look at the environmental consequences as opposed to reaching bald conclusions unaided by preliminary investigation and (2) identified relevant areas of environmental concern and (3) made a convincing case the impact is insignificant. Idaho Natural Resources Legal Foundation, Inc., 96 IBLA 19, 23, 94 I.D. 35, 38 (1987).

It is clear that the subject EA is inadequate. Pursuant to 40 CFR 1508.9(b) an EA shall include brief discussions of the environmental impacts of the proposed action and the alternatives; nonetheless, EA No. NM-036-87-77 includes no discussion of the environmental impacts of either the proposed action or the alternatives.

The subject EA does describe the soil types and topography of the right-of-way area, however, it does not describe the impacts on the soil of the proposed route or the alternative routes. The EA does not indicate which plants and animals inhabit the right-of-way area, nor does it describe the impacts the various routes would have on them. The subject EA does not describe the archaeological resources in the subject right-of-way or its alternatives, nor does it describe the impacts on those resources. In short, the EA fails to adequately describe the nature of the environment or the impacts the various alternatives would have on it.

Moreover, the record clearly suggests that there are impacts from the proposed route. For example, the Decision Record states, "The Proposed Action would impact archaeological resources along the proposed route" (Decision Record at 1) and the EA indicates the proposed route has been adjusted in order to avoid archaeological sites along the original route. It is clear from the record that archaeological resources were evaluated and mitigation measures were taken. However, it is not enough to mitigate and do the archaeological survey without discussion in the EA.

The record also suggests possible impacts to wildlife or even to threatened or endangered species. For example, stipulation No. 12 requires Gila monsters be removed unharmed from the work site; one handwritten set of notes labelled "Scott" refers without elaboration to impacts to threatened and endangered species. Appellants indicate in both their protest and their statement of reasons that they are concerned about the impact the required fencing will have on deer and antelope. Yet, none of these matters is discussed in the EA.

Therefore, we conclude the FONSI is not grounded on an adequate EA. BLM reached the FONSI without taking a hard look at the environmental impacts and without identifying relevant areas of environmental concern. Moreover, BLM has failed to make a convincing case that the impact is insignificant. Thus, we find it is appropriate to remand this matter for preparation of an adequate EA.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, this matter is set aside and remanded for action consistent with this decision.

John H. Kelly
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge