



THE CITY OF LAS VEGAS, NEVADA *ET AL.*

184 IBLA 13

Decided June 7, 2013



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

THE CITY OF LAS VEGAS, NEVADA *ET AL.*

IBLA 2012-194

Decided June 7, 2013

Appeal from a Record of Decision of the Las Vegas Field Office, Bureau of Land Management, imposing conditions on the disposal of public land within the final boundary of a Conservation Transfer Area. LLNVS01000.

Affirmed.

1. Public Lands: Disposals of: Generally

The Board will affirm a BLM decision establishing the final boundaries of an environmentally sensitive area, pursuant to which certain lands designated in the Southern Nevada Public Land Management Act, Pub. L. No. 105-263, 112 Stat. 2343 (1998), for transfer to the City of Las Vegas and North Las Vegas, Nevada (the Cities), will be subject to conditions imposed to protect sensitive resources, consistent with the facilitation of the orderly growth of the Cities, when the decision was made in due regard for the public interest and was based on a reasoned analysis of applicable factors.

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

A supplemental environmental impact statement analyzing the impacts of a decision defining the final boundaries of an environmentally sensitive area, to be included in lands to be transferred to local governmental entities pursuant to the Southern Nevada Public Land Management Act, Pub. L. No. 105-263, 112 Stat. 2343 (1998), will be upheld when it shows that BLM has taken a “hard look” at environmental consequences and contains a reasonably thorough discussion of the

significant aspects of the probable environmental consequences of the proposed action and alternatives thereto.

APPEARANCES: Lawrence S. Bazel, Esq., San Francisco, California, for appellants; Daniel G. Shillito, Esq., and Luke Miller, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE ROBERTS

The City of Las Vegas and North Las Vegas, Nevada (the Cities), have appealed from the *Record of Decision* (ROD) for the *Final Supplemental Environmental Impact Statement—Upper Las Vegas Wash Conservation Transfer Area* (SEIS),<sup>1</sup> issued on October 21, 2011, by the Field Manager, Las Vegas (Nevada) Field Office, Bureau of Land Management (BLM). The ROD sets the final boundary for the Conservation Transfer Area (CTA) established pursuant to the 2004 *Las Vegas Valley Disposal Boundary Final Environmental Impact Statement and Record of Decision* (LVVDB FEIS/ROD). The LVVDB FEIS/ROD provided for the transfer of approximately 46,700 acres of lands in the Las Vegas Valley to the Cities for future growth. However, BLM withheld approximately 5,000 acres from disposal to the Cities because of their high concentration of sensitive resources. BLM left the final boundary of the CTA for future analysis and determination, stating that the final boundary of the CTA “was adaptable, meaning that it could be increased or decreased in size to meet the purpose and need.” SEIS ROD at 2. Based upon information gathered during public meetings, BLM expanded the study area of the CTA to encompass 13,622 acres, which were analyzed for sensitive biological, cultural, paleontological, and hydrological resources that were identified along the Upper Las Vegas Wash (ULVW or Wash). The SEIS assessed the environmental impacts to the various natural and socioeconomic resources that were intentionally left unaddressed in the LVVDB FEIS/ROD and that are specific to land within the approximately 13,600-acre CTA study area. The impacts were evaluated in the SEIS to allow BLM to determine the final boundary of the CTA. BLM issued the ROD concurrent with the SEIS, as allowed under 40 C.F.R. § 1506.10(b).

On appeal, the Cities challenge BLM’s determination to expand the CTA. They complain that the SEIS/ROD adopts an expansion that more than doubles the 5,000-acre CTA identified in the LVVDB FEIS/ROD, and provides that BLM, rather than a local entity, will manage the CTA. Statement of Reasons (SOR) at 2. They argue on various bases that BLM’s definition of the CTA boundary violates the

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<sup>1</sup> Unless otherwise noted, our citations to the SEIS refer to the Final SEIS.

Southern Nevada Public Land Management Act (SNPLMA), Pub. L. No. 105-263, 112 Stat. 2343 (1998); the Administrative Procedure Act (APA), 5 U.S.C. §§ 501-706 (2006); and the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4370 (2006). As discussed below, we conclude that the Cities have failed to show error under any of the cited authorities.

### BACKGROUND

In 1998, Congress passed the SNPLMA to address a specific problem in southern Nevada, *i.e.*, BLM's difficulty in managing public lands interspersed with private lands throughout the Las Vegas Valley, and to alleviate the pressures of a rapidly growing population in and around the Las Vegas metropolitan area by promoting responsible and orderly development. *See* SNPLMA § 2(a)(1)-(3). The SNPLMA was enacted to achieve a dual purpose: "The purpose of this Act is to provide for the orderly disposal of certain Federal lands in Clark County, Nevada, and to provide for the acquisition of environmentally sensitive lands in the State of Nevada." *Id.* § 2(b). Congress designated a disposal boundary inside which Federal lands were authorized for disposal. *Id.* § 4(a). SNPLMA, and its disposal boundary, were amended in 2002 to add acreage to the disposal area. *See* Clark County Conservation of Public Land and Natural Resources Act of 2002 (Clark County Act), Pub. L. No. 107-282, § 401, 116 Stat. 1994; *see also* SEIS at 6.

Subject to SNPLMA, the Secretary of the Interior is authorized to dispose of the identified public land under BLM's jurisdiction, in accordance with applicable law. *See* SNPLMA § 4(a). To implement disposal actions, Congress outlined a "Joint Selection" process, through which the unit of local government, where lands identified under § 4(a) will be disposed, was to jointly select lands with the Secretary for sale or exchange under SNPLMA. *Id.* § 4(d)(1). The Secretary is to coordinate disposal activities with that local governmental unit, and those activities must "be consistent with local land use planning and zoning requirements and recommendations." *Id.* Further, units of local government may secure certain lands and rights-of-way (ROWs) for particular uses. *Id.* § 4(b). Such ROWs granted under § 4(b)(2) would not result in conveyance of the Federal land, but would represent valid existing rights that would be preserved when the underlying land is sold or exchanged out of Federal ownership.

In 1998, BLM completed the Las Vegas Resource Management Plan (Las Vegas RMP), which analyzed and accounted for the disposal of approximately 51,826 acres of Federal land in the Las Vegas Metropolitan area. *See* LVVDB FEIS at 1-3. The disposal boundary Congress identified in SNPLMA § 4(a) encompassed the same disposal lands identified in the Las Vegas RMP, with approximately 200 additional acres, bringing the total close to 52,021 acres. *Id.* As part of promulgating the

Las Vegas RMP, BLM analyzed the potential environmental impacts of disposal through the related RMP EIS. *Id.* This analysis considered projected population growth and community land use plans in determining the overall acres for disposal to meet demand for development. *Id.* The result was an environmental impacts analysis of only 25,540 of the original 51,826 acres identified as potentially available for disposal. BLM assumed 25,540 acres represented the upper limit of lands to be sold for extra developable space during the 20-year planning period of the Las Vegas RMP. *Id.* at 1-4. However, despite this upper limit assumption, the years following implementation of the Las Vegas RMP saw a dramatic increase in the Las Vegas population, resulting in the disposal of the projected acreage at a much faster rate than anticipated. *Id.* It then became apparent that BLM would need to conduct additional NEPA analysis regarding the remaining 26,286 acres that had been deemed eligible for disposal but had not been the subject of NEPA review. At the same time, BLM determined to assess the approximately 22,000 acres added to the disposal boundary by the Clark County Act of 2002. BLM therefore undertook the required environmental review under section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C) (2006). The result was the LVVDB FEIS issued in 2004.

In the LVVDB FEIS, BLM analyzed the environmental consequences of disposing of the land within the boundaries defined by Congress, while identifying ways to avoid, minimize, and mitigate potential adverse impacts. LVVDB FEIS at Executive Summary (ES)-1. The LVVDB FEIS considered three alternatives: the Proposed Action contemplated disposal of all 46,701 available acres; the Conservation Action Alternative contemplated the disposal of the same number of acres but provided approximately 5,000 acres for the CTA which would be disposed of after adopting a Conservation Agreement; and the No Action Alternative that would keep the current level of disposal at the 25,540 acres, resulting in no further disposals until 2018 when the Las Vegas RMP planning term expired. LVVDB FEIS at 2-2, 2-3, 2-5, 2-6. The Conservation Transfer Alternative, which was BLM's preferred alternative, identified approximately 5,000 acres in the northern portion of the disposal boundary as the CTA. *Id.* at 2-5, 2-8 (Figure 2.4-1). This area was identified for the future application of conservation measures based upon, among other things, surveys showing the existence of special status plant species, paleontological resources, and cultural resources. *Id.* at 2-5. These conservation measures would be included in a Conservation Agreement developed by interested parties, including BLM and interested local governmental units, the execution of which would precede the disposal of the CTA lands pursuant to SNPLMA. *Id.*

With the LVVDB FEIS, the Field Manager of the Las Vegas Field Office signed a ROD (the LVVDB ROD) selecting the Conservation Transfer Alternative. He indicated that this Alternative was the agency preferred as well as the environmentally preferred alternative. *See* LVVDB ROD at unpaginated (unp.) 2. Regarding the CTA,

the Field Manager confirmed that a Conservation Agreement would be essential and stated that the CTA should be the focus of additional study, collaboration, and NEPA analysis. *Id.* These further steps would be necessary to address the various remaining issues related to the CTA. The Field Manager specifically stated that the boundary of the CTA would “be adaptable to the needs and concerns of interested parties that participate in the development of the conservation, including community land use planning.” *Id.* The Field Manager was aware of community concerns regarding the resources within the northern portion of the disposal boundary, inclusive of the ULVW, as well as the community’s interests in open space and recreational opportunities. *Id.* at 4.

The LVVDB ROD further stated that the ULVW was a natural flood control feature and that further study of water released into the wash and its effects on the entire wash system would be necessary. *Id.* at 5. The FEIS made clear that the CTA land would include the ULVW area along with an estimated number of acres to provide protection to those sensitive resources in and around the wash. LVVDB FEIS at 2-2, 2-5. Notably, because the boundaries of the CTA were adaptable, they were not precisely defined or described beyond broad assertions that approximately 5,000 acres would be essential for protecting the ULVW. *Id.*; LVVDB ROD at unp. 2. BLM provided that the CTA lands would continue to be subject to local government, but with the condition that a Conservation Agreement must be developed and signed by the necessary parties prior to transfer. LVVDB FEIS at 2-5. The LVVDB ROD, and related NEPA analysis, was not subject to any appeal or other legal challenge.

The SEIS “is a mandatory step in implementing the decision of the ROD for the LVVDB FEIS, which requires further study, collaboration, and analysis of the environmental effects of public land disposal within the CTA.” SEIS at 5. The current SEIS, reflecting the additional study, collaboration, and NEPA analysis, is intended to precisely define the adaptable CTA boundary. BLM held several stakeholder meetings over 2½ years, soliciting views for the optimum size, boundary, and goals for the CTA, and from these meetings BLM recognized strong public support for considering a larger conservation area, inclusive of the alluvial fan north of the original 5,000 acres. *Id.* at 2, 8, 19, 269; *see also* SEIS ROD at 2. BLM utilized stakeholder input, information gathered and analyzed by Utah State University in a report entitled *Upper Las Vegas Wash Conservation Transfer Area: A System to Develop Alternative Scenarios* (2007), input from cooperating agencies, and internal agency expertise in settling on a final study area for the future boundaries of the CTA of approximately 13,622 acres. SEIS ROD at 2; SEIS at 7 (Figure 1.1-2).

BLM described its purpose and need for the SEIS in terms of establishing a final CTA boundary, supported by science, that would meet its obligation to protect sensitive resources. SEIS at 3. BLM expressed concern for the ULVW and its natural

functionality, along with the botanical, cultural, and paleontological resources within the ULVW and surrounding area, and stated that its obligation to protect these resources is consistent with the LVVDB FEIS and ROD, the Las Vegas RMP, the SNPLMA, as amended, and various other Federal laws. *Id.* at 11.

In compliance with NEPA, BLM developed a range of alternatives that favored maximum development of CTA lands, at one end of the spectrum, to maximum conservation of resources within and around the ULVW, at the other end, and ranging from approximately 13,000 acres to less than 1,500 acres. SEIS ROD at 2. BLM considered six alternatives, including the No-Action Alternative, and ultimately selected Alternative B, the boundaries of which defined a CTA of 10,669 acres, subject to disposal after the adoption of a Conservation Agreement signed by the recipient management entity(ies). *Id.* at 2-3.<sup>2</sup>

The U.S. Environmental Protection Agency published the Notice of Availability (NOA) of the Final SEIS in the *Federal Register* on March 30, 2012. The Cities filed their appeal within 30 days of publication of the NOA in the *Federal Register*.

## ANALYSIS

### A. Alleged Violations of SNPLMA

The Cities argue on two bases that the disputed ROD violates SNPLMA. First, they argue that Congress clearly intended BLM to dispose of the public land within the disposal boundary, and that BLM's action amounts to a refusal to comply with the specific dictates of SNPLMA. Second, they claim that SNPLMA requires BLM to defer to decisions and recommendations of local government entities regarding the disposal of land within the disposal boundary. We address these arguments in turn.

#### 1. BLM's Decision is Consistent with SNPLMA

The Cities contend that “the intent of Congress is clear—Congress intended BLM to dispose of BLM-managed land within the disposal boundary— and that is the end of the matter.” SOR at 15-16. They state that in the SNPLMA Strategic Plan, disposal is the mission (“program partners facilitate the orderly *disposal* of Federal land in the Las Vegas Valley”) and Goal 1 (“Provide for the orderly *disposal* of land in

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<sup>2</sup> Two additional areas within the study area—one composed of 2,654 acres of land and the second composed of 373 acres—were made available for private development under the jurisdiction of the City of North Las Vegas. Neither of these areas will be subject to the requirements of the Conservation Agreement. SEIS ROD at 3.

the disposal boundary”). *Id.* at 16 (quoting Strategic Plan at 8-9). They rely upon the LVVDB ROD, which provides that land within the disposal boundary would be available for disposal. They recognize, however, that “lands in the CTA would be disposed based on . . . the conservation agreement process.” SOR at 16 (quoting LVVDB ROD at 1-2).

The Cities seek to strengthen their argument that BLM is mandated to dispose of Federal land within the disposal boundary by referencing the requirement in the SNPLMA that BLM authorize ROWs “for all reservoirs, canals, channels, ditches, pipes, pipelines, tunnels, and other facilities and systems needed for . . . wastewater; or . . . [f]lood control management.” SNPLMA § 4(b)(2). They argue, in effect, that because BLM must transfer ROWs on lands within the CTA, the underlying land must be conveyed as well. They specifically object to the indication in the SEIS ROD that BLM “*will not allow* the development of planned flood-control facilities within the CTA,” including “detention basins and riprap.” SOR at 16 (citing SEIS ROD at 5). Not allowing the development of flood-control facilities within the CTA is contrary to the Cities’ Master Plan for Flood Control, they argue, which “identifies one new detention basin for construction, and expansion of two existing detention basins within the CTA and just downstream of the CTA,” and which provides for the “construction of nearly nine miles of armored levees and channels, using both riprap and concrete, across the northern edge of the Northern Areas and the Shooting Park.” *Id.* According to the Cities, the SEIS “prohibits the development of planned flood-control facilities within the CTA, in violation of SNPLMA’s requirement that BLM transfer the rights of way for flood-control facilities as requested by the Cities.” *Id.* at 16-17.

The Cities reject BLM’s position that SNPLMA authorizes—rather than requires—the disposal of land within the disposal boundary. They counter that the ROW provision indeed *requires* BLM to issue the ROWs, and that the authorization language “should be read together with the purpose of SNPLMA, which is ‘to provide for the orderly disposal of certain Federal lands.’” SOR at 17 (quoting SNPLMA § 4(b)(2)). The Cities argue that the provisions of SNPLMA should be read consistent with the LVVDB FEIS, which they state provided for the disposal of all BLM-managed land within the disposal boundary, and with the SNPLMA Strategic Plan, which they state identifies conveyance of SNPLMA disposal lands as the mission of the Plan. *Id.*

The Cities doubt that BLM will dispose of the CTA lands, even after development of a Conservation Agreement. They emphasize that the SEIS ROD “makes clear that BLM *will not* dispose of the CTA, at least anytime in the near future.” SOR at 17. They point to BLM’s responses to comments on the SEIS stating that “uses on BLM-managed lands, including those that would occur within the final

CTA boundary, will be determined through the current BLM . . . resource management planning process.” SEIS at N-18.

In response, BLM states that SNPLMA § 4(a) *authorizes* the Secretary to dispose of lands within the boundary area through sale or exchange, while SNPLMA § 4(b)(2)(A)(i)-(ii) provides for grants of ROWs over Federal land pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (2006). BLM asserts that Congress did not include lands subject to ROWs in the same category as those subject to disposal—disposal lands are not retained in Federal ownership, unlike lands subject to ROWs. BLM argues that “the SNPLMA obligation on the Secretary to issue ROWs over Federal land for particular uses, when in accordance with law and only when needed, is not the same as a requirement to *dispose* of land, as that term is used in this Act.” Answer at 13. Further, BLM points out that the SEIS was not issued “in response to an application for a right-of-way submitted under § 4(b)(2)(A),” and did not assess “whether it should or should not grant a right-of-way to either Appellant for any of the particularized uses allowed under SNPLMA.” *Id.* BLM concludes that Congress “separat[ed] out the concepts of disposal authorizations and right-of-way granting obligations,” so that “BLM is *authorized* to sell or exchange land within the disposal boundary, but is not required to sell the land if such sale would be inconsistent with the requirements of applicable law.” *Id.* at 14.

[1] We agree with BLM that the Cities’ “allegation that BLM is required to dispose of land within the SNPLMA disposal boundary based on the right-of-way provision is simply wrong.” *Id.* BLM correctly asserts that it “is not attempting to withhold any land from disposal,” that “[n]othing in the Supplemental FEIS ROD has attempted to reduce the land eligible for disposal in Congress’ disposal boundary,” and that “[t]his new decision only requires the 10,669 acres within the Conservation Transfer Area be subject to a Conservation Agreement before transfer.” *Id.*

In their Reply, the Cities argue that SNPLMA § 4(d)(1) “imposed nondiscretionary requirements on BLM.” Reply at 1. BLM does not disagree that it is required to “jointly select” lands for disposal; that BLM is required to “coordinate land disposal activities” with the Cities; and that “[l]and disposal activities . . . shall be consistent with local land use planning and zoning requirements and recommendations.” *Id.* (quoting SNPLMA § 4(d)(1)). However, BLM correctly argues that the Cities turn a blind eye to the requirement in SNPLMA § 4(a) that the land disposal designation be implemented in compliance with other applicable law, which includes the requirements of NEPA. BLM was obligated to evaluate the environmental consequences of the potential disposal of tens of thousands of acres of land designated by Congress.

In meeting this obligation, BLM completed the LVVDB EIS in 2004, and then finished its compliance obligations under NEPA by finalizing the CTA boundary left open for further analysis in the LVVDB EIS. Contrary to the Cities' characterization of BLM's objectives, the purpose of the LVVDB EIS and follow-up SEIS was not to decide whether to dispose of any particular lands, but to assess the environmental consequences of a major Federal action that would result in the potential disposal of thousands of acres of public lands. *See, e.g.*, LVVDB EIS at ES-1. Accordingly, BLM considered impacts to local land use planning in the impacts analysis section of the LVVDB EIS at 4-35 to 4-36, 4-41 to 4-42. The purpose of the SEIS was to establish the boundary for the CTA, not to vet the disposal of particular parcels of land. *See* SEIS at 9. The LVVDB EIS and ROD set forth recommendations for protecting sensitive resources found in the CTA, and the SEIS, in finalizing the boundaries of the CTA, maintains previously suggested mitigation and protection of these resources.

2. *BLM is Required to Coordinate with, not Defer to, the Cities*

The Cities advance the related argument that SNPLMA requires BLM to defer to their land use planning requirements and decisions, as well as their recommendations as to conveyance of disposal lands. They state that under SNPLMA § 4(d)(1), "BLM must select land for disposal jointly with the Cities, and 'coordinate land disposal activities with the unit of local government in whose jurisdiction such lands are located.'" SOR at 18 (quoting SNPLMA § 4(d)(1)). They again rely upon the SNPLMA Strategic Plan, which emphasizes BLM's objective "to develop a unique partnership" in which "partners work together to facilitate the sale of Federal lands within the disposal boundary." *Id.* (citing Strategic Plan at 5). In addition, the Cities complain that the SEIS fails to provide for sewers consistent with the Master Plan for Sewers; that the SEIS ROD "prohibits the very flood-control facilities that are identified in the Master Plan for Flood Control"; and that "BLM has also usurped the authority of the Flood Control District by asserting control over flood-control facilities in the CTA—without any consideration of whether BLM's decision will cause harm downstream." SOR at 18-19.

There is no question that the Cities are to play a role in land disposal activities under SNPLMA. However, Congress did not, in SNPLMA § 4(d)(1), confer upon local government entities the authority to dictate the terms of transferring lands within the disposal boundary. BLM correctly observes that "[n]othing in th[e] language [of SNPLMA § 4(d)] requires BLM to defer to whatever the Appellants want or design through their master plans." Answer at 15. The SNPLMA Strategic Plan, which promotes the development of "unique partnerships" and the support of "master planning" efforts by local governments, does not confer upon the Cities the power to demand land disposal actions that BLM deems contrary to SNPLMA, NEPA, or any other applicable law. As BLM states, "[t]hrough compliance with these laws came the

necessary 2004 LVVDB FEIS and ROD with recommendations to protect sensitive resources found on lands subject to disposal.” *Id.* While BLM is required to coordinate land disposal activities with local governments, and land disposal must be consistent with local plans and zoning requirements and recommendations, “[t]hat is not to say . . . that for lands within the disposal boundary shown to have sensitive resources deserving of protection under applicable Federal law, that local governments can simply plan-away compliance with those laws and demand conveyance by BLM.” *Id.* at 16. Such an approach “would be neither a ‘joint’ [n]or ‘coordinated’ disposal action under the terms of SNPLMA, and would further negate Congress’ requirement that such disposals be in compliance with all other laws.” *Id.*

In their Reply, the Cities reiterate their complaint that the SEIS and ROD “take unilateral action without coordinating with the Cities.” Reply at 4. They argue that the SEIS and ROD “violate SNPLMA. It’s that simple.” *Id.* BLM acknowledges, as it must, that it is required by SNPLMA § 4(d) to “coordinate” with units of local government in the selection of lands for disposal. *See* Sur-Reply at 4. However, BLM also rightly points out that “[t]his selection process is a ‘joint’ process.”<sup>3</sup> *Id.*

In considering the Cities’ argument, it appears to us that they misunderstand the scope and purpose of the environmental analysis BLM conducted in the LVVDB FEIS and SEIS. They fundamentally oppose the creation of the CTA in the LVVDB FEIS/ROD and the definition of its boundaries in the SEIS ROD. In its NEPA documents, BLM evaluated the environmental impacts of the potential disposal of lands designated by Congress in the SNPLMA. If the dictates of local government units were deemed to control any and all issues related to land disposal under SNPLMA, BLM’s NEPA obligations would have no place and, as BLM notes, “SNPLMA’s § 4(a) requirement to comply with other applicable law (i.e., NEPA) was a hollow superfluous suggestion.” Sur-Reply at 5. We recognize that the Cities have not gone so far as to argue that NEPA is not applicable law with which compliance is required under SNPLMA § 4(a). However, in arguing that the scope of the SEIS, and impliedly the LVVDB EIS, should have been limited by the master plans of the local governments, the Cities “undermine[] the NEPA process to such an extent it becomes inconsequential to decision-making.” *Id.* The deficiency alleged by the Cities is contrary to any reasonable understanding of what constitutes “coordination” and

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<sup>3</sup> BLM explains that in order to facilitate § 4(d), its staff developed an Implementation Agreement (IA), under which BLM provides public information on SNPLMA matters generally, and further outlines the steps of joint selection and related activities. IA at 26 (Ex. 1 to Sur-Reply). Joint selection activities occur after a nomination of a parcel for disposal has been submitted to a local government entity. *Id.*

“joint” decisionmaking under SNPLMA, and provides no basis for overturning BLM’s decision.

*B. The LVVDB FEIS and ROD Have a Rational Basis*

The Cities argue that “[t]he APA requires an agency ‘to examine the relevant data and articulate a satisfactory explanation for its action.’” SOR at 19 (citing *FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 513-14 (2009)). They state that “[a]n agency that changes position must say so,” and that “[w]hen the new position depends on factual findings that contradict the previous policy, an agency must provide a reasoned analysis.” *Id.* (citing 556 U.S. at 515-16). They contend that the SEIS is not “truly a supplement to the 2004 EIS,” because it does not “describe the same project as the original.” *Id.* at 19-20. The LVVDB FEIS described the disposal of land in accordance with SNPLMA, they argue, while the SEIS describes the project as “the preservation of ‘hydrologic functioning’ and existing conditions: ‘Establishing the CTA boundary is intended to preserve the ULVW’s natural hydrologic functioning and water quality.’” *Id.* at 20 (quoting SEIS at 11). The Cities conclude that “[t]he goals have obviously changed, and BLM does not disclose *why* it has changed the goals.” *Id.*

We see no basis for the Cities’ argument that the SEIS does not constitute a valid supplement to the LVVDB FEIS. As BLM notes, its “decision and analysis within its Supplemental EIS clearly continue with directives contained in its LVVDB ROD, which was based upon public support for protecting the natural hydrological functionality of the Wash where possible.” Answer at 16. The project considered in the SEIS is “to establish a final CTA boundary that is compatible with protecting natural, cultural, and biological resources and to facilitate orderly growth within the LVV that is consistent with the LVVDB ROD.” SEIS at 10. We perceive no shift in BLM’s goals.

The LVVDB FEIS was meant to “identif[y] the environmental consequences that may result from the disposal and use of all remaining BLM managed lands within the disposal boundary area . . . and identif[y] methods to avoid, minimize, and mitigate, as appropriate for adverse impacts.” LVVDB FEIS at 1-1 through 1-2. BLM selected Alternative B, the Conservation Transfer Alternative, which analyzed the disposal of lands, as noted by the Cities, but also included suggested actions, such as creation of the CTA, to address adverse impacts caused by transfer of the disposal lands. *See* LVVDB ROD at 3. BLM stated clearly that creation of the CTA was necessary to protect sensitive species, cultural, paleontological, and natural flood control resources. BLM specifically stated in the LVVDB ROD that more study, collaboration, and NEPA analysis would be needed for the CTA, and that the

boundaries of that area were adaptable to the needs and concerns of those local entities participating in the development of the CTA. *Id.* at unp. ii to paginated 2.

Rather than shifting positions, BLM sought through the SEIS to define a final CTA boundary that is consistent with the LVVDB ROD. *See* SEIS at 10. The goals of the SEIS flow directly from the LVVDB FEIS. We reject the notion that the two documents are inconsistent or that the SEIS is anything more than a logical next step to implement the LVVDB ROD and comply with SNPLMA. As BLM states: “Appellants have not shown, by any measure, inconsistent agency determinations rising to the level of proving an irrational decision without record support.” Answer at 18 (citing *Cont. Land Res.*, 162 IBLA 1, 5-6 (2004)).

The Cities argue that “[t]he arbitrary nature of BLM’s decision is highlighted by the contradictory positions BLM took in the Draft Supplemental EIS, issued in January 2010, and the Shooting Park Environmental Assessment (EA), issued one month earlier.” SOR at 20. They state that the lands are identical in all relevant aspects, yet BLM determined that lands in the CTA should not be developed because that would alter the “hydrologic functioning” of the ULVW. *Id.* Further, they argue that the SEIS prohibits development within the CTA because it threatens sensitive resources, whereas the Shooting Park EA encourages development of lands in the same area. *Id.* at 20-21. They assert that “[t]o comply with the APA, BLM must explain why it has changed position from the Shooting Park FONSI [Finding of No Significant Impact] and the 2004 EIS.” *Id.* at 21.

We are not convinced by the Cities’ argument. The Shooting Park was created pursuant to special congressional legislation, which directed the conveyance of Federal land to Clark County in Nevada for a Shooting Park, as soon as practicable after the date of enactment of the Act. *See* Pub. L. No. 107-350, § 1(b), 116 Stat. 2975 (2002). The land was transferred to Clark County on November 26, 2003. However, in early 2009, a lawsuit was brought challenging BLM’s transfer of that land without NEPA review. *See* Shooting Park EA, Attachment 1 at unp. 1. To settle the suit, BLM agreed to conduct the NEPA evaluation regarding the transfer of land although it was 6 years after that conveyance occurred and several components of the Shooting Park had been constructed. The EA and FONSI focused on what impacts could be further mitigated. The Cities point out that the EA noted that stormwater is being channelized and routed around the Park. *See* SOR at 13. BLM explains that the treatment of stormwater was analyzed in the EA because Shooting Park structures had been built by the time BLM reviewed the action under NEPA. *See* Answer at 19. BLM states that the EA did not indicate that the Park “had no impacts to hydrological function,” only that “the impacts simply could not be further mitigated and did not require voluminous discussion.” *Id.* at 19-20. BLM explains further that its “mention that the Shooting Park’s presence could offset illegal dumping, and resulting air

impacts, is simply finding the positives in a non-retractable situation, not an endorsement of full-blown residential/commercial development on neighboring lands as implied by Appellants.” *Id.* at 20. BLM concludes that the Shooting Park should be considered as “a primarily open space feature on the landscape, which is considerably different in scale and impact than full-blown urban development.” *Id.*

We reject the Cities’ argument that the SEIS and the Shooting Park EA are inconsistent in their treatment of hydrologic functioning. The purposes and needs of the two undertakings are not synonymous. In the LVVDB FEIS, BLM completed an analysis of resource impacts related to the SNPLMA disposal boundary, but stated that further analysis would be required when the final disposal boundary is established. The SEIS states that the ULVW is the heavily incised natural flood channel for the entire Las Vegas Valley. SEIS at 9. Within the ULVW is a wide diversity of sensitive resources, the continued existence of which can be tied to preserving the natural functionality of the hydrology both within and outside the ULVW. *Id.* at 9, 11. The alluvial fans north of the proposed CTA act as a storm water dispersal system that limits impacts to the sensitive resources within the ULVW. *Id.* The fans disperse water and sediment, reduce erosion-related impacts within the ULVW, and help maintain a certain water quality and sediment load. *Id.* Because most areas that drain into the ULVW have not been developed, increased flow rates and channel erosion caused by engineered flood control to offset such development have not yet impacted the ULVW. *Id.* The concern with development within the CTA relates to the resulting channelization of stream courses, expanded areas of impervious land cover, construction with natural stream crossings, and modifications of sediment transport which can alter the ULVW’s shape and depth. *Id.* at 45, 127, 133. Development is expected to result in higher levels of contaminants both in the ULVW and downstream. *Id.* at 20.

In their Reply, the Cities state in clear terms their objection to the SEIS ROD: “The simple truth is that there is no good reason to prohibit development in the Northern Areas.” Reply at 14. They challenge BLM’s assertion that the ROD “was based on public support for protecting the natural hydrological functionality of the Wash.” Answer at 16. They assert that they “represent the general public, whose interest may differ from the few persons present at BLM meetings,” and that they “have strongly opposed the protection of ‘natural hydrological functionality,’ and this goal does not have the support of the general public.” Reply at 14 n.10.

The SEIS reflects BLM’s recognition that because of urban development in the Las Vegas Valley a naturally functioning wash system is now a rarity. *Id.* at 6, 17. Through protecting the ULVW, BLM is seeking to preserve one remaining wash system consistent with its management objectives. *Id.* at 8. The SEIS correlates with the previous LVVDB FEIS and ROD, and together they provide solid support for the

decision at issue. BLM's decision was made in due regard for the public interest and was based on a reasoned analysis of applicable factors. *See Bristlecone Alliance*, 179 IBLA 51, 54-55 (2010). There was no violation of the APA.

*C. The SEIS and ROD Comply with NEPA*

*1. The Statement of Purpose and Need Is Appropriate*

The Cities argue that BLM's stated purpose, *i.e.*, "protection of 'the natural functioning of the ULVW,' . . . pre-ordains BLM's choice of a no-development alternative, in violation of NEPA." SOR at 23 (quoting SEIS at 11; citing *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991)). They complain that BLM "did not adequately consider the views of Congress, which in SNPLMA directed BLM to dispose of the land within the disposal boundary," and that "[n]othing in SNPLMA suggests that Congress would have wanted BLM to block development on land within the disposal boundary by insisting that the 'hydrologic functioning' must be protected, when the local units of government are demanding otherwise." *Id.* at 23-24.

We disagree with the Cities' analysis. The applicable Council on Environmental Quality (CEQ) regulation provides that a purpose and need statement "shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." 40 C.F.R. § 1502.13. The SEIS carries forward the NEPA analysis left open by the LVVDB ROD, which stated: "Approximately 5,000 acres will be subject to a process of more study, collaboration, and further NEPA analysis." SEIS at 10. The purpose of the analysis suggested in the SEIS ROD was to establish a CTA boundary to protect the sensitive resources BLM identified in the LVVDB ROD, such as sensitive plants and their habitat, cultural resources, paleontological resources, and a naturally functioning wash system. *See* LVVDB ROD at unp. ii. The current SEIS, in "protecting the functionality of the ULVW[,] is fulfilling the missing final analysis as described in the prior LVVDB ROD," which "is precisely what supplemental NEPA is meant to do." SOR at 23.

[2] The CEQ regulations describe the need for supplemental analysis when there is a substantial change to a previously analyzed project, or there are significant new circumstances or information relative to environmental concerns of a proposed action or its impacts. 40 C.F.R. § 1502.9(c)(1)(i)-(ii). The focus of supplemental NEPA analysis is to review an issue or information not fully addressed by previous analysis, so developing a full wide-open project is not necessary or appropriate. *See Center for Biological Diversity*, 181 IBLA 325, 344 (2010) (supplemental environmental reviews are for remaining actions or impacts not previously fully

analyzed). In the SEIS at issue, BLM did not improperly narrow its purpose and need; it simply focused the analysis on the information needing further evaluation as described within the LVVDB ROD, *i.e.*, establishment of a CTA boundary to protect particularly identified sensitive resources. We conclude that defining the purpose and need in this fashion fully complies with NEPA and its implementing regulations.

## 2. BLM Provided a Full and Fair Discussion

The Cities argue that BLM violated 40 C.F.R. § 1502.1, which states that an EIS must “provide full and fair discussion of significant environmental impacts.” They challenge BLM’s modeling analysis on several bases. Relying upon *Backcountry Against Dumps*, 179 IBLA 148, 161-62 (2010), they contend that BLM did not “properly rely on its expert, which made unreasonable assumptions unsupported by the evidence.” SOR at 24. Specifically, they state that BLM’s expert “intentionally biased its modeling results to exaggerate the effects of development, and because it chose incorrect parameters for its hydrology model.” *Id.* They assert that BLM’s expert was not licensed to prepare hydrologic evaluations of Las Vegas Valley, and that the expert’s opinion failed to comply with local requirements for hydrologic models, as set out in the *Hydrologic Criteria and Drainage Design Manual* issued by the Flood Control District. They then question “two unreasonable assumptions” of BLM’s model: (1) if the area is “fully developed, the flood-control facilities identified in the Master Plan would not be built”; and (2) such development would take place in violation of the Clean Water Act, 33 U.S.C. §§ 1251-1387 (2006), and other requirements. *Id.* at 25. The Cities therefore claim BLM’s model was biased to exaggerate development effects. *Id.* at 26-27. We are unpersuaded.

BLM contends that the Cities’ attack on the model it used sets up a “false standard to which BLM never needed to adhere.” Answer at 25. BLM disagrees with the Cities’ reliance on the Nevada Administrative Code § 625.610, which sets forth standards of conduct and other administrative requirements applicable to Nevada professionals. BLM explains that it “is under no obligation to hire a Nevada engineer to complete a water model for BLM’s NEPA analysis,” and that it is not required to “utilize a local water district’s manual for its water model.” *Id.* We agree with BLM and conclude that neither of these claims constitutes a violation of NEPA.

BLM explains that its model was based upon models accepted by the Clark County Regional Flood Control District, a Federal Emergency Management Agency hydrologic model of existing conditions, state-of-the-practice reference documents, and generally accepted modeling practices. SEIS, Appendix N at N-32 through N-34. BLM explained in the section captioned Hydrology and Erosion Analysis that the model was developed for general comparative purposes, and was not intended for use by local municipalities or flood control authorities. *Id.* at N-34. BLM’s analysis of

impacts to the ULVW considered not only the prevention of erosion by controlling peak flows, but also dealt with the functionality of the ULVW in terms of natural flows, natural flood control, sediment transport, erosional processes (deposition and aggradation), and naturally occurring vegetation and habitat. *Id.* at N-30.

In response to the Cities' claim that the modeling was based upon the improper assumption that not all flood-control facilities would be built in and around the ULVW should development occur, BLM states that it did evaluate whether to include possible flood control measures as part of its model. However, BLM emphasizes that implementation of those measures is not guaranteed and that it would be "speculative to assume as fact designs of drainage infrastructure." Answer at 27 (citing SEIS, Appendix N at N-32, N-34). BLM's model was based upon a plan that was not intended to designate exact types, locations, and capacities of flood-control facilities. *Id.* So considered, the Cities have not shown error in BLM's methodology or conclusions. *See Wyoming Outdoor Council*, 176 IBLA 15, 25 (2008).

The Cities also argue that BLM's model is based upon improperly assuming that development in the ULVW area would violate the Clean Water Act. SOR at 25-26. In actuality, they assert that development in the ULVW area would be consistent with regulations and discharge permits issued pursuant to the Clean Water Act, and that through such prescriptions peak flows would be kept to near pre-development conditions.

BLM states that it considered this criticism in response to comments on the Draft SEIS. "The objective of the model, and the decision at issue," BLM explains, "is not simply to determine how to control all aspects of water flow on the alluvial fans leading to the Las Vegas Wash." Answer at 28. "Engineering facilities to manage water flow may keep levels of flow comparable to pre-development levels, but that does not mean other aspects of the Wash are not greatly impacted." *Id.*; SEIS, Appendix N at N-34. BLM asserts that even assuming the Cities take the necessary actions to fulfil all their Clean Water Act obligations and requirements, thereby maintaining water flows around the ULVW in their natural volumes, such "does not prove error in BLM's model," given that "all those actions would have little to no effect on the qualitative assessment of engineered versus natural flows." Answer at 28. In responding to comments on the Draft SEIS, BLM specifically disputed the Cities' contention and concluded that their "suggested mitigation was oversimplifying the situation," and that "achieving nearly identical flows from engineered drainage systems was not realistic." *Id.* (citing SEIS, Appendix N at N-34 to N-35).

BLM responds that it utilized a model accepted by the Clark County Regional Flood Control District. *See* SEIS, Appendix N at N-34. In responding to comments on

the Draft SEIS, BLM made clear that, as a standard modeling practice, extraneous areas were removed from the analysis, given the geography and weather patterns of the area. BLM's objective was to assess the water flow issues related to the alluvial fans north of the ULVW in relation to developed space in those areas; there was no need for BLM's assessment to include all washes from the entire Las Vegas Valley, since over-inclusion of unnecessary parameters would serve to dilute the effects analysis in the SEIS. In sum, we agree with BLM that its water modeling was sufficient for the purposes it was intended to serve and, therefore, was adequate under NEPA.

### *CONCLUSION*

We conclude that the SEIS and ROD accomplish BLM's limited objective, *i.e.*, to address the environmental issues associated with defining the final boundary of the CTA specifically left open by the LVVDB EIS and ROD. The Cities have failed to show by a preponderance of the evidence that the SEIS/ROD violates SNPLMA, the APA, or NEPA.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

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/s/  
James F. Roberts  
Administrative Judge

I concur:

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/s/  
James K. Jackson  
Administrative Judge