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July 31, 2008

IBLA 2007-244, 2008-100)	UT-060-2005-080
)	
SOUTHERN UTAH WILDERNESS)	Special Recreation Permit
ALLIANCE)	
)	Decision Affirmed

ORDER

The Southern Utah Wilderness Alliance (SUWA) has appealed from separate decisions issued by the Monticello and Moab Field Offices (FOs), Bureau of Land Management (BLM), renewing a 5-year Special Recreation Permit to Red Rock 4-Wheelers (RR4W) for its annual Jeep Safari and Fall Campout, and increasing Jeep Safari route permits based on Environmental Assessment (EA) UT-060-2005-080.¹ Each decision contained a Finding of No Significant Impact (FONSI).

In its Statement of Reasons (SOR), SUWA contends that BLM's decision does not comply with BLM's Utah riparian management policy and that BLM violated the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(2)(C), (2000) by failing to take a "hard look" at concerns involving natural resources, riparian areas, water quality and quantity, wildlife and wilderness values, cultural resources, cumulative effects, and the efficacy of mitigation measures. SUWA faults BLM for failing to consider an alternative of excluding routes in areas proposed for wilderness protection in pending legislation referred to as America's Red Rock Wilderness Act

¹ This appeal originates from SUWA's appeal of separate decisions from the Monticello and Moab FOs, both dated Jan. 23, 2006, based on that EA. SUWA's initial appeal was assigned docket number IBLA 2006-126. On Apr. 6, 2007, BLM sought to make a minor modification to the Moab decision, and this Board set aside and remanded that decision to enable BLM to do so. *Southern Utah Wilderness Alliance*, 172 IBLA 183 (2007). SUWA's pending appeal from the Monticello decision was assigned docket number IBLA 2007-244. The Moab office modified and re-issued its decision on Jan. 23, 2008, and SUWA's appeal from the new Moab decision was assigned docket number 2008-100. By order dated Mar. 25, 2008, the Board consolidated the appeals.

Although there were separate decisions, each approved the same proposed action addressed in the EA, so we will refer to BLM's action as a single decision.

(H.R. 1596/S. 639) (Pending Act), and in failing to give detailed consideration to its proposed alternative that would eliminate 4 routes in their entirety and portions of 13 other routes for a variety of reasons including effects on riparian, wildlife, and vegetation resources. Asserting that the impacts cannot be mitigated to a point of insignificance, SUWA asserts that BLM must prepare an EIS. BLM has filed an Answer responding to each of SUWA's concerns. We affirm BLM's decision for reasons stated below.

BACKGROUND

BLM manages the public lands under the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701, (2000), which "established a policy in favor of retaining public lands for multiple use management." *Lujan v. National Wildlife Federation*, 497 U.S. 871, 877 (1990). In *Norton v. Southern Utah Wilderness Alliance (SUWA)*, 542 U.S. 55 (2004), the Court recognized multiple use management as a "deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put." 542 U.S. at 58.

Over the past decades, Moab, Utah, and its environs have emerged as an internationally renowned "mecca" for off-road vehicle (ORV) enthusiasts, though "[m]ost Jeep Safari routes are routes that have been used for many years for mining, oil and gas development, filming, livestock grazing, wood gathering, and recreation." See EA at 24-25. In the spring of 1966, local residents initiated the annual Moab Jeep Safari that was managed by the local chamber of commerce. EA at 4. BLM issued the first Jeep Safari permit in 1973, for four trails and an unknown number of vehicles. By 1979, the Safari had grown to 10 trails with an estimated 400 vehicles participating in the 1-day event. RR4W assumed responsibility for the event and was granted a 5-year permit in 1986 for 15 routes. In 1991, BLM renewed the permit, which was expanded to include 30 routes and a Fall Campout event.² EA at 4. The permit was renewed again in 1996 and 2001. In the period from 1996 to 2005, participation in the spring event ranged from 1,718 vehicles in 2000 to 1,292 vehicles in 2005. *Id.*, Table 1. Participation in the fall event ranged from 253 vehicles in 1996 to 87 vehicles in 2003. *Id.* at 5. Despite the level of participation in these guided permitted events, it is important to recognize that guided use constitutes less than 5% of total use because all of the routes are open to ORV use by members of the

² BLM's decision renewing this permit was affirmed by this Board in *Owen Severance*, 118 IBLA 381 (1991).

public generally.³ Use is heavy in the spring, starting in February, peaking at Easter, and remaining high until Memorial Day when there is another peak with a period of moderate use in the fall. EA at 24. The significance of the environmental impacts of the proposed action must be measured with respect to this context.

SUWA's members use BLM lands including those involved in this appeal for hiking, camping, and other recreational pursuits that include viewing wildlife and plants, and enjoyment of the natural quiet. SOR at 6-7. SUWA has actively challenged ORV use that disturbs its members' enjoyment of affected public lands. E.g., *Norton v. SUWA*, 542 U.S. 55 (2004); *Southern Utah Wilderness Alliance v. Smith*, 110 F.3d 724 (10th Cir. 1997); *Owen Severance*, 118 IBLA 381 (1991); see also *Rainer Huck*, 168 IBLA 365 (2006), *aff'd sub nom. Williams v. Bankert*, 2007 WL 3053293 (D. Utah Oct. 18, 2007).

The proposed action adopted by BLM involves two components. First, BLM renewed RR4W's 5-year permit to conduct guided tours for the Jeep Safari in the spring and a Fall Campout using a total of 32 existing routes.⁴ Answer at 2-3. BLM established limits on the number of riders allowed in a tour group and the number of times a route could be traveled in each event. *Id.* at 11. BLM imposed 51 operating requirements to protect sensitive resources and reduce potential conflicts with other users. Compliance was to be monitored. All of these routes are open to use by the general public and are shown on commercial maps and listed in guidebooks. *Id.* at 9.

The second component of BLM's decision approved an increase in the number of permits BLM would issue for the Jeep Safari routes over the following 5 years. The number of group permits for motorized events was increased from 8 to 16; the number of permits for commercial tours was increased from 15 to 30.

³ BLM acknowledges that information for comparing permitted use with non-permitted use is available for only 6 of the routes, but notes that "there is no reason to believe that the ratio of permitted to private use varies from these ranges on the remaining 25 routes." EA at 39, 70 (Appendix E). On those 6 routes, permitted use ranged from 0.07% to 4.4%. *Id.* BLM also notes that 40% of all permitted user days occurred on one route for which permitted use was only 4.4% of total use.

⁴ The approved permit allows RR4W to guide tours each year during the 10 days that precede Easter and during a 4-day period around Labor Day. Answer at 3. The portion of the permit approved by the Moab Office involves 29 of the Jeep Safari routes that extend 560 miles, 167 of which cross BLM land. The portion approved by the Monticello Office involves 3 routes that extend 70 miles, 53 of which cross BLM land. *Id.* at 9; see EA at 10-12.

BLM's ENVIRONMENTAL ANALYSIS

The EA in this case addresses the impacts of the proposed action under the applicable Resource Management Plans (RMPs) with respect to issues identified by BLM's interdisciplinary team and raised during public scoping. These include impacts on wildlife (including threatened and endangered species), impacts on riparian and flood plain resources, water quality, wilderness, and cultural resources.

In addition to the proposed action, BLM's EA addressed two other alternatives based on the public input in the scoping process: a "reduced route" alternative which would eliminate seven routes where resource conflicts were identified and the "no action" alternative where no permitted use would be granted to RR4W but private use would continue to occur. EA at 14. BLM considered other alternatives, but eliminated them without studying them in detail. BLM considered an alternative 1-year permit because the Moab FO is considering a revision to its RMP,⁵ but BLM concluded that the 5-year permit could be made to conform to the new RMP. BLM considered eliminating portions of routes within areas proposed as wilderness in the Pending Act but rejected this alternative for several reasons. BLM found that elimination of portions of a route would make the entire route unusable, and existing RMPs do not require BLM to manage these lands as wilderness. SUWA had proposed elimination of a number of routes within the areas proposed as wilderness in the Pending Act for reasons other than wilderness values, but BLM was unable to find the resource conflicts identified by SUWA for many routes. Routes where resource issues could be identified were included in the Reduced Route Alternative for more detailed consideration. EA at 15-16.

In rejecting the alternatives, BLM found that the alternatives would not meet the purpose and need for the proposed action. We agree with BLM that none of these alternatives would effectively reduce impacts from ORV use because the routes remain open to use by members of the public without permits, which accounts for the vast majority of the overall use at the time of the Jeep Safari. BLM notes that most of the routes are in areas open to cross-country travel, and, unlike permitted users who must remain on designated routes, these non-permitted users face no restrictions on their travel. EA at 35. This circumstance led BLM to conclude that permitted use has fewer impacts than private use. *Id.* For example, BLM notes that cultural resources are more likely to be disturbed by cross-country travel than by permittees who are

⁵ The Grand Resource Area RMP governs use of the Federal public lands administered by BLM's Moab FO and the San Juan RMP governs use of those lands administered by the Monticello FO. Both RMPs provide for ORV and other motorized use for the recreation resource management program. Answer at 6-7.

confined to specific routes. The same logic applies to impacts on other resources such as vegetation, wildlife, and riparian values. *Id.* at 40.

RIPARIAN POLICY

SUWA contends that BLM's approval of the proposed action violates BLM's Utah Riparian Management Policy set forth in Instruction Memorandum (IM) UT 2005-091, SOR at 9-15. The IM established a policy to maintain or improve riparian areas to proper functioning condition, IM at 3, and provides that no new surface disturbing activities will be allowed within 100 meters of riparian areas unless it can be shown that there are no practical alternatives, all long term impacts can be fully mitigated, or the activity will benefit or enhance the riparian area. *Id.* at 4. We note that the IM provides that actions to maintain or improve riparian areas include vehicle use restrictions or closures. *Id.* at 9. SUWA, however, faults the EA, which considered vehicle restrictions, because it did not include official "conditions ratings" for riparian areas damaged by previous use so that compliance with the policy can be measured.

BLM asserts that it is in compliance with this policy because it considered alternatives in its EA. Answer at 30-31. BLM contends that the proposed action is not a *new* activity because it involves the renewal of an existing permit for routes that are already open to use and will remain so. BLM stresses that it has imposed stipulations for protection of riparian areas.⁶

Indeed, our analysis of this issue and all of the issues raised by SUWA is driven by the fact that all of the routes are open to unguided public ORV use that will continue even if we reverse BLM's decision. See EA at 39. Although SUWA argues that BLM's action "exacerbates the already alarming status quo," SOR at 14, SUWA fails to recognize that because guided use constitutes less than 5% of total use, the

⁶ The Moab FONSI/DR provides for one-way travel on two routes to prevent route widening. Stipulation 24 confines travel on the Onion Creek Road to the county-maintained road with no travel in the stream or the narrows. Stipulation 25 makes a portion of a route in the Tusher/Bartlett Wash unavailable for motorized use. Stipulation 45 requires vehicles to avoid damage to riparian vegetation and streambanks and prohibits widening of routes. Stipulation 46 requires vehicles to cross the streams in single file to avoid widening of routes. Stipulation 47 requires vehicles on certain routes to drive in the center of the channel to avoid disturbing banks and vegetation. Stipulation 48 excludes vehicles wider than 76 inches from two of the routes. Stipulation 49 prohibits vehicles traveling in opposite directions from passing each other in narrow portions of the route but requires them to reverse to a suitable passable location.

proposed action makes no significant contribution to the adverse impacts of which SUWA complains. As discussed below, BLM suggests that those adverse effects will worsen if guided use is not available.

Thus, while SUWA has provided much support for its arguments concerning the adverse effects of ORV use, especially with respect to riparian areas, the issue in this case is not whether to allow ORV activity or not. The routes in this case remain open to ORV use without regard to the proposed action. Thus, so the overall impact of ORV use cannot be avoided under any of the alternatives addressed in the EA or urged by SUWA because use under the approved permits would be a very small percentage of total use. See EA at 39.⁷

BLM persuasively suggests that unguided use will increase if we were to eliminate the opportunity to take guided motorized trips by reversing BLM's decision in this case. *Id.* at 39-40. Use under permits is preferable because the holders of those permits are required to adhere to permit conditions and risk the loss of their permits if they fail to do so. *Id.* at 39; see, e.g., *Larry Amos*, 163 IBLA 181, 188 (2004); *Judy K. Stewart*, 153 IBLA 245, 251-52, (2000); see also *Dirt, Inc.*, 162 IBLA 55, 59 (2004). Because unguided public use is not subject to the same stipulations and monitoring, BLM believes that adverse effects to almost all resource values will increase if no authorization for permitted use is granted.⁸ EA at 39-41. Given the fact that ORV use of the routes at issue will continue regardless of whether BLM authorizes permitted use, we do not consider a decision to continue guided use which is subject to some degree of monitoring for adverse impacts to be inconsistent with BLM's riparian policy.

⁷ It is helpful to contrast the circumstances of SUWA's appeal with our decision in *Arizona State Association of 4-Wheel Drive Clubs, Inc. (ASA4WD)*, 165 IBLA 153, 159 (2005), in which we affirmed a BLM decision that denied a permit for a particular route in an ORV event because BLM properly determined that the route was not open to ORV use under the applicable land use plan and because increasing ORV use of the canyon due to the mistaken perception that it was open to general ORV use had caused unacceptable impacts to riparian values.

⁸ For example, SUWA refers to the impacts of fluids that may leak from vehicles, SOR at 26-27, but these impacts are more likely to be mitigated by permitted guides because permit stipulations require clean-up of such leaks and compliance with the stipulations is subject to monitoring by BLM. BLM also points out that guided users are less likely than other users to depart from the routes and travel cross country. This is an important consideration in comparing the effects of the proposal on cultural resources.

NEPA

We first consider SUWA's contention that BLM violated section 102(2)(C) of NEPA, which requires that an agency prepare an EIS for consideration of potential environmental impacts of a proposed action if that action is a "major Federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C) (2000). We will affirm a BLM decision to proceed with a proposed action without preparing an EIS where the record demonstrates that BLM has taken a "hard look" at the proposal and has identified relevant areas of environmental concern so that it could make an informed decision about whether there are any significant environmental impacts, and, if so, whether they can be reduced to insignificance by mitigation measures. *Biodiversity Conservation Alliance*, 169 IBLA 321, 331 (2006); *National Wildlife Federation*, 169 IBLA 146, 154-55 (2006); *Southern Utah Wilderness Alliance*, 164 IBLA 33, 36 (2004). A party challenging BLM's FONSI has the burden of demonstrating with objective proof that the FONSI is based on a clear error of law or demonstrable error of fact, or that BLM failed to consider a substantial environmental question of material significance to the proposed action, or otherwise failed to abide by section 102(2)(C) of NEPA. *Biodiversity Conservation Alliance*, 169 IBLA at 332; *National Wildlife Federation*, 169 IBLA at 155; *Southern Utah Wilderness Alliance*, 164 IBLA at 36.

NEPA is a procedural statute designed to "insure a fully informed and well-considered decision." *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 558 (1978). "If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values may outweigh environmental costs." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350-51 (1989). Rather, the process assures that decision-makers are fully apprised of likely effects of alternative courses of action so that selection of an action represents a fully informed decision. *In re Bryant Eagle Timber Sale*, 133 IBLA 25, 29 (1995). When BLM has satisfied the procedural requirements of section 102(2)(C) of NEPA, it will be deemed to have complied with NEPA. *National Wildlife Federation*, 169 IBLA at 155.

SUWA attempts to support its claim that BLM failed to take a "hard look" at the environmental effects of the proposed action by arguing that BLM needed more information before approving the proposal. For example, SUWA contends that BLM needs more information on the impacts of the proposal on riparian areas because it lacks sufficient data on water quality to make an informed decision, noting that BLM did not provide water quality data based on tests. BLM argues that SUWA has failed to identify the tests or base line data that BLM should have developed. Answer at 42.

In deciding whether BLM has taken a hard look at the likely environmental consequences of a proposed action, we have been guided by the “rule of reason,” as expressed in *Don’t Ruin Our Park v. Stone*, 802 F. Supp. 1239, 1247-48 (M.D. Pa. 1992):

An EA need not discuss the merits and drawbacks of the proposal in exhaustive detail. By nature, it is intended to be an overview of environmental concerns, not an exhaustive study of all environmental issues which the project raises. If it were, there would be no distinction between it and an EIS. Because it is a preliminary study done to determine whether more in-depth study analysis is required, an EA is necessarily based on “incomplete and uncertain information.” *Blue Ocean Preservation Society v. Watkins*, 767 F.Supp. 1518, 1526 (D. Hawaii 1991) So long as an EA contains a “reasonably thorough discussion of . . . significant aspects of the probable environmental consequences,” NEPA requirements have been satisfied. *Sierra Club v. United States Department of Transportation*, 664 F.Supp. 1324, 1338 (N.D. Ca. 1987), . . . quoting *Trout Unlimited v. Morton*, 509 F.2d 1276, 1283 (9th Cir. 1974). [Footnote omitted.]

National Wildlife Federation, 169 IBLA at 155 (emphasis added).

If the objective of NEPA is to “insure a fully informed and well-considered decision,” the rule of reason requires us to consider what information is necessary to inform the particular decision being made. See *Yankee Nuclear Power Corp.*, 435 U.S. at 558. Although the information SUWA would have BLM develop would better inform a decision as to whether to allow ORV use or not, the issue here is whether BLM may make provision for permitted guided use when a higher level of unguided use otherwise would likely occur.

SUWA bases its contention that BLM failed to take a hard look at riparian and flood plain issues on a declaration of Charles Schlez, an ecologist, and information in the EA itself.⁹ SOR, Ex. 6. However, as we previously noted in our discussion concerning BLM’s adherence to BLM’s Utah Riparian Policy, the EA shows specific consideration of those impacts and measures taken to mitigate adverse effects. We would not disagree with Schlez’s observation that restricting use would reduce impacts, but as BLM points out, Schlez also opined that “all vehicle use must be

⁹ The fact that SUWA itself cites the effects described in the EA in support of its position tends to negate its argument that BLM failed to consider those effects. Rather, it appears that SUWA believes that BLM’s “look” at the impacts was not “hard” enough because it did not impel BLM to reject RR4W’s application.

banned in order to effectively bring the impacts to these resources to a non-significant level.” Answer at 37, quoting SOR, Ex. 6 at ¶ 27. That observation, however, does not address the issue in this appeal, which is whether it is proper for BLM to provide for guided ORV use against the background of unguided use that will inevitably continue to occur. Nor does it establish that BLM failed to take a “hard look” at the potential impacts of the proposed ORV use on the riparian areas or overlooked significant environmental impacts.

SUWA particularly faults BLM for failing to take a look at the impacts on Arch Canyon. SOR at 21-22. In its Answer, BLM explains how the Arch Canyon route was examined during the preparation of its EA. Answer at 37-40, Ex. A. Like the other routes, the 8.5-mile Arch Canyon route is open to unrestricted vehicle use and is currently authorized for ORV use under a 5-year permit during the San Juan ATV Safari and by commercial tour companies. BLM notes that RR4W has applied to use only 2.5 miles of this route, and that Monticello BLM generally prefers that vehicles turn around 4.5 miles into the canyon to avoid culturally sensitive areas. EA at 45. Because non-restricted use already occurs on that portion of the route, BLM expects impacts of the proposed action to be minimal. EA at 53.

CONCLUSION

We do not consider it necessary to repeat all of SUWA's arguments concerning the impacts of this decision. We find that BLM has effectively answered them by identifying the portions of the EA where those arguments are addressed. The issue confronting BLM in this case was whether to allow or deny an application for guided permitted use in an area open to unrestricted use in which guided use is a minuscule portion of total use. We find that the EA prepared by BLM was sufficient to inform that particular decision.¹⁰ Although we may not have specifically addressed each of

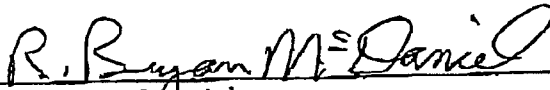
¹⁰ Although an agency may be required to consider the alternative of delaying a proposal while additional information is developed, it is not required to adopt that alternative. We note that in refusing to enjoin a sale of oil and gas leases on the Outer Continental Shelf and require an agency to gather more information, one court stated:

One of the costs that must be weighed by decisionmakers is the cost of uncertainty i.e., [sic] the costs of proceeding without more and better information. Where that cost has been considered, and where the responsible decisionmaker has decided that it is outweighed by the benefits of proceeding with the project without further delay, the courts may not substitute their judgment for that of the decisionmaker and insist that the project be delayed while more information is sought.

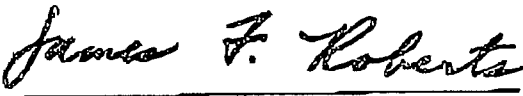
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SUWA's arguments, we have considered them and find that they provide no basis for reversal of BLM's decision. *See generally National Labor Relations Board v. Sharples Chemicals, Inc.*, 209 F.2d 645, 652 (6th Cir. 1954); *Glacier-Two Medicine Alliance*, 88 IBLA 133, 156 (1985).

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


R. Bryan McDaniel
Administrative Judge

I concur:


James F. Roberts
Administrative Judge

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¹⁰ (...continued)

Kleppe v. Sierra Club, 427 U.S. 410 n. 21, 96 S.Ct. 2718, 49 L.Ed.2d 576 (1976). [Footnote omitted].
State of Alaska v. Andrus, 580 F.2d 465, 473-74 (D.C. Cir. 1978), vacated in part on other grounds sub nom. *Western Oil & Gas Ass'n v. Alaska*, 439 U.S. 922 (1978).