

EMERALD TRAIL RIDERS ASSOCIATION

IBLA 98-104

Decided April 28, 2000

Appeal from a Decision Record/Finding of No Significant Impact of the Area Manager, McKenzie Resource Area, Oregon, Bureau of Land Management, implementing in part terms of the Mohawk Recreation Area Management Plan with respect to off-highway vehicle and target shooting opportunities. OR-090-EA-97-26.

Appeal dismissed in part; decision affirmed.

1. Rules of Practice: Appeals: Standing to Appeal

Standing to appeal requires that a party to the case be adversely affected by the decision appealed from. To the extent that an appellant is challenging actions studied by BLM but not implemented in the decision appealed, the appeal is properly dismissed.

2. Environmental Quality: Environmental Statements— Federal Land Policy and Management Act of 1976: Land-Use Planning—National Environmental Policy Act of 1969: Environmental Statements—National Environmental Policy Act of 1969: Finding of No Significant Impact

A finding of no significant impact requiring preparation of an environmental impact statement will be affirmed when the record demonstrates that BLM has considered the relevant environmental concerns, taken a hard look at potential environmental impacts, and made a convincing case that no significant environmental impact will result from the action to be implemented. The adequacy of the record to support a finding of no significant impact is evaluated on the basis of the action which BLM has decided to implement in the absence of connected actions upon which the proposed action depends for its justification or cumulative impacts from past, present, or reasonably foreseeable future actions.

APPEARANCES: Susan E. Buxton, Esq., Boise, Idaho, for appellant; E. Bradley Grenham, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Emerald Trail Riders Association (ETRA) has appealed from a Decision Record issued by the Area Manager, McKenzie Resource Area, Oregon, Bureau of Land Management (BLM), dated October 28, 1997. That management decision implemented portions of the Final Mohawk Recreation Area Management Plan (MRAMP), with respect to off-highway vehicle (OHV) use and target shooting opportunities in the "Mohawk Recreation Area."

The Final MRAMP addresses management of the recreational use of 27,271 acres of public land scattered, in a checkerboard pattern, throughout the 75,753-acre Mohawk Recreation Area, which is northeast of the Eugene/Springfield metropolitan area in western Oregon. "Part III" of the Final MRAMP ("The Management Program") sets forth various "management actions" for the many diverse forms of motorized and nonmotorized recreational use within the recreation area, including OHV and target shooting opportunities. (Final MRAMP at 19.)

In her October 28, 1997, implementation decision, the Area Manager decided to implement a portion of Part III of the management program outlined in the Final MRAMP. Specifically, with respect to "OHV Designation" and "Resource Manipulation and Rehabilitation," BLM provided for implementing management actions C1 through C6, C12(b), C13, and C14, in the case of OHV designations, and G1 and G2, in the case of resource manipulation and rehabilitation. 1/

The decision was supported in part by an April 1997 Environmental Assessment (EA) (No. OR-090-EA-97-26), concerning the action proposed in the draft MRAMP and alternatives thereto. On the basis of the EA which analyzed the effects of implementation of the MRAMP, BLM made a finding of no significant impact (FONSI). The EA was tied to the Environmental Impact Statement (EIS) prepared for the Resource Management Plan for the Eugene District and the EIS for the April 1994 Record of Decision (ROD) in

1/ The BLM decision was ambiguous with respect to implementation of management action C9, which provided that BLM would discuss with Willamette Industries, Inc., rerouting trail segments in sec. 14, T. 15 S., R. 2 W., Willamette Meridian, Oregon, away from streams, where feasible, or taking other action, as provided for in management action C8. (Decision at 1-2; see Final MRAMP at 22.) However, BLM explains on appeal that the provision for implementing management action C9 was done "inadvertently." (Response to Motion to Stay at 2 n.1.) The BLM explanation appears consistent with the fact that the BLM decision also declined to implement management action C8, as well as management actions C7, C10, C11, and C12(a), pending further consideration. (Decision at 2.)

which BLM adopted the "Standards and Guidelines for Management of Habitat for Late! Successional and Old! Growth Forest Related Species Within the Range of the Northern Spotted Owl" (Standards and Guidelines) (known, collectively, as the "Northwest Forest Plan"). ^{2/} The Area Manager found that the MRAMP did not create any significant effect on the human environment, beyond that already identified in the 1994 ROD. Accordingly, she found that BLM was not required to prepare an EIS in connection with the actions implemented pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4332(2)(C) (1994).

Appellant, which represents motorcyclists, mountain bikers, and other OHV enthusiasts, specifically objects to the Area Manager's decision to, as ETRA describes it, close about 22 of the 80 miles of existing OHV trails and stream crossings in the Mohawk Recreation Area to OHV use. (Statement of Reasons for Appeal (SOR) at 6; see Petition for Stay at 2.) Appellant also asserts that the process leading to the FONSI was flawed in that the FONSI was published simultaneously with the draft EA, contending that any FONSI must take into consideration comments received on a draft EA. (SOR at 4.) Further, appellant contends that the scope of the EA was improperly narrowed to limit the analysis to OHV use and shooting and not including other forms of recreation. Id. at 5. Appellant also argues that the EA is flawed by a lack of an adequate inventory of existing trails and monitoring data regarding existing use. Id. at 6. Further, ETRA cites lack of information regarding the impact of closure to recreational interests and the amount of controversy generated by the closure as reasons why the EA is inadequate. Id. at 7. Appellant further challenges the failure of the EA to consider the cumulative impact on OHV users of such foreseeable actions as timber sales requiring closure of trails. Id. at 8. Additionally, appellant contends that the EA and FONSI are premature in view of the lack of information, citing BLM recognition in the decision of the need to "further explore resource protection mitigation measures with trail users." Id. at 9-10 (quoting BLM decision at 2). Appellant also filed a petition to stay the effect of the BLM decision pending administrative review on appeal.

Counsel for BLM has entered an appearance in this case and filed a response to the stay petition. In its response, BLM points out that in the implementation decision under appeal BLM expressly declined to adopt OHV management actions identified in the MRAMP as C7, C8, C9, C10, C11, and C12(a) "in order to allow BLM to further explore resource protection

^{2/} The ROD was based on a February 1994 "Final Supplemental EIS on Management of Habitat for Late! Successional and Old! Growth Forest Related Species Within the Range of the Northern Spotted Owl" developed by BLM, together with the Forest Service, U.S. Department of Agriculture, which analyzed 11 alternatives for the comprehensive management of timber and other natural resources on all Federal lands in California, Oregon, and Washington, within the geographic range of the Northern spotted owl.

measures with trail users through a planning process to be conducted during fiscal year 1998." (BLM Response to Motion to Stay at 2.) Further, BLM notes that the implementation decision focuses on "immediate safety hazards identified through the MRAMP planning process" and involves "closure of less than 1/4 mile of OHV trails out of over 80 existing miles." Id. at 3-4. With respect to appellant's assertion of procedural flaws in the EA and FONSI, BLM asserts that there was no prejudgment in the analysis, but rather the draft FONSI was circulated with the draft EA for the purpose of receiving comments on the significance of the action and the FONSI itself. Id. at 6. Thus, BLM notes the FONSI was only signed after consideration of both the EA and the comments received. Id. at 6-7. Further, BLM responds that the scope of the EA was not limited to OHV use and shooting, but included other recreational uses. Id. at 7.

The BLM response is supported by the description in the record of the nine OHV management actions approved for implementation by the Area Manager. For the most part, they relate to posting signs for the benefit of trail users and others, designating one-way beginner trails, posting areas which were previously closed to OHV use, surveying existing trails for possible future OHV management, and providing for limitations upon future trail construction in wetlands and other special areas. (Decision at 1; Final MRAMP at 21-23.) In only two cases (management actions C2 and C3) did the Area Manager provide for closing any existing OHV trails to OHV use, specifically providing for realigning or eliminating three trail segments. (Decision at 1; Final MRAMP at 21.) The segments total less than 1/4-mile in length, thus substantiating BLM's assertion on appeal. (Final MRAMP at 21.) In consideration of the fact that the actual decision appealed from only involves closure of 1/4 mile of OHV trails and is compelled by public safety concerns, we denied appellant's petition to stay the effect of the BLM decision pending our review of the merits of the appeal by order dated January 28, 1998. 3/

[1] To the extent that appellant is challenging the MRAMP generally and provisions thereof other than C1 through C6, C9, C12(b), C13, and C14, it is contesting proposals which BLM had not decided to implement as of the time of the decision under appeal. The decision indicates that BLM

3/ We note that the purpose and need for the closure was adequately explained and documented. See Final MRAMP at 21-22, 43; Response to Public Comments attached to October 1997 decision at 2. The MRAMP terms which BLM implemented state that the C2 closure, which was to be accompanied by a rerouting of the trail, was intended to "encourage motorcycle deceleration before crossing a primary roadway." (Final MRAMP at 21.) It also stated that the C3 closure, which was to be accompanied by a search for an alternate route, was intended to "eliminate a trail segment deemed too dangerous for motorized recreational activity." Id. at 22. In each case, the Area Manager deemed the situations to pose "high safety risks to the public," thus justifying according the actions "priority." (October 1997 decision at 1; Response to Public Comments attached to EA at 2.)

specifically declined to adopt other OHV management actions "in order to allow BLM to further explore resource protection measures with trail users through a planning process to be conducted during fiscal year 1998." Subsequently, during the pendency of this appeal BLM has informed the Board that it was discussing with appellant undertaking a "joint field visit to clarify the issue of trail closure," given the great disparity between BLM's and appellant's assessment of the number of miles of existing trails which will be closed by virtue of the Area Manager's October 1997 decision. (Notice Regarding Agency Response to SOR.) Standing to appeal requires that a party to the case be adversely affected by the BLM decision. 43 C.F.R. § 4.410. To the extent that appellant is challenging actions discussed in the MRAMP but not implemented by BLM, there is no adverse decision to appeal and any appeal must be dismissed as premature. Jan Wroncy, 136 IBLA 187, 189 (1996); see Petroleum Association of Wyoming, 133 IBLA 337, 342-43 (1995).

[2] Section 102(2)(C) of NEPA requires BLM to consider the potential environmental impacts of an action in an EIS prior to authorizing "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C) (1994); Sierra Club v. Marsh, 769 F.2d 868, 870 (1st Cir. 1985). In order to determine whether to prepare an EIS, BLM prepares an EA. 40 C.F.R. § 1501.4. A BLM decision to undertake an action analyzed in an EA without preparation of an EIS based on a FONSI will ordinarily be affirmed when the record demonstrates that BLM has considered the relevant matters of environmental concern, taken a "hard look" at potential environmental impacts, and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. Defenders of Wildlife, 152 IBLA 1, 6 (2000); Rebecca S. Andersen, 145 IBLA 206, 218 (1998). An appellant seeking to overcome that decision must carry the burden of demonstrating, with objective proof, that BLM failed to adequately consider a substantial environmental question of material significance to the proposed action. Id. We conclude that appellant has failed to do so here.

The adequacy of a FONSI for a particular action is ordinarily evaluated on the basis of the potential impacts of the action which BLM has decided to implement, in the absence of a finding (a) that the action is a part of several connected actions which depends on the connected actions for its justification or (b) that the impact of the action must be considered together with the impact of other past, present, or reasonably foreseeable future actions which will have a cumulative impact. See Larry Thompson, 151 IBLA 208, 213 (1999); Sierra Club, 111 IBLA 122, 134 (1989). Although the MRAMP and the EA address a class of actions much broader than those implemented by the limited October 1997 BLM decision, the options listed in the MRAMP and addressed in the EA have been reserved for possible future action after further input from trail users and study. (BLM Decision at 2.) The actions implemented in the present decision do not foreclose or compel choices with respect to future actions. Appellant has not shown that implementation of the limited actions adopted by BLM at this

time, including closure of 1/4 mile of OHV trails in two locations for reasons of public safety, are interdependent parts of other connected actions required to be considered together with the actions implemented. Further, appellant has not shown that the actions adopted by BLM might have a cumulatively significant impact together with other past, present, or reasonably foreseeable actions. Accordingly, consideration of appellant's many challenges to the EA that are unrelated to the implementation decision is not appropriate at this time.

Although preparation of a draft FONSI prior to receipt of comments on the draft EA is an unorthodox manner of proceeding, it appears that BLM received and responded to comments prior to finalizing both the EA and the FONSI. In the context of this case, there is no showing that the resulting FONSI is not supported by the record. While it appears that BLM has recognized a need for obtaining further information prior to implementing broader aspects of the Final MRAMP, there has been no showing that the impact of closure of 1/4 mile of OHV trails for reasons of public safety or the other measures implemented by the BLM decision may have a significant impact on the human environment. Accordingly, appellant has failed to establish error in the October 1997 implementation decision appealed.

To the extent that appellant's arguments have not been expressly addressed in this decision, they have been considered and rejected on the ground that they are either contrary to the facts and law or are immaterial.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the appeal is dismissed in part and the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Lisa Hemmer
Administrative Judge

