

THE WILDERNESS SOCIETY

IBLA 92-143

Decided February 6, 1992

Appeal from a decision of the Colorado State Director, Bureau of Land Management, approving the Record of Decision for the Final Environmental Impact Statement entitled "Vegetation Treatment on BLM Lands in Thirteen Western States," as it related to public lands administered by the Bureau in the State of Colorado. (CO) WY-ES-91-030-4320.

Appeal dismissed.

- 1 Administrative Authority: Generally--Administrative Procedure: Administrative Review--Delegation of Authority--Rules of Practice: Appeals: Generally--Secretary of the Interior

Where the Colorado State Director, BLM, issued a decision approving a record of decision for an EIS regarding a vegetative treatment program for thirteen western states, insofar as it related to public lands administered by BLM in Colorado, and the Assistant Secretary, Land and Minerals Management, subsequently concurred in selection of the vegetative treatment program, that concurrence amounted to Secretarial approval of the vegetative treatment program for BLM lands in 13 western states, including Colorado. Accordingly, the Board of Land Appeals lacks jurisdiction to consider an appeal of the Colorado State Director's decision filed subsequent to the Assistant Secretary's action.

APPEARANCES: Patrick J. Garver, Esq., Salt Lake City, Utah, for appellant.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

The Wilderness Society has appealed from a July 23, 1991, decision of the Colorado State Director, Bureau of Land Management (BLM), approving the Record of Decision for the Final Environmental Impact Statement (FEIS) entitled "Vegetation Treatment on BLM lands in Thirteen Western States," insofar as it applies to lands administered by BLM in Colorado.

Incorporated with the Record of Decision is a single-page document containing two statements. The first, signed by the Director, BLM, and dated August 7, 1991, reads:

I approve and concur in the selection of the Preferred [sic] Alternative of the vegetative treatment on BLM land in 13 western states defined in the attached Record of Decision and analyzed in the Final Environmental Impact Statement, titled Vegetation Treatment on BLM Lands in the Thirteen Western States (U.S. Department of the Interior, Bureau of Land Management, May 1991).

The second, signed by the Assistant Secretary, Land and Minerals

Management, and dated August 14, 1991, states: "I concur in the above decision for vegetative treatment on BLM lands in 13 western states defined in the attached Record of Decision." The Record of Decision selected Alternative I, as defined in the FEIS, which involves the implementation of an integrated vegetation treatment program for BLM-administered lands, including the use of manual, mechanical, biological, prescribed burning, and chemical methods of vegetation treatment.

In his July 23, 1991, decision the Colorado State Director stated that "[i]mplementation of this program is dependent on the level of funding received annually and the allocations determined by program priority. Prior to project implementation, site-specific environmental analyses will be conducted to evaluate treatment project impacts on the resources of the local area."

[1] This appeal must be dismissed. Under 43 CFR 4.410(a), any party to a case who has been adversely affected by a decision of a BLM officer has the right of appeal to this Board. However, an exception to that grant of authority to the Board is recognized by the regulation "[w]here a decision has been approved by the Secretary." 43 CFR 4.410(a)(3). In Blue Star, Inc., 45 IBLA 333 (1979), the Board explained the basis for this exception:

[T]he authority which has been delegated to the Office of Hearings and Appeals and to its Director, for the purpose of its specific functions, is the equivalent of that delegated to each of the several Assistant Secretaries, *i.e.*, "all of the authority of the Secretary." Accordingly, each has the power to act with finality on matters within his or her own province. It follows that it was not contemplated that one officer who commands all of the authority of the Secretary should employ that authority to invade the province of another such officer who is not under his direct supervision. Thus, where an Assistant Secretary has made a decision or, prior to the filing of an appeal, has approved a decision made by a subordinate, that decision may not be reviewed in the Office of Hearings and Appeals since the full authority of the Secretary would have been exercised.

Id. at 335-36. See Marathon Oil Co., 108 IBLA 177, 179 (1989).

In this case, appellant seeks review of the Colorado State Director's July 23, 1991, decision. That decision was to approve the Record of decision for the FEIS, as it related to BLM-administered public lands in Colorado. Subsequent to that decision, and prior to the filing of this appeal, both the Director, BLM, and the Assistant Secretary concurred in

the vegetative treatment program selected in the Record of Decision. Under the Blue Star doctrine, the August 14, 1991, concurrence of the Assistant Secretary in the vegetative treatment program for BLM lands in 13 western states, including Colorado, amounted to Secretarial approval of the vegetative treatment program and deprived this Board of jurisdiction to entertain any appeal from the Colorado State Director's decision. 1/

Nevertheless, we note, as indicated by the Colorado State Director, that prior to any project implementation, site-specific environmental analyses will be prepared. Implementation decisions based on such environmental analyses are subject to appeal to this Board.

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.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur.

C. Randall Grant, Jr.
Administrative Judge

1/ Since the Board has no jurisdiction in this case, it is unnecessary to address whether appellant is adversely affected by the Colorado State Director's decision.