



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



SOUTHERN UTAH WILDERNESS ALLIANCE

172 IBLA 183

Decided August 24, 2007



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IBLA 2006-126

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Appeal from a Decision Record and Finding of No Significant Impact issued by the Moab (Utah) Field Office, Bureau of Land Management, renewing a 5-year Special Recreation Permit for the Red Rock 4-Wheelers' Jeep Safari and increasing Jeep Safari route permits. UT-060-2005-080.

Set aside and remanded.

1. Administrative Authority: Generally--Rules of Practice:
Supervisory Authority of the Secretary

The Board does not exercise supervisory authority over BLM and, therefore, may modify a BLM decision only to correct an underlying error of law or fact in the context of a challenge to the merits of that BLM decision.

2. Administrative Procedure: Generally

A BLM request that the Board modify a BLM decision may be construed by the Board as a request that the decision be set aside and remanded for further action.

APPEARANCES: Liz Thomas, Esq., Moab, Utah, for Southern Utah Wilderness Alliance; James E. Karkut, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

On April 6, 2007, the Board received a document styled as "Unopposed Motion for Order Making Minor Modification to Decision" (Motion for Modification) from counsel for the Bureau of Land Management (BLM). This motion requested that the Board "make 2 minor changes" to one of the 29 vehicular routes covered by the Moab (Utah) Field Office's January 23, 2006, Decision Record and Finding of No Significant Impact (DR/FONSI). Motion for Modification at 3. Despite the perceived efficiency of having the Board make these modifications, we find that the Board has

no authority to make such interim modifications, even with the express consent of the parties, and even if the changes do not affect the issues on appeal. Accordingly, for the reasons set forth below, we deny the Motion for Modification and set aside the DR/FONSI and remand the case to BLM.

Background

On January 23, 2006, the BLM Moab Field Office and the BLM Monticello Field Office each issued DR/FONSIs based on Environmental Assessment (EA) No. UT-060-2005-080, which is entitled “Red Rock 4-Wheelers Jeep Safari and Fall Campout 5-Year Permit Renewal and Other Permitted, Non-Competitive Motorized Use of Jeep Safari Routes.”

In its DR/FONSI, the Moab Field Office renewed Red Rock 4-Wheelers’ 5-year Special Recreation Permit (SRP) to conduct a motorized vehicle event known as the Jeep Safari and Fall Campout on 29 existing routes (totaling approximately 600 miles) on public lands administered by the Moab Field Office. The Moab Field Office also approved an increase in the number of organized motorized event permits and commercial tour permits it would consider issuing in the next 5 years for use of the Jeep Safari routes. In its DR/FONSI, the Monticello Field Office approved for inclusion in the Jeep Safari SRP three existing routes (totaling approximately 23 miles) on public lands administered by that office.

The Southern Utah Wilderness Alliance (SUWA) filed a timely appeal of those DR/FONSIs. The Board docketed that appeal as IBLA 2006-126. However, the Board subsequently redocketed the appeal of the Monticello Field Office DR/FONSI as IBLA 2007-244. Herein, we consider BLM’s Motion for Modification of the Moab Field Office DR/FONSI, the appeal of which is presently pending with the Board as IBLA 2006-126. IBLA 2007-244 remains on the Board’s docket.

Discussion

BLM correctly states that it loses jurisdiction over a decision when it is appealed, citing *McMurray Oil Co.*, 153 IBLA 391, 393-94 (2000). Motion for Modification at 3-4. BLM implies that, while its jurisdiction is removed, the Board acquires the same jurisdiction BLM normally has over the substance of a decision, and therefore, the Board can make changes to BLM decisions that are under appeal. Motion for Modification at 4. We disagree.

[1] In describing the Board’s appellate role and relationship to BLM, we have held that “[t]he Board does not exercise supervisory authority over BLM except in the context of deciding an actual appeal case over which the Board has jurisdiction.” *Defenders of Wildlife, Wyoming Outdoor Council*, 169 IBLA 117, 127 (2006), quoting

Nevada Outdoor Recreation Association, 158 IBLA 207, 210 (2003). Therefore, although we may *consider* BLM decisions “as fully . . . as might the Secretary,” *United States Fish & Wildlife Service*, 72 IBLA 218, 221 (1983), we cannot manage the public lands as a proxy for BLM. Rather, we may modify a BLM decision only to correct an underlying error of law or fact in the context of a challenge to the merits of that BLM decision.

[2] However, we may remand a case to BLM to allow the agency to alter and reissue its decision. This process allows adversely affected parties to appeal the reissued decision to the Board. Even though SUWA does not oppose the modification, unless BLM reissues the decision, any modification made by the Board while the decision remains under appeal would likely go unnoticed by a third party who might be adversely affected by the modified decision. Such action would preclude the third party from seeking review of the modified decision. Accordingly, we decline to make the requested modification and deny the motion. Instead, we construe BLM’s Motion for Modification as a request that the decision be set aside and the matter remanded to BLM for further action.

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 Moab Field Office DR/FONSI is set aside and the case is remanded to BLM.

/s/
H. Barry Holt
Chief Administrative Judge

I concur:

/s/
Bruce R. Harris
Deputy Chief Administrative Judge