

INTERIOR BOARD OF LAND APPEALS

El Bosque Preservation Action Committee

160 IBLA 185 (November 18, 2003)

Title page added by:
ibiadecisions.com

EL BOSQUE PRESERVATION ACTION COMMITTEE

IBLA 2000-261

Decided November 18, 2003

Appeal from Record of Decision for the Final Rio Grande Corridor Coordinated Resource Management Plan issued jointly by the State Director, New Mexico State Office, the Manager, Taos (New Mexico) Field Office, and the Manager, La Jara (Colorado) Field Office, Bureau of Land Management, specifying management guidelines for public lands along the Rio Grande River and establishing criteria for boating use on segments of the river.

Affirmed.

1. Administrative Procedure: Adjudication-- Administrative Procedure: Administrative Review

Appellants bear the burden of demonstrating, by a preponderance of the evidence, that BLM committed a material error in its factual analysis or that the decision generally is not supported by a record showing that BLM gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made.

APPEARANCES: Kay Weiner, El Bosque Preservation Action Committee, Embudo, New Mexico; Ron Huntsinger, Manager, Taos, New Mexico, Field Office, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

On February 29, 2000, the El Bosque Preservation Action Committee (El Bosque PAC), through Kay Weiner, filed a purported "Protest of the Rio Grande Final Management Plan and Commercial Outfitter Stipulations."^{1/} The Rio Grande

^{1/} Under the Department's rules of practice, 43 CFR 1.3, a person other than an
(continued...)

Corridor Final Plan, subtitled Final Rio Grande Corridor Coordinated Resource Management Plan (CRMP) and Taos Resource Management Plan Amendments, was issued by BLM on January 4, 2000. A Record of Decision (ROD) for the CRMP was issued jointly on January 4, 2000, by the State Director, New Mexico State Office, Bureau of Land Management (BLM); the Taos, New Mexico, Field Office Manager, BLM; and the La Jara, Colorado, Field Office Manager, BLM. The Plan “provides management guidance for public lands along the Rio Grande in New Mexico (Taos Field Office) and in Colorado (La Jara Field Office), and also amends the Taos Resource Management Plan.” (ROD, cover letter; see also Rio Grande Corridor Final Plan (Final Plan) at 1-1.) The ROD also establishes criteria for boating use on segments of the river.

Planning efforts for the Rio Grande Corridor formally began in 1994. Development of the CRMP involved substantial public input:

From the issues and the desired future condition statements, a Draft Plan [July 1997] was formulated, presenting four alternative approaches to managing the public lands in the Rio Grande Corridor. Following the conclusion of the comment period on the Draft Plan in October 1997 and the subsequent analysis of the comments, a Proposed Plan [and Final Environmental Statement] was released in September 1998. The Proposed Plan included a mixture of the actions/prescriptions from various alternatives presented in the draft. The protest period for the Proposed Plan ended in October 1998 and minor adjustments were made to develop the Final Plan. There were no changes to the RMP amendments outlined in the Proposed Plan.

(Final Plan at 1-3.) El Bosque PAC provided input in the preparation of the October 1997 Draft Plan and, on October 6, 1998, protested the Proposed Plan.^{2/} The ROD and Final Plan were issued by BLM in January 2000, with notice that “[a]ny person adversely affected by a decision of the BLM in implementing any portion of this Plan may appeal that action * * * at the time the action is proposed for implementation.”

^{1/} (...continued)

attorney is eligible to represent another in limited circumstances. Kay Weiner has not shown that she is qualified to represent El Bosque PAC as an attorney or an officer. See 43 CFR 1.3(b)(3)(iii). However, the record shows that Weiner has participated in the decisionmaking process in this case and, therefore, could maintain the appeal in her personal capacity.

^{2/} In addition to considering those items protested when it formulated the Final Plan, BLM also responded to El Bosque PAC’s specific concerns (identifying six) in a letter dated January 19, 2000.

(ROD at 7; see also Final Plan at 1-3.) Thereafter, El Bosque PAC filed its “protest” on February 29, 2000.

Consequently, the Taos Field Manager responded to the “protest” in a letter dated March 29, 2000, and ultimately rejected it as follows: “It appears that your letter was submitted as a protest to the Rio Grande Plan. The protest period ended on October 5, 1998[,] and therefore [it] can not be accepted.” (BLM letter of March 29, 2000, at 2.) However, it is well established that a document which is styled as a “protest” may nevertheless be considered a notice of appeal in accordance with 43 CFR 4.411 where the person filing it has been a party to the case and challenges an adverse decision that has been made by BLM.^{3/} See, e.g., Thana Conk, 114 IBLA 263, 273 (1990); Arnell Oil Co., 95 IBLA 311, 318 (1987); Goldie Skodras, 72 IBLA 120 (1983). We note that 4.411 also establishes the mandatory timeframe within which a party seeking to appeal a BLM decision must file its notice of appeal--30 days after the date of service. In this instance, BLM, “[d]ue to some confusion on the appeal process,” effectively reissued the ROD by letter dated February 16, 2000, thereby extending the appeal period until March 16. El Bosque PAC’s appeal was filed well within the appeal period and therefore it is properly before the Board. See 43 CFR 4.410, 4.411. We therefore will proceed to review the reasons for appeal provided by appellant, see 43 CFR 4.412, and, in turn, will consider BLM’s March 29 letter as an answer duly filed in accordance with 43 CFR 4.414.

In its February 29, 2000, notice of appeal, El Bosque PAC specifically challenges the Final Plan on several grounds asserting error in implementation of the river management plans presented therein. Specifically, appellant argues that “in proposing non-permitted commercial use of the private land at Lover’s Lane in Rinconada by seventeen commercial users, and the proposed use of Embudo Station Restaurant as a primary take-out by eleven commercial users, with ‘Embudo South’ as an alternative take-out,” BLM fails to comply with the relevant county use plans. El Bosque PAC further contends that BLM improperly “instituted year-round commercial and private boating” without public comment or input, noting that all previous drafts of the Corridor Plan established “a set season of 5-6 months of commercial boating.” Finally, appellant asserts that no safety improvements have been made to Embudo South, “the most likely takeout for commercial and private use,” despite the repeated warnings of the dangers of using this stretch of highway and the turn-off to the Embudo Station bridge. Appellant also cites the increased

^{3/} There is no requirement that a document be labeled a notice of appeal or even use the word “appeal,” and the Board has adopted a policy that a document filed objecting to a final decision should be treated as a notice of appeal. It will be construed as a notice of appeal if it challenges a BLM decision which is adverse to the complaining party.

burden placed “on local and county emergency medical services and law enforcement” as a result of using this take-out. El Bosque PAC therefore suggests that the Final Plan should be opened up for public comment.

In reviewing appellant’s arguments, we first observe that approval and amendment of planning determinations, i.e., most management plans, are not actions appealable to this Board. Friends of the River, 146 IBLA 157, 163-64 (1998); Wilderness Society, 90 IBLA 221, 224 (1986). We have held, however, that approval of activity plans or decisions which implement a management plan or amendment are distinguishable from appeals of a management plan or plan amendment and may be appealable to the Board. National Organization for River Sports, 140 IBLA 377, 384-85 (1997); see 43 CFR 1610.5-3(b); Deschute River Landowners Committee, 136 IBLA 105, 107 n.3 (1996).

The ROD in this case actually contains three separate decisions in the text of a single document.^{4/} Those decisions are: 1) the decision of the State Director to approve the Taos RMP amendments described in the Rio Grande Corridor Final Plan; 2) the decision of the La Jara Field Manager to approve the CRMP for the La Jara Field Office; and 3) the decision of the Taos Field Manager to approve the CRMP for the Taos Field Office with modifications as set forth therein which “were based upon informal protest responses received in October, 1998.” (ROD at 1.) The distinction between these decisions was recognized by BLM at the time of preparing the Rio Grande Corridor Proposed Plan and Final EIS (August 1998). The BLM cover letter states that the “proposed CRMP/FEIS is an integration of several activity-level plans along the Rio Grande in New Mexico (Taos Field Office) and in Colorado (San Luis Resource Area), and also addresses amendments to the Taos Resource Management Plan.” (BLM letter dated Aug. 28, 1998). In the cover letter, BLM explains that “protests related to New Mexico RMP-Level Decisions (the yellow pages)” must be filed with the Director, BLM. Id. Regarding specific actions described in Chapter 2, Activity-Level Proposals, on the other hand, BLM stated that an informal protest may be filed with the Taos Field Office. Id.

The distinction between these decisions is also recognized in the Final Plan which provides in the introduction under the heading Purpose and Need:

[T]his document is a little different than the usual because it includes two very different levels of BLM planning. Through this document the BLM prepared an activity-level coordinated resource management plan

^{4/} The ROD was signed separately by the New Mexico State Director and by the La Jara and Taos Field Managers.

for the public land within the Rio Grande Corridor, and also amended the Taos RMP.

Final Plan at 1-1. Accordingly, it appears that the Board’s jurisdiction has been invoked as to the implementing actions taken in the CRMP as distinguished from the amendment of the RMP over which we have no jurisdiction. Because the ROD implements procedures and rules regarding boating/rafting on the river, jurisdiction exists to review the decision as set forth at 43 CFR 4.1. See National Organization for River Sports, 140 IBLA at 384-86.

[1] The standard of review applied by the Board when reviewing an implementation decision of BLM is described in Wilderness Society, supra at 232: “BLM has the responsibility of administering the public lands and must be accorded the discretion necessary [to effectively] discharge its duties. So long as BLM’s management decision is based on a consideration of all relevant factors and is supported by the record, the Board will not disturb it, absent a showing of clear reasons for modification or reversal.”

Reviewing El Bosque PAC’s arguments seriatim, we find the challenged ROD to be well-supported by the record. Accordingly, we must affirm BLM’s decision.

With respect to El Bosque PAC’s noted concerns for compliance with Rio Arriba’s land use planning, BLM has stated:

Your reference to “non-permitted commercial use” of private lands at Lover’s Lane and Embudo Station is not clear. The Final Plan recommends actions for public lands as well as for potential private land acquisitions. Actions would not be implemented on private lands until the lands were acquired.^{5/} BLM does not influence or control

^{5/} With respect to the private/public land distinction, BLM explained the potential for the subject take-outs as follows:

“Lover’s Lane: [I]f public access is acquired, a permanent restroom will be built, and a parking area established above the riparian area. If access to this parcel is not acquired, then BLM will work with stakeholders to determine alternative strategies.

“Embudo Station: [P]rivate facilities may be available if boaters make arrangements with the owner. If the Embudo South site is developed, BLM will limit development to what is needed to provide for resource protection or public safety * * *.”

(Final Plan at 4-9; see also Proposed Plan at 2-48 (BLM would develop access and (continued...))

activities on private lands unless specifically provided for under a signed agreement with the landowner. BLM does not “allow” use of Embudo Station as a takeout. Any public use at this site is at the discretion of the private landowner. BLM is required to consult with local governments and consider local land use planning in developing our resource management objectives. The County was offered many opportunities to provide input during the Rio Grande planning process. We recently met with the Rio Arriba County manager, commissioners and planning staff to discuss several issues of importance to the County, including impacts of commercial rafting in the Embudo area. We agreed to continue coordinating with Rio Arriba County as we implement the Rio Grande Plan.

(Answer at 1.) The record shows that BLM carefully reviewed the planning area’s recreational resources. (ROD at 1-5; Final Plan at 4-1 through 4-12; Proposed Plan at 4-22, 4-24 through 4-36.) Its review included inquiry into the local governments’ own management plans, concluding with a determination that no inconsistencies exist between the proposed action and the local land use planning. (Proposed Plan at 5-1; see also ROD at 7.) With respect to the use of private lands, BLM has clearly warned that “[t]here will be no landing on private lands [at Lovers’ Lane, Embudo Station, and Embudo South] except in emergencies or with landowner permission.” (Final Plan at 4-9; Proposed Plan at 2-48.) Appellant has shown no error in BLM’s determination.

Appellant asserts that in all previous drafts of the plan there has been a set season of 5-6 months and that the year-round use was instituted without public comment or input. BLM replies that year-round boating was an alternative considered in the planning process. Indeed, we find the different alternatives presented in Draft Plan to encompass a variety of proposals, including year-round use under Alternatives A and C. (See Draft Plan, Tables 2-6, 2-7, 2-8, 2-12, and 2-14.) Later in the planning process BLM addressed the seasonal issue: “The Proposed Plan changed the focus from seasonal caps to a combination of daily thresholds and seasonal variations in use.” (Proposed Plan at 4-24.) BLM’s determination accommodated the needs of the outfitters while recognizing local concerns by providing limited boating during the main season and an identified winter season. (ROD at 4.) We note that BLM responds, “[t]he decision to change the use season in the Bosque was based upon public comments received throughout the planning process.” (Answer at 1.) Such comments are found in the record. (See, e.g., Proposed Plan, Vol. 2.) Appellant, with respect to this issue, has failed to

^{5/} (continued)

facilities on BLM lands if Lover’s Lane access is not acquired).)

demonstrate with objective proof that BLM failed to consider a substantial question of material significance to the proposed action.

With respect to El Bosque PAC's final issue, BLM responds:

Your concerns for safety on Highway 68 and the burden this places on emergency medical services and law enforcement is also a concern for BLM, Rio Arriba County and the New Mexico State Highway and Transportation Department (NMSHTD). We do not anticipate significant increases in traffic based upon our planned actions within Rio Arriba County. BLM's primary management focus will be to protect riparian areas through vehicle closures, provide for public access at Embudo South (in the absence of an agreement with the Embudo Station landowner) and improve human health and safety by installing signing and a restroom at Lover's Lane. * * * BLM will continue to coordinate with NMSHTD to resolve safety issues. BLM will be working closely with Rio Arriba County and public safety agencies on emergency medical services and law enforcement issues.

(Answer at 1.) Appellant's concerns do not reflect an error in BLM's determination to proceed with the Final Plan. As noted in the ROD, comments and protests received on the Proposed Plan did not provide any new information or data what would lead BLM to the conclusion that there were errors in the proposed actions. (ROD at 1.) Likewise, appellant has demonstrated no error in the ROD or Final Plan.

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

C. Randall Grant, Jr.
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge