

OWEN SEVERANCE ET AL.

IBLA 91-88

Decided March 15, 1991

Appeals from a decision of the Area Manager, Grand Resource Area, concurred in by the Moab, Utah, District Manager, Bureau of Land Management, renewing 5-year special recreation use permit No. MD-90-GR-011R.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Permits--National Historic Preservation Act: Generally--Public Lands: Special Use Permits--Special Use Permits

Issuance of a special recreation permit for off-road vehicle tours over existing roads and trails may be affirmed on appeal where the record establishes that the potential impact to cultural resources was carefully considered, routes were altered accordingly, and protective stipulations were attached to the permit.

2. Environmental Policy Act--Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements--Public Lands: Special Use Permits--Special Use Permits

A finding of no significant environmental impact associated with a special recreation use permit for an off-road vehicle tour may be affirmed where the record establishes that BLM took a "hard look" at the environmental impacts of the activity authorized by the permit, considered reasonable alternatives, and applied mitigating measures to avoid significant adverse environmental impacts.

APPEARANCES: Owen Severance, pro se; Lori Potter, Esq., and Yuki Ishizuka, Research Assistant, Denver, Colorado, for appellants Southern Utah Wilderness Alliance, Sierra Club, and The Wilderness Society; David K. Grayson, Esq., Salt Lake City, Utah, for the Bureau of Land Management; Ber Knight, Information Officer, and Ron Brewer, President, Moab, Utah, for intervenor, Red Rock 4-Wheelers, Inc.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Owen Severance (Severance) has appealed from a Record of Decision issued by the Bureau of Land Management (BLM), Grand Resource Area Office,

concurrent with the Manager of the Moab, Utah, District Office, dated November 2, 1990, renewing a 5-year special recreation use permit (MD-90-GR-011R). The permit was issued to Red Rock 4-Wheelers, Inc. (RR4W or Red Rock), for the Annual Easter Jeep Safari and Fall Campout Event. The 1991 Jeep Safari is scheduled to take place from March 23-31. The Southern Utah Wilderness Alliance, the Sierra Club, and The Wilderness Society (SUWA group) have also filed a separate appeal of this decision along with a motion for a stay and for expedited consideration of their appeal. RR4W, the holder of the 5-year permit in question, filed a motion to intervene in this appeal.

By order of February 14, 1991, the Board granted expedited consideration and took the motion for stay under advisement pending expedited consideration of the case on its merits. In the same order the motion of RR4W to intervene was granted.

RR4W filed its current special recreation application, dated January 29, 1990, for a permit covering the 5-year period from January 1991 to December 1996 for the purpose of conducting its annual Easter Jeep Safari and Labor Day Fall Campout events. RR4W proposed to use 28 existing roads and jeep trails located within Grand and San Juan Counties, Utah. The environmental assessment (EA) prepared by BLM to analyze the environmental impacts of the permit recites that, for purposes of the Easter Jeep Safari, cumulative use of all the trails would be limited to a maximum of 1,610 vehicles on any given day during the 9-day event (see EA-UTU-068-90-54 at 4 and Appendix D). 1/

The record describes the history of these events beginning in 1966 when local residents initiated the annual Moab Jeep Safari. BLM issued the first Jeep Safari permit in 1973, for four trails and an unknown number of vehicles. By 1979, under sponsorship of the Moab Chamber of Commerce, the Safari had grown to 10 trails with an estimated 400 vehicles participating in the 1-day event. It continued to grow, and pre-Safari tours were initiated that eventually led to more than a week of off-road vehicle (ORV) activity associated with the Safari.

In 1985, the Chamber of Commerce turned the Jeep Safari over to the intervenor, Red Rock, a local ORV club, which applied to BLM for a 5-year permit, proposing to use 15 trails involving a considerable increase in the number of participating vehicles. Between 1985 and 1990 the event grew to 28 approved trails with 1,165 registered vehicles. The 1985 permit, as modified by addenda, expired in April 1990, following the annual Safari (EA UTU-068-90-54 at 2).

1/ The maximum authorized use consists of the total of the number of vehicles authorized to use each of the different trails during the event. See Appendix D. The proposed action as considered in the EA also embraces the potential future addition of six other trails which would each be authorized for use by as many as 50 ORVs for a potential additional use of 300 vehicles.

This event, which is scheduled to occur during a 9-day period commencing March 23, makes use of roads and trails which are also open to general use by the public year round. The record characterizes the nature of the routes and the usage authorized by the permit as follows:

The 28 trails which have been authorized in the past were established at various times to provide access for mining, livestock management, wood gathering, seismic testing, and recreation. Many date back to the 1950's and 1960's during the local uranium boom. Segments of the trails range from maintained Class B

county roads to two-tracks and traditional paths over rock outcrops * * *. Some segments of roads have been linked in the past ten years by users to create continuous trails for recreational use. Some of these have been specifically created for Jeep Safari events. All of the roads and vehicle trails under consideration are open to general use by the public and most are listed in various guide books and maps. The Safari tours include one trip leader followed by a prescribed number of participants with a trail guide at the end of the line.

Id.

The record further shows that BLM's examination of the environmental impact of the expansion of these events in recent years involves three closely related EA's. In February of 1990 BLM prepared an EA (UT-068-90-47) before five trails were added to the 1990 Safari event. Subsequently in August of 1990, an additional EA (UT-068-90-116) was prepared to address potential impacts associated with the Fall Campout.

After receipt of RR4W's renewal application, BLM prepared a third EA (UT-068-90-54). The EA record reflects public input in this process. The first draft of this EA was announced to the public in June of 1990 on the posted environmental document list. A BLM news release of August 28, 1990, invited public participation in a scoping meeting. That public meeting was held in Moab, Utah, on September 4, 1990, to identify possible environmental and socioeconomic issues to be considered in the EA. BLM released the EA and FONSI (finding of no significant impact) on September 13, 1990, requesting further public comments. The EA record notes that in response to the request for public input 2,349 public responses were received "with 2039 (86 Percent) supporting the Jeep Safari and 310 (14 percent) generally opposed."

The final EA, dated November 2, 1990, took note of the high level of public interest in this matter, described the proposed action and existing management and environmental considerations, outlined the anticipated environmental impact of RR4W's proposed action, and examined mitigating measures designed to lessen that impact.

In the November 2, 1990, Record of Decision (ROD) BLM renewed RR4W's 5-year recreation permit subject to an extensive list of stipulations which had been "developed to mitigate potential impacts identified through the

environmental assessment process." The decision to renew this permit was based on BLM's accompanying FONSI. Based on the environmental analysis, BLM determined that impacts of the proposed events are not expected to be significant and, hence, preparation of an environmental impact statement (EIS) is not required. The ROD sets forth the rationale, stating:

The proposed action will provide recreation opportunities for the public and, as mitigated, will have no unnecessary or undue impacts to the environment. The action is in conformance with the Grand Resource Area Management Plan (1985). Comments received from the public suggest that an EIS is necessary to adequately address the impacts associated with the proposed action. BLM disagrees with this assertion and believes that the potential impacts represented in the EA have been adequately defined. After review of comments, BLM is convinced that implementation of the proposed action will not result in significant impacts to the human environment and, therefore, an EIS is not required. Adequate protective measures have been incorporated into the selected alternative to assure that any potential adverse impacts are satisfactorily mitigated. Monitoring of the event, including stream crossing, will be conducted to determine if adjustments to the authorized action are necessary during the term of the permit.

(ROD at 1).

In his statement of reasons (SOR) for appeal, Severance, "a recreational user of the Grand Resource Area and an Avocational Archaeologist," contends that the approval of this special use permit was not proper because the EA did not adequately address the issue of impacts to cultural resources that might be present on the routes used for these events. Appellant asserts that a cultural resources inventory is a required prerequisite for approval of the permit regardless of whether the roads or trails involved are established public roads which have been maintained and bladed.

The SUWA group also objects to the BLM approval of the permit and requests a stay of this year's Safari event, alleging that the event has grown from "a local recreational event to an enormous spectacle" which will cause irreparable injury to appellants and the environment. Appellants admit ORV's are permitted on these trails year round, but they assert this event causes a substantial increase of use and has environmental impacts which degrade the wilderness experiences of non-motorized recreational users, stating:

If the maximum number of vehicles allowed by the permit were to use each of the available trails for every day of the event, then 17,280 individual jeep trips would be made over nine consecutive days every year. This would equate to 86,400 individual trips over the five year life of the Jeep Safari permit challenged here.

Large-scale ORV use has significant, lasting impacts on the environment. ORVs widen existing trails, crush fragile vegetation, break down rock ledges, and gouge deep ruts into stream banks at stream crossings.

(SUWA Group SOR at 5).

Appellants have expressed their concern that several of the trails used in the Jeep Safari are in areas which Congress is currently considering for inclusion in the National Wilderness Preservation System. The SUWA group alleges the proposed event "unnecessarily degrades the wilderness suitability of these lands and others which are not being considered as wilderness but which possess important natural resources" (SOR at 1-2). The SUWA group specifically points out that 18 of the trails used for the Safari run through lands which Congress is considering for inclusion in the National Wilderness Preservation System pursuant to a proposal introduced in the 101st Congress as H.R. 1500. Appellants state: "Both SUWA and the sponsors of H.R. 1500 consider these trails indistinct and insignificant enough so as not to disqualify these areas from wilderness consideration" (SUWA Group SOR at 7).

Appellants, primarily, are highly critical of BLM's analysis of the environmental impacts of the permit renewal. They assert that the EA is inadequate in its treatment of several crucial areas and assert that an EIS is necessary to fully evaluate the impacts of the proposed action as required by National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 (1988). Appellants generally assert, inter alia:

Several of the trails used by the Jeep Safari are in areas which Congress is currently considering for inclusion in the National Wilderness Preservation System. * * *

Utah's high desert canyon country is a highly erosive, extremely arid ecosystem where plant and animal life is sparse. The desert is home to the bighorn sheep, the endangered peregrine falcon, and a variety of unique plant species which struggle to survive on only 10-12 inches of precipitation per year. Planning a massive ORV event in such a fragile area requires a care-ful analysis of the event's environmental impacts and a thorough consideration of relevant alternatives.

Unfortunately, the BLM has prepared an Environmental Assessment ("EA") which does an inadequate job of evaluating the Jeep Safari's impacts to water resources, plant and animal life, and other natural resources. More disturbing, however, is the BLM's failure to consider any alternative ways of planning the Jeep Safari which would minimize the event's environmental impacts. The EA presents only one alternative to the proposed action. This alternative would eliminate the Jeep Safari entirely. In essence, the BLM inadequately evaluated the only option it presented to the public and to itself.

In its comments on the EA, The Wilderness Society, one of the Appellants here, expressed support for events such as the Jeep Safari when they are conducted in an environmentally sound manner. However, the explosive growth of this event makes it a new creature, and past impacts cannot be used as a measure for future impact.

(SUWA Group SOR at 1-3). Appellants have also made several specific factual allegations concerning matters such as water resources, plant and animal life, riparian areas, and other natural resources that, they assert, will be adversely affected by the renewal of this permit.

BLM has filed its answer, responding that a stay of the permit is not appropriate for this year's event because appellants have failed to meet the necessary requirements to justify a stay consistent with the principles recognized by the Federal courts regarding interim injunctive relief. BLM argues (1) that appellants are unlikely to prevail on the merits of their claims; (2) they would not be irreparably harmed if no stay is granted for this year's event; (3) appellants have not shown that threatened injury outweighs the adverse impact on BLM creating a management nightmare and inconvenience to the public if the permit is enjoined at the last minute; and (4) the public interest would not be served at this late date by enjoining the 1991 Easter event which has long been planned and is merely a continuation of past yearly events (Answer at 2-5).

As to appellants' concern that the relatively undeveloped nature of the trails or roads on lands within the permit area should be preserved and protected for wilderness consideration as set forth pursuant to a bill introduced in the 101st Congress, H.R. 1500, BLM points out the lands in question are not required to be managed in such a manner because they have not been designated as Wilderness Study Areas (WSA's) under section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1988). Although H.R. 1500 would include areas discrete from those identified as WSA's in the BLM wilderness review under FLPMA, this bill proposed in the last Congress has not been enacted into law and provides no legal basis for BLM to restrict otherwise lawful use of lands identified therein as potentially subject to classification as wilderness (Answer at 5-6).

As to appellants' attack on BLM's NEPA compliance, BLM asserts that "its EA and resulting FONSI are quite adequate and totally supported by the record and that the suggestion that an EIS is necessary is not even supported by appellants' own arguments in its SOR" (Answer at 7). BLM points out that, consistent with recent legal precedent, BLM has complied with NEPA requirements as it has taken a "hard look" at the environmental impacts of this action and "has quite justifiably concluded that there is no significant impact from the five-year permit to the Red Rock 4-Wheelers with the mitigating measures required by the stipulations which are imposed by the BLM on its permit" (Answer at 8).

BLM takes issue with appellants' contention that intensified vehicle use during the Safari event has significant, lasting impacts on the environment. It states that

registered vehicles are not present during the entire nine days, but rather a majority of the participants come for the Easter weekend events. Therefore, the total number "running" over the 28 trails during the entire nine days is much less than the 1,165 referenced. The worst case situation would be 1,165 vehicles on 28 trails on Easter weekend (2 days)

(Answer at 9).

Under the current authorization for the 1991 event, 1,610 vehicles are permitted with a potential for future addition of 300 vehicles based on monitoring and additional evaluation of impacts. BLM contends, based on past events, that fewer than the total numbers can be expected over the 9 days for this year's event. It states, "[I]n 1991 * * * 22 trails [will be] used on Saturday of Easter weekend with 43 additional trips being conducted on one or more of the approved trails over the remaining eight days" (Answer at 10).

BLM disagrees that 17,280 individual Jeep trips would be made, indicating this represents the worst case scenario and is not a statement of fact or the expected situation. It notes the EA assumed the worst case scenario in terms of possible impacts in the analysis, and the final decision was based on potential impacts being mitigated through stipulations (Answer at 11).

In addition, BLM has provided a detailed point-by point-response to appellants' other specific allegations as to factual matters concerning the nature of the Safari event and its impacts on water resources, plant and animal life, and other natural resources.

RR4W has submitted its response to the SUWA group's appeal in support of the BLM decision and its objections to the request for stay. It contends its rebuttal clarifies numerous misleading representations by the SUWA group.

First, as to the request for stay, RR4W asserts there is no merit to appellants' claims. Red Rock confirms BLM's understanding that ORV use will not approximate the maximum number of vehicles for the maximum number of trails during each day of the event. The response states:

The 1991 Easter Jeep Safari will use 26 of the 28 permitted trails (27 were used in 1990), and vehicle limits set by RR4W are generally less than allowed in the permit. The greatest number of trails to be used on one day will be 22 on Saturday, March 30. The remaining 8 days will use from 3 to 9 trails each, with a total of 65 trail days (not 9 x 28!), compared with 52 trail-days in 1990. RR4W-imposed registration limitations on the largest day will allow 1,060 vehicles, which is fewer than attended the 21 trails on the largest day last year. If every trail fills during the 9 days (an unlikely case), the sum of the vehicles

participating each day will be 2,995 vehicle days, compared to 2,379 last year.

(RR4W Rebuttal at 2-3).

RR4W also points out that the event taking place on Easter Sunday, March 31, will have no adverse effect on the earliest lambing of bighorn sheep. RR4W emphasizes a stay at this juncture will have little effect because people will come anyway, having made plans and reservations long in advance (RR4W Rebuttal at 3). Moreover, it asserts that a stay will be harmful to the environment for this year "because the organized event with its trail guides and its education in backcountry ethics will be prevented from having a controlling influence on the many 4WD vehicle operators who already plan to be in Moab" (RR4W Rebuttal at 22).

RR4W summarizes its general response to the SUWA group's charges, noting first that much of the the SUWA group's presentation appears devoted to their wish not to see any 4WD vehicles or tracks on the trails. It states:

A considerable body of the SUWA presentation seems devoted to their wish not to see 4WD vehicles or tracks at all. RR4W heartily agrees about the off-trail tracks, but there is not one bit of evidence offered that the tracks seen by their Declarants were put down by Jeep Safari participants or even during the 12 days of our events rather than the 353 other days of the year. SUWA should welcome the efforts RR4W makes to educate drivers to stay on established trails; this positive influence is our contribution to caring for the lands during the other 353 days of the year.

(RR4W Rebuttal at 3).

As to the SUWA group's assertion that the Jeep Safari should not use lands proposed for wilderness by the H.R. 1500 bill, RR4W replies: "Existing trails that are 'indistinct and insignificant' to [appellants] are almost all machine made (by bulldozers, usually) and are not altered significantly by the passage of rubber-tired 4WD vehicles" (Rebuttal at 4).

RR4W further responds to allegations of adverse effects from the event, stating:

SUWA concerns about effects upon wildlife are based largely on hypotheses on the detrimental effects of human presence. The areas they speak of as critical to wildlife habitat are mostly in the presence of paved or graded roads available to the passenger-car-driving public, yet have thriving wildlife populations.

SUWA statements about riparian regions and watersheds [show] that their arguments are based on map study without knowledge of the land itself. The trails that cross streams are all machine made; stream banks have long since been altered by caterpillar

tracks, blades, and occasional flash floods. By comparison, our puny tires have insignificant effect.

(RR4W Rebuttal at 4).

Regarding potential trail alternatives, Red Rock relates:

SUWA implies that RR4W has ignored certain trail availability,-- that trails could be modified or new trails chosen to serve SUWA wishes, particularly to avoid conflicts with H.R. 1500 proposals. * * * RR4W trail leaders have learned how to assemble trail segments into pleasurable trips having one-day durations, and most of the unused trails are either too long, too short, too distant, or too snowy.

(RR4W Rebuttal at 5).

RR4W also provides a lengthy and detailed rebuttal to factual allegations presented by the SUWA group as to the adverse impacts of the Jeep Safari event on the character of the trails in the area, riparian areas, wildlife, etc., as raised in their SOR.

Special use permits are issued under the general authority of the Secretary of the Interior to regulate the use of the public lands, pursuant to section 302(b) FLPMA, 43 U.S.C. § 1732(b) (1988). Special recreation use permit requirements are authorized by the regulations in 43 CFR Subpart 8372. Special recreation permits are required for ORV events involving 50 or more vehicles. 43 CFR 8372.1-1; see 43 CFR 8344.1 (ORV use). The regulations provide: "The approval of an application and subsequent issuance of a special recreation permit is [sic] discretionary with the authorized officer." 43 CFR 8372.3.

Accordingly, BLM has the discretion to issue a special recreation use permit application if the proposed activity is consistent with BLM objectives, responsibilities, or programs for management of the public lands involved. Mendocino County Tax-Payers Land Use Committee, 86 IBLA 319 (1985); Cascade Motorcycle Club, 56 IBLA 134 (1981); see also Whitewater Expeditions & Tours, 52 IBLA 80 (1981). Appellants' challenge to the exercise of discretion in this case is predicated primarily on the adequacy of compliance with requirements for protection of cultural resources and the adequacy of the environmental analysis.

[1] With respect to the potential impact to cultural resources, we note that pursuant to section 106 of the National Historic Preservation Act, 16 U.S.C. § 470(f) (1988), and the regulations promulgated pursuant thereto, the Department is required when licensing an undertaking to seek to identify any property eligible for inclusion in the National Register that is located within the area of the project's potential impact and which may be affected by the project. The Department is also obligated pursuant to statute to provide for the preservation of archeological data (including relics and specimens) which might otherwise be lost as a result of alteration of the terrain associated with a Federally licensed project. 16 U.S.C. §§ 469

to 469c-2 (1988). In this regard, noting a "Congressional intent to protect values which have yet to be discovered as well as values which are already known," the Board has upheld stipulations attached to public land use authorizations which require archeological inspections prior to surface disturbing activities where archeological finds have not yet been made. Cecil A. Walker, 26 IBLA 71, 75-76 (1976); see Water Users Association No. 1, 108 IBLA 166 (1989).

The EA for the 5-year permit does analyze the potential for impacting cultural resources, concluding that there will be no impact. Thus, the EA relates that:

None of the trails have sites present that are listed on the National Register of Historic Places. A Class I literature search found no known sites on the trails. BLM consultation with the Utah State Historic Preservation Officer yielded a concurrence in a Determination of No Effect (See Appendix F). [2/]

(EA UTU-068-90-54 at 6). Further analyzing the impact of running the event over existing roads and trails, the EA notes:

Cultural resources may be affected by use of the routes, but previous bulldozing has effectively destroyed their significance. Since the roads and trails have been used in the past and the vehicles will stay within the existing roads and trails, no significant cultural resources will be damaged. If significant cultural and paleontological resources become identified on old or proposed routes, some level of avoidance or mitigation will be undertaken.

(EA UTU-068-90-54 at 10). Additionally, we note that several of the stipulations attached to the permit, which were a predicate for the FONSI in this case, relate to mitigation of potential impacts to cultural resources. The permittee is obligated to take precautions to protect natural resource values including cultural and historic objects, to prevent vandalism, and to ensure that all vehicles "stay on identified roads and trails" (Stipulations 3, 4, and 5). The stipulations expressly require the permittee to inform the participants of their liability to criminal prosecution for any vandalizing of archeological sites or collecting of historic or prehistoric artifacts (Stipulation 14). All trail guides must be informed of the permit stipulations and a trail guide is required for each group of 25 vehicles (Stipulations 16 and 17).

2/ By letter dated Oct. 23, 1990, the State Historic Preservation Office responded to the BLM request for consultation regarding the potential effects of the event on cultural resources as follows: "After review of the material provided; our office would concur with the determination of No Effect based on the description of the project and BLM cultural resource protections outlined by 8100 procedures" (EA UTU-068-90-54 at Appendix F).

In this context, we are unable to sustain appellants' contention that BLM's action in approving the permit for the Jeep Safari has violated the cultural resources protection requirements. As a threshold matter, no alteration of the terrain or surface-disturbing activity is envisioned by the authorization to use existing roads and trails. We are not persuaded by appellants' contention that use of the existing roads and trails which have been used for years and, in many cases, bulldozed and graded for exist-ing travel, will have a significant adverse impact on cultural resources situated in the traveled road. With respect to potential impact to unknown sites off the roads and trails, the stipulations attached to the permit are carefully crafted to avoid impacts. Further, we note that the EA for the 5-year permit must be considered together with the EA (UT-068-90-47) for the five routes added to the Jeep Safari in the Spring of 1990, which is explicitly incorporated by reference (EA UTU-068-90-54 at 2). Regarding consideration of alternatives, the spring 1990 EA discloses that: "The Red Rock 4-Wheelers have included alternative routes utilizing existing roads in the event that there are problems with the preferred route" (EA UT-068-90-47 at 3). The spring 1990 EA notes with respect to the Golden Spike Trail: "Cultural Resources. The proposed spur in Section 4, T. 26 S., R. 21 E., leads to a significant Archaic alcove which needs to be protected from public exposure. The Red Rock 4-Wheelers indicated that they would drop the spur if necessary (EA UT-068-90-47 at 5). The mitigation measures implemented in the EA to avoid adverse impacts to cultural resources include a determination that "[o]n the Golden Spike Trail, the spur into the alcove site in section 4, T. 26 S., R. 21 E. will not be used for either vehicles or pedestrians" (Stipulation 4 (EA UT-068-90-47 at 2)).

The spring 1990 EA also assesses the potential impact to paleontological resources. The threat of adverse impact to dinosaur tracks from usage of parts of the proposed Copper Ridge Trail resulted in a recommendation from paleontologists to avoid portions of the trail within the geologic feature known as the Salt River anticline and appropriate portions of the trail were omitted from the permit (EA UT-068-90-47 at 3-5 and map 1).

Regarding the impact of the Fall Campout event on cultural resources, the EA (UT-068-90-116) prepared for the 1990 event, which is also incorporated in the record in this case, discloses that: "Two of the camps are in dry wash bottoms and no impacts are expected at these locations. The campsite for the Dome Plateau Trail could have impacts to cultural artifacts by displacement or destruction if they exist within the camping area" (EA UT-068-90-116 at 2). The FONSI for the upcoming event was predicated on the following mitigating measures: "The campsite on the Dome Plateau Trail will be surveyed for cultural resources, and if significant sites are found they will be mitigated by avoidance. With this there should be no residual impacts to cultural resources" (EA UT-068-90-116 at 2). The EA for the 5-year permit expressly incorporated the mitigating measures included in UT-068-90-116 for the fall 1990 event. Against this background, we are not persuaded that BLM improperly failed to protect cultural resources.

[2] Appellant, the SUWA group, criticizes the EA, charging that it did not properly consider sufficient evidence to determine the impacts on specific critical areas and did not properly consider sufficient alternatives to

be a complete environmental review. The Board has previously noted that an EIS is not always required for compliance with NEPA. In preparing an EA, which assesses whether an EIS is required under section 102(2)(C) of NEPA, an agency is required to take a "hard look" at the problem addressed, identifying relevant areas of environmental concern, and make a convincing case that the environmental impact is insignificant. Maryland-National Capitol Park & Planning Commission v. U.S. Postal Service, 487 F.2d 1029 (D.C. Cir. 1973); Yuma Audubon Society, 91 IBLA 309, 312 (1986).

It is also well established that the Board will affirm a FONSI with respect to a proposed action if the record establishes that a careful review of environmental problems has been made, all relevant environmental concerns have been identified, and the final determination is reasonable. G. Jon Roush, 112 IBLA 293 (1990); Utah Wilderness Association, 80 IBLA 64, 78, 91 I.D. 165, 173-74 (1984). The record must establish that the FONSI was based on reasoned decisionmaking. Thus, one challenging such a finding must demonstrate either an error of law or fact or that the analysis failed to consider a substantial environmental problem of material significance to the proposed action. G. Jon Roush, supra at 298; Glacier-Two Medicine Alliance, 88 IBLA 133, 141 (1985). The ultimate burden of proof is on the challenging party and such burden must be satisfied by objective proof. Mere differences of opinion provide no basis for reversal. Red Thunder, Inc., 117 IBLA 167, 175, 97 I.D. 263, 267 (1990); G. Jon Roush, supra at 297-98.

To succeed in this appeal, appellants must provide evidence that BLM did not take a "hard look" at the environmental impact of the proposed Jeep Safari and Fall Campout event, based on a proper and sufficient environmental analysis record compiled in accordance with established procedures, or that the decision to permit the event was not the reasonable result of the review process. Yuma Audubon Society, supra at 315. Although the SUWA group have their own views as to what is a proper management scheme for the lands involved in the permit area which conflicts with BLM's actions in this case, they have not shown that the BLM environmental review did not include a "hard look" at the many concerns raised during the review process. Nor have they shown that BLM's finding was not a result of reasoned decisionmaking.

With regard to BLM's obligation to consider alternatives to the proposed action in undertaking the EA, appellants contend the process was fatally flawed by the failure to consider anything other than the no-action alternative. A careful review of the environmental analysis in the case record discloses this is not the case. As discussed above, the EA for the trails added to the event in the spring of 1990 (UT-068-90-47) expressly considered the need to alter and/or delete certain proposed trail segments because of the threatened impacts to cultural and paleontological resources. Where necessary to avoid adverse impacts, alternatives were implemented. This EA was expressly incorporated by reference in the EA for the 5-year permit renewal. Similarly, the EA for the fall campout (UT-068-90-116) determined that one of the three campsites did have potential for adverse impacts to cultural resources. As discussed previously, the potential effects were mitigated by a decision to survey the site for cultural resources and, if any are found, to mitigate impacts by avoidance. It is

true that the EA for the 5-year permit did not analyze the alternative supported by appellants, i.e., exclusion of ORV use on those lands which would be affected by H.R. 1500. The basis for rejecting this alternative was explained in the EA: these areas are outside of WSA's identified pursuant to FLPMA which BLM is required to manage to avoid impairment of wilderness values, the evaluation of resources values for these areas was completed in development of the Grand Resource Area Resource Management Plan (RMP), and ORV use of these trails is consistent with the RMP (EA UTU-068-90-54 at 5). We do not find that the EA failed to consider reasonable alternatives to the proposed action.

Appellants allege that according to the Utah Division of Wildlife Resources 3/ "seven of the Jeep Safari trails will intrude upon the habitat of desert bighorn sheep during their critical lambing period * * *. Under Federal Law, the bighorn is classified as a 'sensitive' species entitled to special management protection." Appellants further charge that BLM has admitted in the EA that "human activities can result in habitat abandon-ment, sickness, or even death of bighorn" (SOR at 8).

BLM responds in its answer that the desert bighorn sheep found in Utah (Ovis canadensis nelsonii) are not classified as sensitive under Federal law. 4/ In any event, we note that the EA does not ignore consideration of impacts to bighorn sheep. The EA concludes that because

of the small percentage of bighorn habitat involved and the season of the year the event occurs, there will be no adverse impacts to bighorn. Bighorn lambing occurs in May and June in the areas where the Jeep Safari routes are located; with the largest percentage of lambing occurring in May.

(EA UTU-068-90-54 at 11). Despite the SUWA group's assertion that lambing season commences April 1, BLM has reconfirmed the basis of its analysis in its answer.

BLM responds at length that documented information shows the Jeep Safari event does not interfere with the desert bighorn sheep lambing season. BLM states in pertinent part:

Lambing season does not occur to any significant extent during the month of April in southeast Utah. This fact was stated in the EA and can be substantiated in documented studies conducted by Irvine (1969), Dean (1977), King (1982), Bates (1982) and Haas (1990). Wilson (1965), who was inadvertently omitted from the bibliography references, states "Lambs are born from the

3/ SUWA Group Exh. 7, Letter of Dec. 13, 1990, from the State of Utah Department of Natural Resources Division of Wildlife Resources.

4/ Two other subspecies found in California (O.c. californiana) and in Mexico (O.c. cremnobates) are considered for possible addition to the list of endangered and threatened wildlife (BLM Answer at 13).

first of May through the first week in July with the greatest number of lambs being born between the middle of May and the first week in June."

In the EA, no adverse impacts are anticipated to occur to bighorn. Bighorn lambing will not be affected. Bighorn sheep have been known to be susceptible to harassment and disturbance.

* * * * *

Other studies, however, have shown desert bighorn to habituate to human disturbance in some circumstances (Hicks and Elder 1979, Hamilton et al. 1982). Recent studies have correlated recreational use patterns with bighorn movements and distribution (Hicks and Elder 1979, Prudy and Shaw 1980, 1981, Hamilton et al. 1982). These studies have suggested that bighorn are able to avoid disturbances caused by most types of recreational uses and such uses do not affect populations. [Emphasis in original.]

(Answer at 13-14).

It is clear from the record that the impact on the bighorn sheep has been considered by BLM in its analysis. There may appear a difference of opinion among experts as to exactly when the lambing season begins near the event area. The EA in the section of Wildlife/Riparian/Endangered Species devotes substantial analysis to this issue, concluding bighorn lambing will not be affected. The EA recites the same timeframe, May and June, for lambing season in this area as BLM submits on appeal.

The EA specifically notes that "the areas where April lamb sighting have occurred are not near any of the Jeep Safari routes" (EA UTU-068-90-54 at 11).

Under the section on Mitigation Measures, the EA also requires that all ORV's will be required to stay on designated roads to protect riparian areas and also allow bighorn sheep to habituate to a predictable routine. The EA further directs if bighorn sheep are encountered, they are not to be approached either on foot or by vehicle. Permit stipulations 21 and 22 incorporate these same protective requirements.

As noted above, BLM has effectively delegated substantial responsibility to RR4W, as permittee, to run the approved events in such a way that there is no damage to cultural or environmental resources from operation of ORV's outside the narrow limits of existing trails. In affirming BLM's decision, we are impressed by RR4W's evident recognition of its obligations to ensure that participants use the trails responsibly and obey the restrictions imposed by BLM (RR4W Rebuttal at 3, 23, 25). RR4W states: "RR4W policy deploras driving off the trails, even where it is legally permissible. We provide experienced trail guides and assistants throughout the trail group in order to avoid such transgressions, and we encourage such responsibility throughout the year." Id. at 25). Our approval of this system is made with the expectation that BLM will hold RR4W account-able for any violations of participants, whether or not discovered at the time of the permitted events, by enforcing permit sanctions. In this way,

BLM can effectively extend its limited enforcement resources (not only for these events, but also year round) and help ensure that no harm to these priceless resources will occur, so that they will be available for future generations to enjoy, whether on foot, on bicycle, [or in] off-road vehicles.

As previously indicated, appellants have included in their SOR an extensive list of factual allegations which they contend support their claim that the event will have severe negative impacts on the lands and wildlife in the area. Both the BLM and RR4W have provided a detailed response to these specific allegations. To the extent we have not fully discussed those allegations herein, we have considered and rejected all such contentions within the appeal as not dispositive of the key issues of this case. It suffices to note that we are satisfied that the record adequately supports BLM's environmental analysis and review leading to the renewal of the RR4W permit.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, appellants' request for a stay of the decision appealed from is denied and the decision is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

David L. Hughes
Administrative Judge