MEG SCHERCH PETERSON

193 IBLA 255            Decided October 29, 2018
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IBLA 2015-203 Decided October 29, 2018

Appeal from a decision of the Acting Field Manager, Taos (New Mexico) Field Office, Bureau of Land Management, approving the issuance of special recreation permits for non-motorized competitive events. DOI-BLM-NM-F020-2014-0001-EA.

Affirmed.


   The Board is guided by a “rule of reason” in assessing an EA’s adequacy. The Board will uphold a BLM decision to proceed with a proposed action after completion of an EA and FONSI when the record demonstrates that BLM has considered all relevant matters of environmental concern, taken a “hard look” at potential environmental impacts, and made a convincing case that no significant impact will result or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures.


OPINION BY ADMINISTRATIVE JUDGE HAUGRUD

Meg Scherch Peterson appeals from a Decision Record (Decision or DR) issued on May 22, 2015, by the Acting Field Manager, Taos (New Mexico) Field Office (TFO), Farmington District, Bureau of Land Management (BLM), approving “Special Recreation
Permits for Non-Motorized Competitive Events in the Río Grande del Norte National Monument.” The Sangre de Cristo Audubon Society filed a separate appeal of BLM’s Decision (IBLA 2015-193), which is decided by a separate order.

SUMMARY

BLM’s Decision authorizes the issuance, on an annual basis, of three special recreation permits (SRPs) for commercial, one-day events within the Río Grande del Norte National Monument (Monument). Two of the events are competitive trail running races, and one is a mountain bike race. BLM issued the Decision and an accompanying finding of no significant impact (FONSI) after completing an Environmental Assessment (EA)\(^1\) in May 2015 pursuant to the National Environmental Policy Act of 1969 (NEPA) and its implementing regulations.\(^2\)

Peterson argues that BLM’s Decision was predicated on an inadequate EA that failed to properly analyze the potential impacts of the events on the Monument’s resources, particularly the impact on migratory birds. Peterson also believes BLM did not properly involve the public in its decision-making processes and asserts other claims, all alleging that BLM’s decision was in error.

Peterson has not shown that BLM erred in its Decision to approve the SRPs. In its EA, BLM took the required “hard look” at the potential impacts of the events on the Monument’s resources, including migratory birds and raptors. BLM incorporated stipulations into the permits to mitigate impacts and adequately assessed the effect of those stipulations in reducing impacts. BLM also properly involved the public in its decision-making, considering comments and revising the EA in response to comments. Accordingly, Peterson has not demonstrated that BLM erred, and we affirm BLM’s Decision.

FACTUAL AND PROCEDURAL BACKGROUND

Río Grande del Norte National Monument

The Río Grande del Norte National Monument was established by Presidential Proclamation No. 8946 on March 25, 2013.\(^3\) The Monument includes approximately

\(^1\) Administrative Record (AR) 1613-1690, DOI-BLM-NM-F020-2014-0001-EA (EA).
\(^2\) 42 U.S.C. § 4332(2) (2012); 40 C.F.R. Chapter V (Council on Environmental Quality (CEQ) regulations) and 43 C.F.R. Part 46 (Department regulations).
243,000 acres of public land located within Taos and Rio Arriba Counties in northern New Mexico that is managed by BLM. The landscape is comprised of rugged, wide open plains at an average elevation of 7,000 feet, dotted by volcanic cones, and cut by steep canyons. A primary feature is the Rio Grande Gorge, an 800-foot deep canyon with only a few drivable access points over nearly 70 miles of river. The Monument’s designation is designed to preserve the region’s “cultural, prehistoric, and historic legacy and maintain its diverse array of natural and scientific resources, ensuring that the historic and scientific values of this area remain for the benefit of all Americans.”

While the Presidential Proclamation prohibits or restricts certain activities within the Monument, it explicitly allows non-motorized mechanized vehicles to be used on designated roads and trails. Approximately 66 miles of non-motorized trails exist within the Monument, and trail use constitutes a “significant portion of visitor use.”

The Proclamation directs BLM to manage the Monument as part of its National Landscape Conservation System, and to prepare and maintain a management plan specific to the Monument to protect the objects identified in the Proclamation. BLM has initiated the land management planning process for the Monument, which will conclude with an amendment to the 2012 Taos Resource Management Plan (RMP), but it has not yet completed that process. Until a management plan is completed, BLM manages the Monument, subject to the restrictions set forth in the Proclamation, under the Taos RMP.

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4 See id. at 18785 and accompanying map.
6 Id.
7 78 Fed. Reg. at 18784.
8 Id. at 18785.
9 EA at 29.
Of particular relevance to this appeal, the Taos RMP created a special recreation area, known as the Rio Grande Gorge Special Recreation Management Area (SRMA), within what are now the boundaries of the Monument. The SRMA was created to provide for developed and permitted recreational opportunities:

The relevant recreation program objectives for the area are to provide exercise close to home, high quality recreation opportunities and experiences, and to issue special recreation permits in an equitable manner for specific uses of public lands and related waters as a means of providing for private and commercial recreation.\(^{13}\)

The Rio Grande Gorge SRMA is comprised of a number of recreation management “zones,” with the two primarily involved in this appeal being the Taos Valley Overlook and Wild Rivers zones. Taos Valley Overlook zone is near the southern end of the Monument and has about 16 miles of trails.\(^{14}\) Under the Taos RMP, only nonmotorized recreation is allowed on the trails, but the issuance of SRPs is contemplated as a management action.\(^{15}\) A primary access point to the trails in the Taos Valley Overlook zone is the Cascabel Trailhead, which is located just outside of the Monument boundaries at the end of State Highway 110.\(^{16}\)

The Wild Rivers zone is located over 40 miles to the north of the Taos Valley Overlook zone.\(^{17}\) The area encompasses the confluence of the Red River and the Rio Grande.\(^{18}\) The Wild Rivers zone has a backcountry byway, a visitor center, trails, five developed campgrounds, picnic tables, grills, drinking water, and restrooms.\(^{19}\) Two group shelters also are available -- La Junta, which accommodates up to 50 people, and El Aguaje, which accommodates up to 30 people.\(^{20}\) Among other management actions, the Taos RMP directs BLM to “[c]onsider small competitive events and [a] limited number of guide services” in the area.\(^{21}\)

\(^{13}\) DR (AR 1609-11) at unpaginated (unp.) 2 (generally citing Taos RMP § 2.2.6 (Recreation)).
\(^{15}\) Taos RMP at 61.
\(^{16}\) See EA at 46.
\(^{17}\) id. at 43.
\(^{19}\) Id.
\(^{20}\) Id.
\(^{21}\) Taos RMP at 58.
BLM’s Consideration of Proposed Non-Motorized Competitive Events

Following the establishment of the Monument, BLM received three SRP applications for commercial events to take place within the Monument: 1) a ten kilometer trail race to take place across the Taos Valley Overlook trail system; 2) a 12 or 24-hour competitive endurance mountain bike event on the Taos Valley Overlook trail system; and 3) a half-marathon and ten kilometer race on the established Wild Rivers trail network.22 The events would be confined to the Taos Valley Overlook and Wild Rivers (Wild Rivers/Guadalupe Mountain) recreation management zones of the SRMA.23

BLM completed a draft EA analyzing the three pending SRP applications in July 2014, and proposed granting the three applications with a number of required design features and operational stipulations.24 BLM also completed a biological evaluation (BE) assessing the likely potential effects of the proposed activities on listed or threatened endangered species, BLM-listed sensitive species, migratory birds and raptors, and big game winter range.25 The BE included recommendations that BLM consider imposing timing restrictions to avoid impacts to big game winter range and raptor breeding.26 The 2014 Draft EA did not directly address these recommendations but described why a seasonal restriction was not analyzed in detail as a separate alternative.27

BLM made the 2014 Draft EA available for a 30-day public comment period and received 17 comments.28 In response to comments and internal review, BLM made substantial revisions to the EA, adding two new alternatives (Alternatives C and D) that considered timing restrictions, adding a new mitigation measure to the proposed action, and providing a more detailed discussion of the affected environment and the potential impacts to that environment, including impacts to BLM sensitive species and migratory birds.29 BLM’s final EA considered as alternatives (A) authorizing the issuance of three SRPs for non-motorized competitive events in the Monument (the Proposed Action); (B)

22 AR 1-45; Answer at 3.
23 See EA at 7 (“[T]he Wild Rivers and Guadalupe Mountain zones, which are contiguous, are collectively referred to as ‘Wild Rivers’ . . . since the event in this area is proposed predominantly in the Wild Rivers zone.”).
24 2014 Draft EA (AR 321-51) at AR 325-28. The 2014 Draft EA is not paginated, so citations are made to the AR page numbers.
26 BE at 25.
27 2014 Draft EA at AR 328.
28 AR 353-420 (copies of comments); EA at 49.
29 See EA at 49-63 (summarizing and then providing responses to comments).
a No Action Alternative under which no non-motorized competitive events would be authorized in the Monument but other non-motorized use would continue; (C) authorizing the issuance of three SRPs subject to a January 1-August 31 timing limitation designed to protect big game winter range and BLM sensitive species by precluding any events during that time period; and (D) authorizing the issuance of three SRPs subject to a March 1-July 31 timing limitation designed to protect the breeding and nesting activity of migratory birds and raptors.\textsuperscript{30}

The Proposed Action, Alternative A, would require yearly approval of the events to avoid making a long-term decision that would restrict options in developing the management plan for the Monument.\textsuperscript{31} The Proposed Action incorporated various project design features and stipulations intended to avoid or minimize adverse effects to vegetation, soils, migratory birds and other wildlife. In the Wild Rivers area, the single trail running event would be limited to 400 persons, including event personnel and vendors.\textsuperscript{32} The race would take place on designated roads and trails, and the start/finish area would be located on the paved road in front of the Wild Rivers visitor center where amplified music would be permitted.\textsuperscript{33} Parking would be limited to the visitor center and a previously disturbed area, and the parking areas would be monitored and reseeded if necessary to prevent soil loss.\textsuperscript{34} The event perimeters and parking areas would be flagged prior to the event and monitored for enforcement.\textsuperscript{35}

The permit authorizing the Wild Rivers race would be subject to 17 event-specific stipulations and a general one providing that “[o]ther current BLM land-based SRP stipulations may apply.”\textsuperscript{36} The specific stipulations include requirements that the permittee rehabilitate any trail damage within five days of the event and that a portion of the fee program funds be dedicated to pay for noxious weed treatment and seed for

\textsuperscript{30} \textit{Id.} at 7-13 (description of alternatives).

\textsuperscript{31} DR at unp. 1; see also EA at 5 (“The decision whether or not to authorize permits . . . would be in the \textit{interim} while management planning for the monument is ongoing and cannot establish a precedent or limit alternatives in the monument planning process. . . . Any authorization of the competitive events . . . will be granted year-by-year at least until the monument plan is complete . . .”).

\textsuperscript{32} EA at 8-9.

\textsuperscript{33} See DR at unp. 1; EA at 7 (“At the Wild Rivers area, staging would occur at or near the Zimmerman Visitors Center.”); Answer at 5 (“[T]he start/finish area [for the Wild Rivers race] would be located on the paved road in front of the Wild Rivers visitor center where amplified music would be permitted.”).

\textsuperscript{34} EA at 9.

\textsuperscript{35} \textit{Id.}

\textsuperscript{36} \textit{Id.} at 11-12.
any disturbed areas.\textsuperscript{37} Additionally, while the race could be authorized to take place at any time during the year, if the event was scheduled during the nesting season of raptors and other birds, from March 1 to July 31, the permittee would be required to conduct a nest survey.\textsuperscript{38} If an active nest was identified, the permittee would consult with a BLM wildlife biologist to determine the best means of mitigating disturbance to the nest, “with emphasis on avoidance by rerouting the event course.”\textsuperscript{39}

The Proposed Action would also authorize one trail running event and one mountain bike event in the Taos Valley Overlook area.\textsuperscript{40} The events would take place only on designated or existing roads and trails, with trails leading down the canyon closed to competitive events.\textsuperscript{41} Participation would be limited to 400 people per event, and no more than three vendors would be allowed in designated staging areas.\textsuperscript{42} Event staging, including parking and vending, would occur outside of the Monument’s boundaries.\textsuperscript{43}

As with the Wild Rivers event, permits would be conditioned on event-specific stipulations. No amplified music would be permitted for either event in the Taos Valley Overlook area.\textsuperscript{44} In addition, the stipulations require the permittee to ensure bikes are washed to avoid the spread of noxious weeds and non-native species; require monitoring to determine sustainability of the events; require rehabilitation of any trail damage; and require a nest survey and mitigation to avoid nest disturbance if events were scheduled during the nesting season of March 1 to July 31.\textsuperscript{45}

For all three events, BLM would conduct pre-event monitoring to establish baseline conditions to document any existing impacts and ensure that the trails can withstand the proposed events.\textsuperscript{46} “If not, use of those trails would not be allowed.”\textsuperscript{47} Post-event monitoring would also be required to determine if the sites declined due to the impacts of the permitted activities and “determine whether future reductions are

\textsuperscript{37} \textit{id.} at 9-10.  
\textsuperscript{38} \textit{id.} at 9.  
\textsuperscript{39} \textit{id.}  
\textsuperscript{40} \textit{id.} at 10.  
\textsuperscript{41} \textit{id.} at 10-12.  
\textsuperscript{42} \textit{id.}  
\textsuperscript{43} See \textit{id.} at 7 (“Staging for the events at Taos Valley Overlook, including the start and finish line(s), would be located at a developed trailhead outside of the [M]onument boundaries.”).  
\textsuperscript{44} \textit{id.} at 11.  
\textsuperscript{45} \textit{id.} at 11-12.  
\textsuperscript{46} \textit{id.} at 10 (Wild Rivers), 12 (Taos Valley Overlook).  
\textsuperscript{47} \textit{id.}
necessary to mitigate social or resource impacts (such as noxious weeds or bird nesting, for example).\textsuperscript{48} Activities and mitigation measures under Alternatives C and D are the same as in the Proposed Action, except that the events would not be permitted to occur during certain times of the year. The timing restriction proposed under Alternative C – no events from January 1 through August 31 – was based on the BE’s recommendation to preclude events during that time period to avoid impacts to the winter range of big game and BLM sensitive species in the project area.\textsuperscript{49} Also under Alternative C, amplified music would not be allowed at any of the events.\textsuperscript{50} The timing restriction under Alternative D (March 1 to July 31) was proposed “primarily to prevent disturbances to raptors during periods of nesting, foraging, and fledging as well as to protect breeding and nesting migratory birds.”\textsuperscript{51}

Finally, BLM considered a no-action alternative (Alternative B), under which BLM would not approve the SRP applications and regular non-motorized visitor use in the Taos Valley Overlook and Wild Rivers zones would continue at current levels.\textsuperscript{52} BLM would consider future SRP applications on a case-by-case basis.\textsuperscript{53}

The EA analyzed the environmental effects of each alternative on resources in the proposed project area, addressing wildlife resources (including BLM sensitive species, migratory birds and raptors, and big game winter range), ecological diversity (including impacts to vegetation and soils), and recreation.\textsuperscript{54} Direct, indirect and cumulative impacts were assessed for each alternative.\textsuperscript{55} BLM acknowledged that granting SRPs could result in disturbance of resources in the project area, but BLM anticipated that the events would result in only minimal adverse impacts.\textsuperscript{56} Under all action alternatives BLM concluded that, given the short duration of the events, the similarity to existing types of uses, and the mitigation stipulations included as part of the action alternatives, the impacts to resources would not be significant.\textsuperscript{57}

\textsuperscript{48} Id. at 9, 10 (Wild Rivers), 11 (Taos Valley Overlook); see also id. at 10, 12 (describing pre- and post-monitoring requirements for each event).
\textsuperscript{49} Id. at 12.
\textsuperscript{50} Id. at 13.
\textsuperscript{51} Id.
\textsuperscript{52} Id. at 12.
\textsuperscript{53} Id.
\textsuperscript{54} Id. at 31-48.
\textsuperscript{55} Id.
\textsuperscript{56} Id.
\textsuperscript{57} See, e.g., id. at 35-36, 42, and 44-45 (discussing impacts to migratory birds under alternatives A, C, and D); see also FONSI (AR 1607).
BLM’s May 22, 2015, Decision, and Peterson’s Appeal

After completing the EA, the Acting Field Manager issued a FONSI\(^{58}\) and a separate DR that approved the Proposed Action, as recommended by the Monument Manager.\(^{59}\) The DR summarizes the monitoring and mitigation measures included to avoid or minimize adverse impacts to wildlife, vegetative, and other resources, stating that “all event parameters and measures that will be stipulated in the permit authorizations” were set out in the EA.\(^{60}\)

The DR explains that BLM adopted Alternative A because it satisfies the need to provide opportunities for non-motorized competitive events on established trails in the Monument.\(^{61}\) BLM rejected the No Action Alternative because it would not meet the need for permitted recreation opportunities as prescribed by the Taos RMP.\(^{52}\) BLM did not select Alternative C because the extensive timing limitation “was unnecessarily restrictive to protect wildlife values,” and would have “substantially constrained the opportunity for when the events could occur.”\(^{63}\) Similarly, BLM did not select Alternative D “because it too would unnecessarily limit the short-duration recreational opportunities when measures already incorporated into the selected alternative are designed to accommodate the avoidance of active nest sites and consider other mitigation measure on a case-by-case basis.”\(^{64}\)

In making the decision, the Acting Field Manager specifically determined that the Proposed Action conformed to the 2012 Taos RMP because the events will occur within areas established by the Taos RMP for permitted and developed recreation opportunities.\(^{65}\) She also concluded that the action was consistent with the care of Monument objects because “[n]othing in the analysis of potential impacts in the attached EA suggests that the preservation and protection of these objects will be compromised as a result of issuing the Special Recreation Permits.”\(^{66}\) She stated that any “potential impacts can be effectively mitigated by the suite of measures included in the selected alternative.”\(^{67}\) She emphasized that permits must be reviewed and approved annually.

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58 AR 1607.
59 DR at unp. 1.
60 Id.; see also EA at 8-12.
61 DR at unp. 2.
62 Id. at unp. 3.
63 Id.
64 Id.
65 Id. at unp. 1 (citing Taos RMP § 2.2.6).
66 Id. at unp. 2.
67 Id.
and that a longer-term decision on whether to issue SRPs for competitive events within the Monument “is a decision reserved exclusively for an approved Monument Plan . . .”

Peterson and the Sangre de Cristo Audubon Society separately appealed from BLM’s Decision. By Order dated August 19, 2015, the Board denied BLM’s motions to dismiss the appeals, concluding that appellants had timely filed their appeals. As mentioned above, this decision addresses only Peterson’s allegations. The Audubon Society’s appeal is decided by separate order.

DISCUSSION

In her appeal, Peterson raises thirteen enumerated objections to BLM’s Decision to authorize issuance of the SRPs. Most of the objections concern the adequacy of the EA or the process used to prepare it. Three of the objections do not directly contest the issuance of the SRPs but instead relate to other BLM decisions concerning the acquisition and use of the property used as access to the Taos Valley Overlook trail system. As discussed below, the Board concludes that Peterson has not demonstrated that BLM erred in its decision-making.

A. Regulatory Background and Standard of Review

BLM authorizes commercial recreation activities on public lands it administers by issuing SRPs, which may authorize activities such as organized mountain biking and trail running races. SRPs are issued at the discretion of the authorized BLM officer upon consideration of seven broad factors, including the public interest and other information BLM finds “appropriate.”

In exercising its discretion to issue SRPs, BLM’s decision must have a rational basis supported by facts of record demonstrating it is not arbitrary, capricious, or an abuse of discretion. An appellant has the burden on appeal to “show, by a preponderance of the evidence, that a challenged decision is in error.” This burden is not satisfied simply by conclusory allegations of error or expressions of disagreement

68 Id. at unp. 3.
69 43 C.F.R. Subpart 2932.
70 Id. § 2932.26.
71 See, e.g., James R. Stacy, 188 IBLA 134, 137 (2016); Ernie P. Jablonsky d/b/a Montana Big Game Pursuits, 184 IBLA 331, 337-338 (2014).
with BLM’s analysis and conclusions.\textsuperscript{73} Rather, the appellant must demonstrate that “BLM committed a material error in its factual analysis or that the decision is not supported by a record that shows that BLM gave due consideration to relevant factors and acted on the basis of a rational connection between the facts found and the choice made.”\textsuperscript{74}

In this instance Peterson bases her challenge in significant part on alleged deficiencies in the EA. Under NEPA, federal agencies must prepare an Environmental Impact Statement (EIS) evaluating the potential environmental impacts of major Federal actions significantly affecting the quality of the human environment.\textsuperscript{75} An agency may prepare an EA to determine whether potential impacts are so significant as to require preparation of an EIS or rather whether a FONSI may be issued.\textsuperscript{76} An EA is “a concise public document”\textsuperscript{77} with a “level of detail and depth of impact analysis . . . limited to the minimum needed to determine whether there would be significant environmental effects.”\textsuperscript{78} An EA is intended to be an overview of environmental concerns, “not an exhaustive study of all environmental issues which the project raises.”\textsuperscript{79}

\[1\] The Board is guided by a “rule of reason” in assessing an EA’s adequacy.\textsuperscript{80} The Board will uphold a BLM decision to proceed with a proposed action after completion of an EA and FONSI when the record demonstrates that BLM has considered all relevant matters of environmental concern, taken a “hard look” at potential environmental impacts, and made a convincing case that no significant impact will result or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures.\textsuperscript{81}

To succeed in challenging the adequacy of an EA, an appellant must make an “affirmative showing that BLM failed to consider a substantial environmental question of material significance.”\textsuperscript{82} An EA will not be found defective “merely because the EA could have been more thorough”; rather, the appellant must show that the omitted analysis

\textsuperscript{73} James R. Stacy, 188 IBLA at 138.
\textsuperscript{74} Id. (quoting Ernie P. Jablonsky, 184 IBLA at 338).
\textsuperscript{75} 42 U.S.C. § 4332(2)(C) (2012).
\textsuperscript{76} 40 C.F.R. § 1508.9(a)(1); 43 C.F.R. § 46.300.
\textsuperscript{77} 40 C.F.R. § 1508.9(a).
\textsuperscript{78} 43 C.F.R. § 46.310(e).
\textsuperscript{79} Wildlands Defense, 192 IBLA 383, 388 (2018) (quoting Duna Vista Resorts, 187 IBLA 32, 47 (2016)).
\textsuperscript{80} Id.; see also Center for Biological Diversity, 189 IBLA 117, 129 (2016).
\textsuperscript{81} Wildlands Defense, 192 IBLA at 388.
\textsuperscript{82} Id. at 389 (quoting Arizona Zoological Society, 167 IBLA 347, 357-58 (2006)).
“compromised the EA so severely as to render the FONSI arbitrary and capricious." Nor can an appellant succeed by making conclusory allegations, unsupported by evidence showing error. Instead, the error or deficiency in BLM’s NEPA review “must be alleged with reasonable particularity and supported by objective proof.” Mere differences of opinion between an appellant and BLM do not provide a basis for reversal.

B. BLM Fulfilled its Duty to Provide for Public Involvement in Development of the EA

Peterson first alleges that BLM failed to provide adequate notice of the draft EA. She states that BLM did not follow its usual practice of posting the draft EA on its “home page” but instead posted notice on the Monument website. She states that she needed to guide others to the EA: “I was able finally to locate the EA several clicks into the [Monument] [web]site and to guide others to the EA.” She further notes that the TFO ultimately posted the notice on its home page, but that this did not occur until February 2015, after the conclusion of the public comment period.

Peterson’s allegations do not show error in BLM’s process. When preparing an EA, BLM must provide for public notification and involvement “to the extent practicable,” but “the methods for providing public notification and opportunities for public involvement are at the discretion of [BLM].”

Here, BLM involved the public in multiple ways. BLM posted the draft EA on its Monument website, making it available for a 30-day public review and comment period. There is no statutory or regulatory requirement to post a draft EA at all for public comment, let alone at a specific website address, so Peterson’s complaint about

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83 *Western Watersheds Project v. BLM*, 721 F.3d 1264, 1275 (10th Cir. 2013).
84 *Id.*
86 *Wildlands Defense*, 192 IBLA at 389.
87 *See Peterson Notice of Appeal (NOA) at ¶1.*
88 *Id.*
89 *Id.*
90 *Id.*
92 EA at 49.
93 43 C.F.R. § 46.305(b); *see Birch Creek Ranch, LLC*, 184 IBLA 307, 321 (2014) (“Neither NEPA nor CEQ regulations explicitly require a Federal agency to allow public comment on every EA.”).
the electronic location of the draft EA is without merit. BLM also provided Peterson and other parties known to be interested in the matter with specific notice via email of the availability of the draft EA, including the website where the EA was posted. BLM received comments on the draft EA from 17 separate entities, including individuals, special interest groups, and the New Mexico Department of Game and Fish. BLM made substantial revisions to the EA in response to comments and provided specific responses to each comment in the final EA. Before issuing its decision, BLM met with Peterson and other interested groups regarding the proposed action. The record demonstrates that BLM effectively involved the public in its decision-making process and fulfilled its public participation duties under NEPA.

C. **BLM Properly Stated the Need for the Project**

Peterson argues that BLM failed to establish a need for the proposed action, asserting that if commercial needs are being met “elsewhere” on public lands, “there is no need for these events in the Monument.” Although she does not frame these allegations in the context of specific NEPA deficiencies, the allegations in essence assert that BLM has not adequately justified the purpose and need for the proposed action.

An EA must briefly discuss the need for the proposed action, and BLM enjoys considerable discretion in defining the purpose and need. BLM summarized the purpose and need of its proposed action in this fashion:

The purpose of this action is to provide opportunities for non-motorized competitive events on the BLM’s developed network of trails within the Rio Grande del Norte National Monument. The BLM needs to respond to

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94 E-mail to Interested Parties from Bradley Higdon, Planning and Environmental Specialist, TFO, BLM, dated July 8, 2014 (AR 311) (“Current management activities that may be of interest, including new proposals, will be posted on the Monument planning webpage[.] . . . An activity-specific EA that evaluates a proposal for non-motorized competitive events (trail running and mountain biking) is now posted for public review and comment on this webpage.”).
95 AR 353-419 (public comments); EA at 49.
96 See EA at 49-63 (public comment summary and responses).
97 See NOA at ¶ 1 – 2 (Appellant’s references to contacts with TFO and her April 2015 meeting with the BLM Field Manager and NEPA planner); AR 581-83 (email and accompanying letter from Audubon New Mexico referencing Dec. 15, 2014, meeting with BLM).
98 NOA at ¶ 12.
99 43 C.F.R. § 46.310(a)(2).
100 Bristlecone Alliance, 179 IBLA 51, 64 (2010).
applications for SRPs in accordance with its land use planning decisions, policies, and the provisions of the Presidential Proclamation which established the monument. The BLM must also exercise its discretion to issue or deny permits for organized groups, commercial use, and competitive events involving recreation activities on public lands in accordance with 43 CFR 2932 and BLM Manual 2930-1.\textsuperscript{101}

This purpose and need statement appropriately defines the decision-making objective both with reference to the permit applications BLM was reviewing and BLM’s more general land management responsibilities.\textsuperscript{102}

Peterson assumes that BLM may grant the SRP applications only if the events could not be held elsewhere in the region, but the issuance of SRPs is a discretionary decision that does not require such proof. BLM must ensure that its action conforms to the Monument Proclamation and governing land use plan, but BLM is not confined to grant SRPs only if no other alternative exists. The Board has held that BLM is not required, in making discretionary land management decisions, to prove such a “need” for a project:

There is no requirement that the statement of purpose and need be objectively verifiable or supported by scientifically verifiable evidence, or that the EIS must prove that a project serves a particular purpose or there exists a particular need for the project.\textsuperscript{103}

In this instance, BLM properly recognized the need to act upon the applications for SRPs and properly articulated the purpose and need of its proposed action in the EA.

D. \textit{BLM Did Not Ignore “Expanded Uses” of the Monument}

Peterson argues that BLM improperly provided for “expanded use” of the Monument by authorizing commercial races, camping, and amplified music, noting that

\textsuperscript{101} EA at 5.

\textsuperscript{102} See \textit{Alaska Survival v. Surface Transp. Bd.}, 705 F.3d 1073, 1085 (9th Cir. 2013) (“[A]n agency must consider the statutory context of the proposed action and any other congressional directives in addition to a private applicant’s objectives. [Citations omitted] But when granting a license or permit, the agency has discretion to determine the best way to implement its statutory objectives ... in light of the goals stated by the applicant.”); see also \textit{Bristlecone Alliance}, 179 IBLA at 61-64 (purpose and need must also consider BLM’s statutory and regulatory objectives).

\textsuperscript{103} \textit{Backcountry Against Dumps}, 179 IBLA 148, 165 (2010).
these activities have never before been authorized to occur in the Monument.\textsuperscript{104} She asserts that the impacts of these expanded uses were “not analyzed.”\textsuperscript{105}

Contrary to Peterson's assertions, BLM recognized these “expanded uses” and evaluated the anticipated impacts of the activities as part of the proposed action (\textit{i.e.}, Alternative A). The EA describes the proposed action as authorizing three SRPs for competitive non-motorized racing events that would include vendors, amplified music, and camping.\textsuperscript{106} The impacts associated with these events (including their “expanded uses”) were addressed in the EA’s discussion of impacts anticipated from the proposed action.\textsuperscript{107} Impacts caused by the increased intensity of a competitive event, including from amplified music, were specifically addressed by resource where appropriate.\textsuperscript{108} Peterson has not identified any “expanded use” or environmental concern that BLM failed to consider. “[A]s long as an EA contains a reasonably thorough discussion of significant aspects of the probable environmental consequences, NEPA requirements have been satisfied.”\textsuperscript{109}

To the extent Peterson suggests that BLM improperly characterized these “expanded uses” as being “similar to current uses,”\textsuperscript{110} and thus understated the impacts to resources such as migratory birds, this argument is not well founded. BLM’s statement that the events are “similar to current uses” refers to the nature of the underlying “types of use” of the public lands, \textit{i.e.}, nonmotorized uses such as hiking, trail running and mountain biking.\textsuperscript{111} The EA documents that each of these nonmotorized uses has been occurring in the Taos Valley Overlook and Wild Rivers zones.\textsuperscript{112} While the permitted events would involve more intensive short-term activity, the uses would be exactly the same types that have been occurring in the two special recreation

\textsuperscript{104} NOA at ¶¶ 5-7.
\textsuperscript{105} Id.
\textsuperscript{106} See EA at 8-9, 10-11.
\textsuperscript{107} Id. at 31-39 (direct and indirect effects), 45-46 (cumulative impacts).
\textsuperscript{108} See, e.g., id. at 34 (amplified music on bald eagles), 35 (mountain bike event and amplified music on peregrine falcons), 35-36 (mountain bike event and amplified music on migratory birds), 36 (effects on vegetation of staging competitive events), 37 (effects on trails of staging competitive events), 38-39 (effects on recreation of staging competitive events).
\textsuperscript{109} Western Watersheds Project, 175 IBLA 237, 242 (2008).
\textsuperscript{110} See, e.g., EA at 35-36 (finding “only minimal adverse impacts” on migratory birds in part because events “are similar to current uses”).
\textsuperscript{111} See DR at unp. 2-3.
\textsuperscript{112} EA at 30, 46; BE at 24 (“Currently, recreation activities occur throughout the region on [F]ederal lands, . . . including hiking/running, . . . bicycle riding, . . . camping, . . . year around. . . . The proposed project areas are high use sites for recreation.”).
management zones. Given this fact, BLM’s characterization of the uses at the events as being “similar to current uses” is reasonable. Moreover, in assessing likely impacts, BLM recognized the ways that the events would not be similar, recognizing the short-term intensity difference of the events from more typical usage.\(^\text{113}\)

Peterson also asserts that BLM acted contrary to governing land management plans because camping is “not allowed” in the special recreation management areas.\(^\text{114}\) She cites to unidentified “sections of the plan,” presumably referring to the Taos RMP, which are said to “expressly forbid camping throughout the trails system.”\(^\text{115}\) In fact, other than the area encompassing the Taos Valley Overlook trail system, the Taos RMP generally allows camping to occur in the special recreation management zones, and even lists camping as a primary activity in the Wild Rivers area.\(^\text{116}\) In any event, nothing in the Proposed Action or in the Decision provides for camping in the “trails system.” Rather, BLM states that camping is “anticipated for the mountain biking event” and restricts camping to “developed sites and infrastructure such as the administrative access road (loop road).”\(^\text{117}\) BLM further requires the permissible parking and camping areas to be designated and flagged by BLM prior to events and “monitored for enforcement” during the events.\(^\text{118}\) Accordingly, we find that BLM fully complied with the Taos RMP and its other land management duties with respect to camping at the events.

Finally, Peterson appears to suggest that authorizing the “expanded uses” violates the terms of the Proclamation establishing the Monument and is not in the public interest.\(^\text{119}\) These assertions are without merit. BLM properly may approve new activities so long as they are consistent with the Proclamation and the governing resource management plan. The President’s Proclamation precludes certain activities in the Monument, such as mineral entry and motorized vehicle use, but does not generally

\(^{113}\) See, e.g., EA at 35-36 (noting greater potential for disturbance to migratory birds from mountain biking and amplified music), 46-47 (describing, among other things, impacts from “spike in” or “increased” trail use during the events).

\(^{114}\) NOA at ¶ 6.

\(^{115}\) Id.

\(^{116}\) See Taos RMP at 55 (“The entire planning area will remain open to dispersed recreation. The camping limit on public lands is set by BLM policy and is currently limited to 14 days.”), 58 (listing camping as a primary activity in Wild Rivers Rim zone), 61 (listing as an implementing action the closure to camping of Taos Valley Overlook zone, which did not include the Cascabel access road at the time of issuance).

\(^{117}\) EA at 11.

\(^{118}\) Id.

\(^{119}\) See NOA at ¶¶ 5, 6.
prohibit new activities from being approved. In approving the issuance of the SRPs, the Acting Field Manager explicitly determined that the action was consistent with both the Taos RMP (which established the impacted zones for organized recreational opportunities) and the preservation and protection of the objects for which the Monument was established. Peterson provides no evidence showing this consistency determination to be in error.

E. **BLM Adequately Assessed Baseline Conditions**

Peterson alleges that BLM failed to properly assess the impacts of the proposed action under NEPA because of a flawed assessment of baseline conditions. In particular, Peterson is concerned that BLM did not accurately assess existing visitor use or the baseline conditions of nesting migratory birds. Upon review of the record, we find that BLM adequately assessed baseline conditions and took the requisite hard look at the environmental consequences of its proposed action.

1. **BLM properly accounted for baseline visitor use.**

Peterson asserts that BLM has not presented reliable or relevant data on visitor use. Among other allegations, she asserts that visitor use data is "seriously questionable" since it amounts to "mere 'collections of numbers' rather than data." Peterson purports to find discrepancies in BLM's visitor use data, arguing that these discrepancies undermine BLM's conclusion that granting the three SRPs will represent "a very small incremental change to the ongoing recreational activities" in the respective areas.

Peterson alleges a number of perceived errors, omissions, or contradictions in BLM's statement of visitor usage, including the following: (1) BLM reported a total use of 182,501 users in the Monument during the last year of recorded use (2013), and indicates a total of 59,245 users in the Taos Valley Overlook, Wild Rivers, and Orilla Verde management zones that year, but BLM does not explain how or where the remaining 120,000 visitors used the Monument resources; (2) BLM does not report specific visitor use for each year since 2010, even though it had installed vehicle counters in the Taos Valley Overlook area of the SRMA in 2009-2010; (3) BLM anticipates 30,000 to 50,000 visitors to the Monument going forward, although recreational use in the

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121 DR at unp. 2.
122 NOA at ¶¶ 8-9.
123 Id. at ¶ 9.
124 Id. at ¶ 8 (quoting EA at 47).

193 IBLA 271
Monument has actually varied from 124,477 to 192,337; (4) BLM predicts less than a 1% increase in average annual visits, while also projecting increases of 4% and 3%, respectively, in the Taos Valley Overlook and Wild Rivers areas of the SRMA; (5) BLM reports 20,000 users per year on Taos Valley Overlook trails in one section of the EA while saying elsewhere there were 20,200; and (6) BLM’s 2009 personal survey of trail use in the Monument disclosed 38% (hikers) and 3% (mountain bikers), but failed to present the total numbers of users.\(^{125}\)

We find no error in BLM’s visitor use data that undermined its analysis of the likely impacts of the Proposed Action. The omissions or discrepancies reported by Peterson either do not exist or are inconsequential to the impacts analysis. There is no discrepancy in having the visitors to the Monument total 182,000 while the total visitors to three discrete areas within the Monument total under 60,000.\(^{126}\) And Peterson points to no error in BLM’s impact analysis caused by failing to specify where each of the remaining users visited the Monument. It is “not enough to speculate and assert a desire for more information without connecting those allegations to an affirmative showing that BLM failed to consider a substantial environmental question of material significance.”\(^{127}\)

BLM’s conclusion that the incremental change would be very small is also rationally based. BLM expects a total of 1,200 additional visitors associated with the events (400 maximum per event), which translates to less than a 1% increase in visits to the Monument as a whole and translates to a 4% and 3% increase in visits to the two relevant special recreation management zones, using their 2013 visitation figures.\(^{128}\) Given the number of total users, BLM fairly characterized the incremental change attributable to 400 people on each of three occasions in any one year as “very small.”\(^{129}\)

BLM did not provide yearly visitor estimates for each recreation zone, but Peterson does not describe how that omission compromised BLM’s NEPA analysis. BLM’s use of its most recently compiled data – the 2013 calendar year at the time – to assess

\(^{125}\) See id. at ¶¶ 8-9 (citing EA at 29, 30 (Figure 1 (Recreation Visits on Monument Lands)), 31, 38, 39, 46-47).

\(^{126}\) See EA at 30, Figure 1 (showing total visitor use in the Monument in 2013 as 182,501, with an average of 160,144 visits during the 5-year period from 2009 through 2013); EA at 38 (“[V]isitation in the recreation areas within the [M]onument can vary from 30,000 to 50,000 or more from year to year” (Emphasis added)).

\(^{127}\) Faulkner v. BLM, 164 IBLA 204, 209 (2004).

\(^{128}\) See EA at 46-47 (“The two events in the Taos Valley Overlook area would amount to about a four percent increase in the annual use of the trail system [i.e., 800/20,257], while the single event in the Wild Rivers [area] would add about three percent to its annual visitation [i.e., 400/13,591].”).

\(^{129}\) EA at 47.
visitor usage at Taos Valley Overlook and Wild Rivers was reasonable, and Peterson presents no evidence to suggest the figures are incorrect. Similarly, Peterson does not explain how BLM’s analysis was flawed by describing usage in the Taos Valley Overlook area as “about 20,200 visits” in one section of the EA, while noting later that trails in the area “receive substantial use, as much as around 20,000 users per year . . .” Under the rule of reason applied to reviewing NEPA analyses, these inconsequential discrepancies or omissions amount to nothing more than fly-specking the document and are insufficient to establish error in BLM’s consideration of environmental impacts.

Peterson also does not explain how BLM’s use of percentages to describe the distribution of recreational use led to improper analysis of impacts. BLM determined, by communicating with trail users in the Monument during a 2009 survey, that 38% participated in hiking and 3% participated in mountain biking, thus gauging the general distribution of recreational use. Peterson has shown no error in evaluating use in this fashion. As the Board has previously explained, an appellant “cannot simply ‘pick apart a record with alleged errors or disagreements,’” without connecting those allegations to an affirmative showing that BLM failed to consider a substantial environmental question of material significance.

In sum, Peterson fails to establish any material error in BLM’s assessment of past or anticipated visitor use in the Monument or the relevant zones of the SRMA. BLM reasonably determined, using available data, past and expected future levels of recreational use in the Taos Valley Overlook and Wild River areas, which are the specific zones in the SRMA that will be utilized in connection with the SRPs.

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130 EA at 39, 46.
131 See, e.g., Northern Alaska Environmental Center, 153 IBLA 253, 256 (2000) (“In deciding whether an EIS has fulfilled the NEPA mission, courts have stated that they will not ‘fly-speck’ the document and hold it insufficient on the basis of inconsequential, technical deficiencies, but instead will employ a rule of reason such that the question becomes whether an EIS contains a reasonably thorough discussion of the significant aspects of the probable environmental consequences.”).
132 EA at 29.

193 IBLA 273
2. **BLM adequately identified baseline conditions of nesting birds and analyzed the impacts of increased recreational use on nesting birds.**

Peterson argues that BLM failed to adequately consider the likely impacts of the annual non-motorized competitive events on nesting birds.\textsuperscript{135} She asserts that BLM did not survey or otherwise establish baseline conditions for nesting birds and did not analyze the "spike in use [associated with the Proposed Action] and its impacts on nesting disturbance and abandonment."\textsuperscript{136}

The record substantiates BLM’s position that it adequately assessed the baseline conditions of the project area to make an informed decision on how the proposed action and alternatives would impact nesting birds.\textsuperscript{137} As described earlier, to complete the impacts analysis in the EA, BLM prepared a biological evaluation that assessed the potential effects the proposed action may have on "listed Threatened and Endangered species, BLM-listed Sensitive species, migratory birds and raptors, and big game winter range."\textsuperscript{138} BLM wildlife biologists reviewed physical and biological information about the project area gathered from the Fish and Wildlife Service Southwest Regional Ecological Services Field Office and the 2012 BLM Taos Resource Management Plan.\textsuperscript{139} The BLM biologists also conducted two “pedestrian out-and-back” field surveys of the project area in April 2014.\textsuperscript{140} The BE, incorporated into the EA, contains a description of existing conditions and 16 pages of findings addressing potential impacts to wildlife resources, including sensitive species (including the western burrowing owl, bald eagle, and pinyon jay), raptors, and migratory birds.\textsuperscript{141} The final EA provided further description of the existing conditions with respect to bird species.\textsuperscript{142}

Although BLM did not undertake breeding bird surveys, it assessed baseline conditions using existing avian studies completed in 1985 and 2010 for the Wild Rivers area, along with a land-bird breeding study in 2011 that assessed habitats similar to those found in the project area.\textsuperscript{143} Using this information, the EA discusses the distribution, habitat needs, and nesting density of migratory birds, raptors, and BLM

\textsuperscript{135} NOA at ¶¶ 8, 10, 13.
\textsuperscript{136} Id. at ¶ 8.
\textsuperscript{137} See EA at 13-14, 20, 23-27; BE at 5-8, 21.
\textsuperscript{138} BE at 1.
\textsuperscript{139} Id. at 4.
\textsuperscript{140} Id. at 4-5.
\textsuperscript{141} See id. at 5-8 (description of current conditions), 9-24 (findings); EA at 12 (stating that the details of the Biological Evaluation "are supplemented and incorporated into this document").
\textsuperscript{142} EA at 15-27.
\textsuperscript{143} Id. at 20 (discussing 1985, 2010 and 2011 studies).
sensitive bird species.\textsuperscript{144} Regarding raptors, for example, the EA describes within the project area the location of raptor habitat, the results of past nest surveys, an analysis of breeding trends, and the potential impact of existing activities on habitat and breeding success.\textsuperscript{145} A similar description and analysis is made for migratory birds\textsuperscript{146} and for BLM sensitive bird species.\textsuperscript{147} Peterson does not demonstrate how BLM's assessment of habitat and nesting in the project area was not adequate to determine the likely adverse effects of non-motorized competitive events in the impacted SRMA zones.\textsuperscript{148}

Neither does Peterson demonstrate that BLM failed to evaluate the impact of the proposed action and its alternatives on these baseline conditions. With respect to migratory birds, which is Peterson's primary focus of alleged inadequate analysis, BLM recognized the potential for disturbance and stated that it expected mountain biking events in the Taos Valley Overlook area and amplified music in the Wild Rivers area to have the greatest potential for disturbing individual migratory birds and their breeding, nesting, roosting, and foraging activities.\textsuperscript{149} However, BLM concluded that the adverse impacts from the events to local migratory bird populations and species were likely to be "minimal," owing to the short duration of the events, the similarity of the proposed uses to the current recreational uses in the SRMA, and the fact that the events were not likely to occur in the winter.\textsuperscript{150}

BLM also assessed the impact on sensitive bird species. For example, the EA and BE specifically assessed the likely effects of the Proposed Action on the resident Pinyon Jay (\textit{Gymnorhinus cyanoccephalus}), a BLM sensitive species. BLM's biologists concluded that, since no trees would be removed and other vegetation would be minimally disturbed by the events, the Proposed Action may impact Pinyon Jays but was not likely

\textsuperscript{144} See id. at 14-27.
\textsuperscript{145} See id. at 20-23; BE at 21-23 (noting that "no raptor individuals were observed during the pedestrian surveys of the project segments").
\textsuperscript{146} EA at 23-27.
\textsuperscript{147} Id. at 14-18.
\textsuperscript{148} See 43 C.F.R. § 46.310(e) ("The level of detail and depth of impact analysis should normally be limited to the minimum needed to determine whether there would be significant environmental effects.").
\textsuperscript{149} See EA at 35-36.
\textsuperscript{150} Id. at 35-36; see also BE at 21 (finding that "[t]he proposed project has the potential to have an adverse impact on individual birds, eggs, young, and/or the nesting habitat or ground-nesting birds," but "there would be no noticeable impact to migratory bird populations or to species as a whole because the proposed project involves only minimal ground disturbance and the proposed action is similar to activities already occurring in the area").
to result in a trend toward listing under the Endangered Species Act\textsuperscript{151} or loss of viability.\textsuperscript{152}

For similar reasons, BLM concluded that the proposed action would have a “minimal adverse impact” on raptors.\textsuperscript{153} The EA states that the Peregrine Falcon “can habituate to low levels of consistent human disturbance and similar uses have occurred in the project area. Therefore, only minimal adverse impact[s] to this species are anticipated.”\textsuperscript{154} With regard to the Prairie Falcon, Red-tailed Hawk and Golden Eagle, the EA concludes that “since the events would be of short duration, are similar to current uses, and are not likely to be held in the winter, only minimal adverse impact to these species are anticipated.”\textsuperscript{155}

BLM not only made this impact assessment with respect to the proposed action, but also for the two alternatives (C and D) that would impose timing restrictions on the events. These alternatives responded to suggestions made by the public, and BLM’s biologists in the BE,\textsuperscript{156} to consider imposing time restrictions to avoid disturbing big game wintering habitat and the nesting season of birds.

Contrary to Peterson’s assertion that BLM failed to analyze impacts to nesting birds, BLM created Alternative D specifically to analyze the effect of prohibiting events from March 1 to July 31 “during periods of nesting, foraging, and fledging [of raptors] as well as to protect breeding and nesting migratory birds.”\textsuperscript{157} The EA acknowledges that precluding the events during nesting season provides “less potential for disturbance” than the Proposed Action\textsuperscript{158} but concludes that, just as under the Proposed Action, “any adverse impacts would be expected to be minimal” because “the events would be of short duration, are similar to current uses, and because they are not likely to be held in winter.”\textsuperscript{159} Thus, under both the Proposed Action (Alternative A) and Alternative D, the impacts to the affected environment are anticipated to be minimal.

As summarized above, BLM took a hard look at how a “spike” in trail use caused by the proposed action would impact nesting birds, and it had a rational basis for concluding that the impacts would be minimal given the design features and mitigation

\textsuperscript{152} See BE at 17-18; EA at 15-19, 34.
\textsuperscript{153} EA at 35.
\textsuperscript{154} Id.
\textsuperscript{155} Id.
\textsuperscript{156} See BE at 25 (recommending timing restrictions).
\textsuperscript{157} EA at 13.
\textsuperscript{158} Id. at 43.
\textsuperscript{159} Id. at 44.
incorporated into the permits. Peterson has not demonstrated any error or deficiency in the EA, from the standpoint of baseline conditions or the likely consequences for nesting birds of the three annual non-motorized competitive events.

F. Peterson Has Not Shown that BLM Erred in Describing and Imposing its Mitigation Measures

Peterson asserts that "mitigation measures for impacts on birds are inadequate to useless."\textsuperscript{160} This unsubstantiated opinion is insufficient to show error. BLM incorporated into the permit authorizations a suite of mitigation measures either as design features or mandatory stipulations, including limits on participation numbers, restrictions on trail usage, requirements for pre- and post-event monitoring, and rehabilitation of disturbed vegetation.\textsuperscript{161} It also requires the SRP applicant to conduct a nest survey if the event is scheduled during the nesting season from March 1 to July 31, and "if an active nest is found, a BLM Wildlife Biologist would be consulted to determine the best means of mitigating potential disturbances to the site on a case-by-case basis with emphasis on avoidance by rerouting the event course."\textsuperscript{162}

In deciding to grant the permits, the TFO Acting Field Manager recognized that this suite of mitigation measures further supported the conclusion that impacts would be minimal: "A thorough suite of mitigation measures, to be attached to the permits as stipulations, are incorporated into the selected alternative to ensure impacts will be minimal."\textsuperscript{163} While Peterson does not agree with that assessment, she provides no evidence showing it to be in error. And as we have stated, mere differences of opinion provide no basis for reversal.\textsuperscript{164}

The only mitigation measure specifically challenged by Peterson is the stipulation requiring permit applicants to survey for nesting birds if an event is scheduled during the nesting season of March 1 to July 31.\textsuperscript{165} She asserts that it is "unacceptable" for race organizers to be responsible for pre-event surveys, and appears to assume that the surveys will not be scientific.\textsuperscript{165} Just as BLM may with appropriate oversight have an

\textsuperscript{160} NOA at ¶ 11.
\textsuperscript{161} EA at 8-12.
\textsuperscript{162} Id. at 9, 11.
\textsuperscript{163} DR at unp. 2.
\textsuperscript{164} See, e.g., Western Watersheds Project, 175 IBLA at 246.
\textsuperscript{165} NOA at ¶ 11.
\textsuperscript{166} Id.
applicant prepare an EA to assess impacts, there is nothing impermissible in having a
permittee undertake required monitoring in connection with an approved activity. In
this instance, BLM required the race organizers to undertake the nest surveys “in
accordance with BLM protocols,” with the results to be reviewed by BLM wildlife
biologists, for the purpose of determining the appropriate means to mitigate any adverse
impacts. Peterson offers no evidence substantiating her concern that surveys
conducted in this fashion are unlawful or “useless.”

G. Peterson Has Shown No Other Errors in BLM’s Decision

Peterson raises other arguments questioning the sufficiency of the EA, none of
which establishes error in BLM’s Decision. She asserts that BLM failed to properly
determine the specific months likely to be used for non-motorized competitive events,
questioning (by way of example) why July was excluded when it has the highest number
of parked cars in the parking lots.

BLM’s estimate of when the races were likely to occur was not a critical aspect of
its analysis since the EA concluded that impacts would be minimal regardless of season
and the DR does not preclude an event from occurring in July. Regardless, BLM’s
estimate has a sufficiently rational basis in the record so as not to constitute error.
Vehicle count is only one factor BLM considered. Relying on weather information and
visitor use data, BLM concluded that the best months for a race are April, May, June,
September, and October. “Other months of the year are basically too cold, too wet, or
too hot.” The incorporated BE provides more climate data concerning the project area,

167 See 40 C.F.R. § 1506.5(b); Save Our Wetlands, Inc. v. Sands, 711 F.2d 634, (5th
Cir. 1983) (recognizing that an applicant’s “outside consultants may be involved in or
even prepare environmental assessments”).
decision based on EA that required “[s]everal applicant-committed monitoring and
mitigation measures” to be completed in advance of ground-disturbing activities);
Greater Yellowstone Coalition v. Flowers, 359 F.3d 1257, 1276 (10th Cir. 2004)
(upholding Corps of Engineers’ EA in which permittee was required to conduct
“monitoring of active eagle nests during the construction process, with the requirement
that construction activities be modified immediately if eagle disturbance is observed”);
Hillsdale Envtl. Loss Prevention, Inc. v. United States Army Corps of Eng’rs, 702 F.3d 1156,
1172 (10th Cir. 2012) (upholding EA where permittee required to monitor for fugitive
dust emissions).
169 See DR at unp. 1; EA at 9, 11; BLM Answer at 19.
170 NOA at ¶ 9(a).
171 EA at 43.
172 Id.
stating that the hottest month of the year is July with an average maximum temperature of 85.7 degrees, while the coldest month is January with an average minimum temperature of 10.1 degrees Fahrenheit. Because BLM has provided a reasoned explanation for its conclusion that is not contrary to evidence in the record, we find no reversible error in its analysis.

Peterson further suggests that BLM did not adequately explain why it rejected Alternative D, stating that “the public could reasonably conclude that nesting birds could be allotted May, June, and July; racers allotted August, September, and October.” BLM explained that it rejected timing restrictions during the nesting season because it “would unnecessarily limit the short-duration recreational opportunities when measures already incorporated into the selected alternative are designed to accommodate the avoidance of active nest sites and consider other mitigation measures on a case-by-case basis.” The Acting Field Manager’s conclusion is supported by the impacts analysis in the EA. While Peterson would prefer an absolute timing restriction, BLM analyzed that option as an alternative and provided a reasoned explanation for why it was not chosen. In doing so, BLM fully met its NEPA responsibilities in making the decision. As explained nearly three decades ago by the Supreme Court, “NEPA itself does not mandate particular results, but simply prescribes the necessary process.”

Peterson also makes three related allegations that do not directly concern the granting of the SRPs but instead attack different decisions made by BLM concerning the acquisition, development and management of the Cascabel Trailhead. The Trailhead is immediately outside the boundaries of the Monument and will serve as the staging area for the non-motorized competitive events in the Taos Valley Overlook area. Peterson asserts that BLM acquired the trailhead, built an access road, and decided to manage the area for developed recreation without properly undertaking a public planning process and without adequate NEPA compliance. In response, BLM contends that her challenges are time barred because the relevant decision-making occurred in 2013, but nevertheless responds to the allegations on their merits. BLM describes that, in fact, it considered the likely impacts of acquiring the adjacent land and developing the Trailhead, first in a 2006 EA, then in connection with promulgation of

173 BE at 5.
174 NOA at ¶ 9(a).
175 DR at unp. 3.
177 NOA at ¶¶ 2-4.
178 Id.
179 Answer at 20.
the 2012 Taos RMP, and finally, in a 2013 Determination of NEPA Adequacy (DNA), which assessed the adequacy of the 2006 EA.\textsuperscript{180} BLM acquired the property in 2013.\textsuperscript{181}

To the extent Peterson is challenging decisions made by BLM concerning the acquisition and management of the Trailhead, those decisions are not before the Board. All that is currently at issue is BLM’s May 2015 Decision approving the annual non-motorized competitive events. Accordingly, we do not adjudicate the legality of any trailhead development or road access improvement since BLM’s decisions to undertake such activities are not presently on appeal to the Board.\textsuperscript{182}

To the extent Peterson is arguing that BLM violated NEPA in its SRP decision-making by improperly segmenting its analysis of impacts of the trailhead development and the race events in two separate environmental analyses, that argument also fails. Peterson states that by constructing an access road at the Cascabel Trailhead “prior to the DR,” BLM “ignored the environmental impact of this road and other construction on newly acquired acreage . . . .\textsuperscript{183}” But the development of the trailhead and the impacts to the area were appropriately considered by BLM in its EA for the SRPs as part of the cumulative impacts analysis.\textsuperscript{184} BLM was not required to further evaluate the trailhead development. An agency must consider actions together in one environmental analysis if those actions are “connected” to each other.\textsuperscript{185} However, actions that have “independent utility,” i.e., where there exists sufficient justification for each action such that it may proceed without the other, are generally not connected actions.\textsuperscript{186} Here, the acquisition and development of the trailhead has independent utility from the permitted race events. The trailhead provides access for all types of visitors who intend to use either the Orilla Verde or Taos Valley Overlook trail networks, and

\textsuperscript{180} See id. (citing DR/FONSI, dated July 12, 2006 (AR 63); Project Plan and Orilla Verde Recreation Area Management Plan Amendment EA (NM-220-06-013) (AR 65); RMP at 34, 39; DNA Worksheet, dated Mar. 25, 2013 (AR 109)); EA at 48.

\textsuperscript{181} EA at 46.


\textsuperscript{183} NOA at ¶ 2.

\textsuperscript{184} EA at 47-48 (describing vegetation and recreation impacts expected to occur at newly constructed trailhead in the Taos Valley Overlook area); see 40 C.F.R. § 1508.7 (defining cumulative impact as the impact resulting from “the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions . . . .”).

\textsuperscript{185} 40 C.F.R. § 1508.25; Backcountry Against Dumps, 179 IBLA at 171-72.

\textsuperscript{186} Backcountry Against Dumps, 179 IBLA at 172.
development of the trailhead enables BLM “to control unauthorized vehicle use, route proliferation, and trash dumping” in the area.\textsuperscript{187} The acquisition and development of the trailhead thus has utility whether or not the race events occur, and BLM did not err in analyzing the decisions in separate NEPA analyses.

Finally, Peterson asserts in numerous places throughout her appeal that BLM’s Decision is not in the public interest.\textsuperscript{188} BLM is afforded broad discretionary authority under the Federal Land Policy and Management Act and its implementing regulations to decide whether and under what circumstances to issue an SRP.\textsuperscript{189} A BLM decision to issue an SRP will be affirmed where it has a rational basis, meaning that the administrative record shows that BLM gave due consideration to relevant factors, such as whether the SRP is in the public interest, and acted on the basis of a rational connection between the facts found and the choice made.\textsuperscript{190} In the present case, BLM concluded that authorizing non-motorized race events on an annual basis was in the public interest, since it responded to public requests for such activities, was consistent with the Presidential Proclamation and the 2012 Taos RMP, and could be accomplished without significant adverse impacts on migratory birds and other aspects of the human environment.\textsuperscript{191} Peterson offers no argument or supporting evidence establishing that BLM failed to duly consider relevant factors or that BLM otherwise lacked a rational basis for its decision. And mere differences of opinion between an appellant and BLM do not provide a basis for reversal.\textsuperscript{192} Thus, Peterson has failed to demonstrate error in BLM’s Decision.

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\textsuperscript{187} EA at 48.
\textsuperscript{188} NOA at ¶¶ 5, 6, 10, and 11.
\textsuperscript{189} See footnotes 72-77 and accompanying text; see also Acadia Mountain Guides, Inc., 173 IBLA 1, 8 (2007).
\textsuperscript{190} James R. Stacy, 188 IBLA at 138.
\textsuperscript{191} See DR at unp. 1-3; FONSI.
\textsuperscript{192} Wildlands Defense, 192 IBLA at 389.
CONCLUSION

While Peterson fundamentally objects to BLM’s decision to approve the SRPs, she has not met her burden of showing that BLM committed error in its NEPA analysis or violated the requirements of any other law or regulation. Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,\(^{193}\) we affirm BLM’s Decision.

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/s/
K. Jack Haugrud
Administrative Judge

I concur:

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/s/
Amy B. Sosin
Administrative Judge

\(^{193}\) 43 C.F.R. § 4.1.