

INTERIOR BOARD OF LAND APPEALS

Deschutes River Public Outfitters, et al.

135 IBLA 233 (April 23, 1996)

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DESCHUTES RIVER PUBLIC OUTFITTERS, ET AL.

IBLA 93-454, 93-455

Decided April 23, 1996

Appeals from decisions of the Oregon State Director, Bureau of Land Management, denying protests of a decision issued by the Prineville District Manager, adopting the Lower Deschutes River Management Plan.

Affirmed.

1. Wild and Scenic Rivers Act

The Wild and Scenic Rivers Act requires protection and enhancement of the values that caused the designation of the river and surrounding land as a component of the national wild and scenic rivers system. BLM has the authority to enter into with state and local agencies to accomplish this goal.

2. Special Use Permits--Wild and Scenic Rivers Act

The determination of whether a special recreation use permit should be required for commercial outfitter and guide services using public land is discretionary, and BLM may accept or reject a permit application in furtherance of the objectives, responsibilities, and programs for management of the involved public land. A special recreation use permit creates no right to continued use beyond that set out in the permit.

3. Federal Land Policy and Management Act of 1976: Land-Use Planning--Public Lands: Administration--Wild and Scenic Rivers Act

Absent a clear showing of reasons for modification or reversal, a BLM decision to approve a wild and scenic river management plan will be affirmed on appeal if the decision makers considered all relevant factors, and the decision is supported by the record and is in accord with statutory directives.

APPEARANCES: Michael G. Neff, Esq., Portland, Oregon, for Deschutes River Public Outfitters and Oregon Guides and Packers; Tom DeArmond, Hubbard, Oregon, pro se; Laura A. Schroeder, Esq., Portland, Oregon, for Ronald Traver; Donald P. Lawton, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Deschutes River Public Outfitters and Oregon Guides and Packers, (collectively called DRPO), Tom DeArmond, and Ronald Traver (hereinafter appellants), have appealed from decisions of the Acting State Director, Oregon, Bureau of Land Management (BLM), denying their protests to the February 1, 1993, Record of Decision (ROD) by the District Manager, Prineville District, Oregon, BLM, regulating motorized boating on the Federally-designated "Lower Deschutes Wild and Scenic River" in north-central Oregon. ^{1/}

The Lower Deschutes River is a 100-mile stretch of the Deschutes River between the Pelton Reregulating Dam and its confluence with the Columbia River. The State of Oregon accorded the Deschutes River scenic waterway status in 1970, pursuant to the Oregon Scenic Waterways Act, Or. Rev. Stat. §§ 390.805-390.925 (1992). In October 1988, the river was designated a recreational river by Congress, pursuant to section 102 of the Omnibus Oregon Wild and Scenic Rivers Act (the Oregon Act), P.L. 557, 102 Stat. 2782, 2783 (1988). It is now part of the national wild and scenic rivers system and subject to the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271-1287 (1994).

[1] Under the Wild and Scenic Rivers Act, BLM must protect and enhance the values that caused the Lower Deschutes River and surrounding land to be designated a part of the national wild and scenic rivers system to ensure public use and enjoyment of the river and surrounding land. See 16 U.S.C. § 1281(a) (1994); H.R. Rep. No. 1623, 90th Cong., 2d Sess., reprinted in 1968 U.S. Code Cong. & Admin. News 3801, 3803 ("streams which have exceptional values * * *-scenic, recreational, esthetic, and scientific-* * * ought to be preserved for public use and enjoyment"). The values leading to designation are outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values. See 16 U.S.C. § 1271 (1994); Draft Environmental Impact Statement (DEIS) at 107-13.

The Wild and Scenic Rivers Act also grants authority to enter into written cooperative agreements with the state and local agencies for the administration of the scenic river. 16 U.S.C. §§ 1271, 1281(e) (1994). In 1988 BLM entered into a Memorandum of Understanding (MOU) with various Federal, State, county, municipal, and Indian agencies to develop a comprehensive management plan called the Lower Deschutes River Management Plan (LDRMP) and provide coordinated management of the effected land. ^{2/} The MOU set out the obligations of the participants, allocated

^{1/} DRPO and Tom DeArmond are the appellants in IBLA 93-454. Ronald Traver is the appellant in IBLA 93-455.

^{2/} The parties to the MOU are BLM, the Bureau of Indian Affairs (BIA), Deschutes River Management Committee (DRMC), Oregon Parks and Recreation Division, Oregon Department of Fish and Wildlife, Oregon State Marine

responsibilities, and established the procedures to be followed for the completion of the plan by the DRMC and the Managing Agencies. ^{3/}

The planning process was intended to fulfill the requirements of the National Environmental Policy Act of 1969 (NEPA), the Oregon Act, and the Wild and Scenic Rivers Act. The Secretary of the Interior was charged by law with the responsibility to develop a management plan and the MOU assigned the ultimate responsibility for assuring compliance with NEPA and other Federal planning requirements to BLM. BLM was also to assist in the development of the management plan and in the administration of the public involvement process for the Draft Plan.

The various organizations and agencies formed the Deschutes River Policy Group (Policy Group) for plan preparation. ^{4/} BLM had one representative on the 20-member Policy Group and a representative on a four-member Executive Review Board charged with making decisions when the Policy Group could not reach consensus. ^{5/}

The LDRMP was to govern recreational use, including boating, fishing, and camping, on and along the river, as well as public access to the river for those purposes. ^{6/} Plan development began with publication of "Issues and Alternatives For Management of the Lower Deschutes River" (Issues and

fn. 2 (continued)

Board, Oregon State Police, Sherman County, Wasco County, Jefferson County, City of Maupin, and the Confederated Tribes of the Warm Springs Reservation of Oregon.

^{3/} The DRMC is a nine member, Governor-appointed, advisory committee created by Oregon law. The Managing Agencies consist of BLM, BIA, Oregon Parks and Recreation Division, Oregon Department of Fish and Wildlife, Oregon State Marine Board, Oregon State Police, Sherman County, Wasco County, Jefferson County, City of Maupin, and the Confederated Tribes of the Warm Springs Reservation of Oregon.

^{4/} The Policy Group consists of the DRMC and the representatives of the Managing Agencies.

^{5/} The Executive Review Board is established in the MOU and consists of a representative from the Governor's office (representing all state agencies and the DRMC), the Oregon State Director, BLM (representing the Federal interest), a representative of the Tribes, and one person representing local interests (Jefferson County, Sherman County, Wasco County, and the City of Maupin).

^{6/} For planning purposes the river was divided into four segments based on geographical features, public road access, and recreational use patterns: Segment 1 – from the Pelton Reregulating Dam (Rivermile (RM) 100) to the "Locked Gate," on the road along the river maintained by the Deschutes Club (Club) (RM 59); Segment 2 – from the Locked Gate to Sherars Falls (RM 44); Segment 3 – from Sherars Falls to Macks Canyon (RM 23); and Segment 4 – from Macks Canyon to the confluence of the Lower Deschutes River with the Columbia River (RM 0) (ROD at 9).

Alternatives document) in January 1990, asking for public comment. Concurrently, BLM began consideration of the environmental impact of five plan alternatives for preparation of a draft and final EIS. Drafts and final documents and the ROD were distributed to the public in May 1991, June 1992, and February 1993. See 56 FR 24803 (May 31, 1991); 57 FR 21667 (May 21, 1992); 58 FR 7226 (Feb. 5, 1993). Public involvement was sought at each step of the process.

The question of motorboat usage was initially raised in the Issues and Alternatives document. The stated purpose of that document was to identify existing problems (issues) and develop various solutions (alternatives). Six public meetings were held to gather public response. A comment period from January 17, 1990, to March 28, 1990, was provided, and 1,087 comments were received.

One of the concerns addressed in the Issues and Alternatives document was how motorized boating should be managed. Motorized boating, primarily related to fishing, had existed on the Deschutes since the 1950's. Most of the motorized use involved "jet" boats propelled by a jet of water rather than a propeller because jet boats are better suited for shallow water. The Issues and Alternatives document identified bank erosion, degradation of water quality, and disturbance of fish spawning as issues connected with motorized boating, noting that most motorboat use and conflict appeared to occur in Segment 4. However, no conclusive data existed at that time which would permit an evaluation of the perceived impacts. The Issues and Alternatives document noted that in Segment 4 motorboats contributed to congestion at launch sites and competition for fishing and camping areas and that many anglers and other users resented the noise, wake, and competition from anglers using motorboats.

The Policy Group could not reach a consensus regarding management of motorized boating when preparing the final LDRMP, and this issue was referred to the Executive Review Board which decided to curtail motorboat use. 7/ In reaching its decision, the Executive Review Board weighed the public response, the relative frequency of motorized use, use studies prepared by Shelby, 8/ compatibility with other uses, and safety (DEIS,

7/ When the Policy Group could not reach a consensus on an issue, the issue and all relevant information would be forwarded to the Executive Review Board. The Executive Review Board would deliberate only on those issues submitted to it by the Policy Group. Under the MOU, the Executive Review Board would base its decision on the alternatives generated by the Policy Group.

8/ Shelby, et al., "Social and Ecological Impacts of Recreation Use on the Deschutes River Scenic Waterway, Report to the Oregon Legislature, 1987."

Appendix F). In February 1992, the Executive Review Board decided to ban motorboat use upstream from Sherars Falls (Segments 1 and 2) 3 years after completion of the LDRMP, and directed BLM to prepare a supplement to the DEIS to analyze the issue of access to Segment 1 by land. Eight alternatives were analyzed and a 60-day comment period was provided.

The final LDRMP, which was adopted in January 1993, maintained the overall boating use (motorized and nonmotorized) of the river during the primary use season at the 1990 levels, but attempted to redistribute that from peak weekends and holidays to other weekend and weekday periods. See I Final EIS at 44. ^{9/} This redistribution was to be achieved by adopting increasingly restrictive measures (up to limiting entry to the river) over a period of 3 years following LDRMP approval. See I Final EIS at 49, 51. Several restrictions on motorized boating were to be immediately imposed or phased in over the 3-year period so that at the end of the 3-year period Segments 1 and 2 would be closed to motorized boating.

The ROD sets out BLM's specific management decisions intended to implement the LDRMP on the approximately 20,641 acres of public land administered by BLM (49.8 percent of the total land within the general planning area). It also states that BLM will support and assist the Oregon State Marine Board in managing motorized boating and limiting party size. When the District Manager approved the ROD, appellants protested, the State Director rejected their protests, and they appealed to this Board.

DRPO represents guides and outfitters who held valid permits for commercial guide or outfitter activity when the Oregon Act became law, many of whom earn their livelihood on the Deschutes River. DRPO states two general reasons for its challenge to the LDRMP. First it contends that the plan eliminates or greatly curtails existing and grandfathered uses, in violation of the Wild and Scenic Rivers Act, as amended by the Oregon Act. According to DRPO, the legislation designating the Lower Deschutes as a Wild and Scenic River prohibits regulatory action which compromises existing individual rights or privileges. It asserts that the legislative history proves that Congress did not intend to have the Oregon Act or the Wild and Scenic Rivers Act used to force guides and outfitters to curtail or cease using motorboats on the Deschutes River (Statement of Reason (SOR) at 8). ^{10/}

^{9/} The Final EIS was published in two volumes referred to as I Final EIS and II Final EIS.

^{10/} DRPO quotes Senator Hatfield's statement that the Oregon Act did not "attempt to interfere with activities which already exist in the designated river area. For example, timber harvesting, mining, agriculture, grazing and recreational uses are all grandfathered uses in the Act and are allowed to continue to the extent they are currently practiced. (99 [sic 100] Cong. Rec. 15243, Oct. 7, 1988)" (SOR at 8). However, Senator Hatfield also stated that "[m]anagement activities should follow existing

DRPO's second reason for appeal is its belief that the plan violates the Administrative Procedure Act by imposing restrictions on or reallocation of boater use (a) contrary to BLM's own guidelines, (b) without the support of the best available data, and (c) in a manner which discriminates against motorboat users in an arbitrary and capricious manner (SOR at 4-5). ^{11/} DRPO asserts that the Guidelines for Eligibility, Classification, and Management of Wild and Scenic Rivers (Guidelines) promulgated September 7, 1982, by the Departments of the Interior and Agriculture recognized that motorized travel was permitted on recreational rivers and that motorboat use would be restricted or prohibited only when necessary to protect the values for which the river area was designated. 47 FR 39454-59 (Sept. 7, 1982). DRPO argues that, for the restrictions being imposed under the LDRMP to be lawful, BLM must demonstrate that they are necessary to "protect" an "outstandingly remarkable" value for which the river area was designated a component of the wild and scenic rivers system. Because motorized travel was taking place on the river when it was included, DRPO contends that recreating with no encounters with motorboats cannot be considered an "outstandingly remarkable" value in place when the river was added to the system. According to DRPO, there is nothing in the record to demonstrate another value which justifies the restrictions (DRPO SOR at 10). In support of its position that there is no substantial evidence supporting the restrictions, DRPO notes that the State Director's letter denying its protest included expressions of concern for public safety and aesthetics as justifications for the restrictions. At the same time, however, the State Director conceded that motorboats do not contribute significantly to environmental degradation. DRPO argues that the safety argument is speculative and not documented (DRPO SOR at 11).

Appellant Traver is a registered guide who conducts jet boat fly fishing excursions between Harpham Flat and the border of Warm Springs Indian Reservation (in Segments 1 and 2). The basis of his appeal is similar to that of DRPO. Traver contends that the decision to restrict motorboat use is a policy decision intended to favor nonmotorized recreation with no basis in objective fact or reasoned analysis and that the record does not support the breadth and severity of the restrictions. He

fn. 10 (continued)

statutory direction, including that provided in * * * the Federal Land Policy Management Act [FLPMA] to protect the values for which the rivers were designated." 100 Cong. Rec. S15243 (daily ed. Oct. 7, 1988).

^{11/} DRPO objected to the ban from legal sunset to legal sunrise, because those hours were not consistent with Oregon fishing regulations which permitted fishing from an hour before sunrise to an hour after sunset. BLM states that its decision to accept that restriction will not be implemented pending coordination with the fishing regulations. We will consider that portion of the appeal premature. However, Draco Mines, Inc., 75 IBLA 278 (1983) should be noted regarding imposition of restrictions that BLM does not intend to enforce. DRPO's objection to the year-round ban on motorized camping between Free Bridge and Sharps Bar on the west side of the river will not be addressed as well. That area is State land not administered by BLM.

asserts that the Lower Deschutes River should be managed to preserve pre-existing recreational uses, with regulation imposed only when necessary to decrease user conflicts and hazards (Traver SOR at 30).

Both DRPO and Traver challenge the year-round ban of motorboats in Segment 1, but Traver challenges the decision only for the area between Harpham Flat and the border of the Warm Springs Indian Reservation. He argues the ban is unnecessary because that area is not overcrowded with rafters, drifters, or jet boaters between September and June (Traver SOR at 7). He asserts that the decision to ban motorboats in this area during the off season was not well reasoned because the number of boats is below the target level.

Traver contends that BLM based its decision to ban jet boats on conflicts and competition between river users but failed to independently count the number of jet boats, relying on data which combined increases in total numbers. He asserts that this was unreasonable because the majority of the floaters and jet boaters operate in different portions of the same "section" of the river. He maintains that the area between Harpham Flat and Maupin is extremely crowded with 400 to 600 rafts per day, but the area between Harpham Flat and the border of the reservation has only about 30 rafts on peak weekends and significantly fewer during the week. He states that there is a maximum of five to six jet boats in the area, and that in the winter there are only one or two jet boats and no rafts (Traver SOR at 9).

Traver opines that the statements made by commercial rafters and fly fishermen reveal minimal use and those statements outweigh any evidence indicating that increased numbers of users fosters degradation or conflicts. He also argues that BLM failed to consider the negative effect that prohibiting jet boats would have on fly fishing and hunting, because there is no public road access for fishing or hunting between the Deschutes Club Locked Gate to the reservation border, a distance of 7 miles (Traver SOR at 26).

Finally, Traver maintains that when BLM used public comments as a basis for banning jet boats it failed to consider other relevant factors and make a reasonable decision. He argues further that the accuracy of public opinion on complex issues is limited and that many of the comments submitted were not based on factual information applicable to activities between Harpham Flat to the border of the reservation (Traver SOR at 34-35).

An appeal by Tom DeArmond is included in IBLA 93-454. DeArmond alleges that the LDRMP discriminates against older persons and persons with disabilities who must use a motorized boat. DeArmond asserts that the LDRMP is a "well organized plan to take older river users and people like myself with health disabilities off the river."

We note first that BLM contends that the Oregon State Marine Board is the proper forum for resolving appellants' concerns. It asserts that the Marine Board was responsible for formulating the motorboat rules and that

BLM would support the Marine Board in the implementation of those rules. The Marine Board has the authority to regulate boating on waters within the territorial limits of any political subdivision of the State and has the specific authority to prohibit use of motorboats. Or. Rev. Stat. § 830.175 (1992). The LDRMP designates the Marine Board as the implementing agency regarding motorboat rules (I Final EIS at 85). BLM states that the LDRMP provides that it will rely on State rulemaking for final decisions regarding motorboat rules and will incorporate the State requirements in the provisions of Special Recreation Permits issued pursuant to 43 CFR 8372.5. ^{12/}

The rules applicable to motorboats promulgated by the State Marine Board are approved by BLM as a member of the Policy Group and the Executive Review Board, and BLM will be implementing the rules through its permit system. The importance of this fact can be illustrated by noting that, if the rule is made a part of a permit, the violation of that rule may result in the imposition of Federal sanctions for permit violation. State rulemaking might be an avenue appellants could pursue, but that does not bar an appeal of the BLM decision to make the motorboat restrictions a part of its permit requirements.

[2] Special recreation permits are required for commercial use if the authorized officer determines the criteria of the Wild and Scenic Rivers Act requires their issuance. The permits for commercial use of the Deschutes River include the statement that "[s]ince the BLM does not recognize any special recreation permit possessory interest, no abrogation of pre-existing rights affecting Federal lands and related waters is deemed to occur through permit changes or revocation." II Final EIS at 42; See 43 CFR 8372.1-1. Issuance of special recreation permits is discretionary and a permit does not create a right of continued use. 43 CFR 8372.3. The Department may accept or reject a permit application in furtherance of the objectives, responsibilities, and programs for management of the public land involved. Keith Rush d/b/a/ Rush's Lakeview Ranch, 125 IBLA 346, 351 (1993); Patrick G. Blumm, 121 IBLA 169, 171 (1991).

[3] The approval of the LDRMP and the restrictions on motorboats was an exercise of BLM's discretionary authority. Absent a showing of compelling reasons for modification or reversal, this Board will affirm a discretionary decision if the record demonstrates that the relevant factors were considered and the decision is in accord with statutory directives. A decision made in the exercise of discretion determined not to be supported by a rational and defensible basis will be found arbitrary and capricious. National Organization for River Sports, 124 IBLA 38, 43 (1992); Four Corners Expeditions, 104 IBLA 122, 125-26 (1988). Essentially, DRPO and Traver contend that BLM's decision to support the

^{12/} Special Recreation Permits are issued under BLM's authority to regulate boating on the waters it administers within the components of the wild and scenic rivers system. See 43 CFR 8372.0-1 and 8372.0-5(g).

restrictions on motorboat use was arbitrary and capricious because the record does not support favoring one form of recreation over another.

There is no question that one of the reasons for the decision to restrict motorboat use was a decision to favor one form of recreation (nonmotorized use of the river) over another form (motorized use) in order to limit social conflict (DEIS at 216, 217, 221, 227). In its answer, BLM admits that this was a major factor (Answer to DRPO at 10, Answer to Traver at 6). However, other impacts of restricting motorboat use were also mentioned. These included a small increase in streambank stability (DEIS at 29, 169) and reduced impact to fish and wildlife (DEIS at 182, 191).

The motorboat issue had been a matter of concern for some time. In a 1982 State Parks and Recreation Boater Survey, 63.8 percent of the respondents favored limiting powerboat use (Survey at 41), and 67.3 percent of public comments received by the DRMC between June 1988 and January 17, 1990, favored limitations. Of the 626 comments on motorized boating received during the planning process, 200 advocated limits and 221 advocated a total ban on motorboats (DEIS at 348). A vast majority of the separate responses to the Supplement, which examined access in Segment 1, preferred alternatives restricting motorboat use (II Final EIS at 64).

The balance of the record indicates the same concern. In its September 20, 1990, proposed decision restricting motorboat use, the Executive Review Board stated that it could not ignore the public response to the issue (DEIS, Appendix F at 386). It noted that a clear majority of the letters received by the DRMC since 1987 favored restrictions or a ban on jet boats. The Executive Review Board decision stated that it was evident that a serious social conflict existed and that without intervention it would get worse. Id. It explained that its aim was to reduce the social conflict caused by the use of motorized craft without imposing a total ban and it was proposing a solution that would not merely transfer the existing conflicts to some other portion of the river.

The Lower Deschutes River was designated as a recreation river by the Oregon Act. 16 U.S.C. § 1274(a)(73)(E) (1994). In making that designation Congress recognized scenic, recreational, cultural, geologic, fish, wildlife, and botanical values as outstandingly remarkable values. Special reference was made to whitewater boating and fishing (100 Cong. Rec. S15248, Oct. 7, 1988). As a component of the system, the river must be administered

in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, histo

features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area.

16 U.S.C. § 1281(a) (1994). Thus, the statute recognizes that choices may be required.

The Guidelines state that "[e]ach component will be managed to protect and enhance the values for which the river was designated, while providing for public recreation and resource uses which do not adversely impact or degrade those values." 47 FR 39454, 39458-9 (Sept. 7, 1982). They also provide that:

Carrying Capacity. Studies will be made during preparation of the management plan and periodically thereafter to determine the quantity and mixture of recreation and other public use which can be permitted without adverse impact on the resource values of the river area. Management of the river area can then be planned accordingly.

Public Use and Access. Public use will be regulated and distributed where necessary to protect and enhance (by allowing natural recovery where resources have been damaged) the resource values of the river area. Public use may be controlled by limiting access to the river, by issuing permits, or by other means available to the managing agency through its statutory authorities.

Id. at 39459. The Guidelines further specify that "[m]otorized travel on land or water is generally permitted in wild, scenic and recreational river areas but will be restricted or prohibited where necessary to protect the values for which the river was designated" 47 FR 39459 (Sept. 7, 1982). Thus, the Guidelines recognize the possibility that motorized travel might be restricted.

The Lower Deschutes River was designated a component of the national wild and scenic rivers system because of its outstanding recreational values, but those values were not further identified. Therefore, there is nothing intrinsically wrong with favoring one form of recreation over another, so long as the record shows that BLM considered the relevant facts and articulated a rational connection between those facts and the choices it made. Pyramid Lake Paiute Tribe v. U.S. Department of Navy, 898 F.2d 1410, 1414 (9th Cir. 1990).

BLM recognized the competing interests and evaluated them. At every step, interested parties were permitted to participate in public meetings and submit written comments. Numerous studies were evaluated.

Eight studies applicable to those portions of the ROD at issue were considered. ^{13/} Alternatives were identified and considered. Preferred alternatives were modified in response to comments. The final LDRMP contained fewer motorboat restrictions than the DEIS preferred alternative. We find adequate basis for imposing the motorboat restrictions eventually adopted.

BLM does not contest Traver's allegation that there is little traffic on the river in the off-season, but it does argue that there is conflict between motorboat users and other recreational users. It states that some of that conflict results from the time of day that motorboat use takes place (Answer at 11). It asserts that the record shows that noise and fishing competitions are sources of conflict, noting that motorboats often launch before daylight and pull into a fishing hole near a campsite or pass by campsites after dark when returning to the launch site.

Traver has submitted affidavits from 11 individuals (10 of whom have their livelihood linked to the river) who say that motorboats present no serious problem. Traver argues that the affidavits are better than the evidence gathered during the planning process. However, mere differences of opinion, unsupported by objective proof, are insufficient to overcome a BLM determination which is supported by the record.

Contrary to Traver's assertions, BLM considered the negative effect of prohibiting motorboats on fly fishing and hunting. The Supplement was prepared to address the issue of access. BLM recognized that there would be a loss of public hunting, fishing, and other recreational opportunities if motorboat access was limited, but found that a higher quality experience would be available to those floating or hiking into the area without competition from or conflict with motorboat users (Supplement at 23). After the Executive Review Board's decision that alternative

^{13/} The eight studies were: Shelby, et al. Social and Ecological Impacts of Recreation Use on the Deschutes River Scenic Waterway, Report to the Oregon Legislature, 1987; Eixenberger, Don, 1989, Deschutes, "Daily Boater Use by Section," Unpublished Report, Oregon State Parks and Recreation Department; Mitchell, Greg, 1989, "Motorboat Use on the Lower Deschutes River, 1989," State Marine Board and State Parks and Recreation Department; Frest, Terrance J., 1989, "Proposal for Mollusk Survey of the Lower Columbia River and Tributaries," Washington and Other, University of Washington; Klingeman, Matin and Huang, "Investigation of Motorboat-Induced Streambank Erosion of the Lower Deschutes River," February 1990, Water Resources Research Institute, Oregon State University; "The Deschutes Visitor Use Study of 1975," A cooperative effort between BLM, Oregon State Department of Fish and Wildlife, Oregon State Parks and Confederated Tribes of the Warm Springs Indian Reservation; "Deschutes River 1982 Scenic Waterway Boater Survey," Oregon State Parks, Published in 1983; "River Use Conflicts in Oregon," A Report to the State Marine Board, J.C. Draggoo and Associates, January 1987.

public access should be afforded, BLM decided to upgrade the access road from Maupin to the Deschutes Club Locked Gate and obtained a public easement for vehicle access. It is also pursuing walk-in access to public lands and acquisition of land for additional public access (ROD at 45-46). Traver has failed to show that BLM failed to consider relevant factors.

DRPO and Traver consider the opportunity to use motorized boats on the river to be one of its outstandingly remarkable values. In their view, use of motorboats for recreation on the river does not harm other recreational values. BLM and the other members of the DRMC did not reach the same conclusion. There is a genuine difference of opinion as to what course of action would be most beneficial to the greatest number of users. In Southern Utah Wilderness Alliance, 128 IBLA 382 (1994) this Board held that when implementing a resource management plan which established management objectives, BLM may allocate use. The party challenging such a determination must show that the allocation was premised on an error of law or fact. DRPO and Traver have failed to show error in BLM's determination.

It is our opinion after review of the record that the decision to support the restrictions on motorboat use was based on a consideration of relevant factors and is supported by the record. Again, mere differences of opinion provide no basis for reversal if the decision is reasonable and supported by the record on appeal. Id.

DRPO also challenges the limit on boating party size. A restriction was established limiting the permitted boating party size to not more than 16 people in Segments 1, 3, and 4, and not more than 24 people in Segment 2. DRPO contends that these limitations are arbitrary and the party size should conform with maximum party sizes established for other Federally regulated rivers (DRPO SOR at 6). However, DRPO gives no reasons for this assertion.

In its response, BLM states that the party limits are within the range imposed on other Federally administered western rivers with use restrictions or allocations. It notes that party size limitations of 16 to 25 are common on many western rivers and that requirements range from 12 on the Bruneau River in Idaho to 40 in the Cataract Canyon of the Colorado River. The record shows that the limitations imposed on the Lower Deschutes River do conform with other Federally regulated rivers, and that the party size requirements are part of an overall program of planned actions to minimize user conflicts and avoid the need for a permit system. Limitations on vehicle size and parking near sensitive areas are part of that program (DEIS at 83, 102, 103). DRPO has failed to show that the party size limitation was arbitrary or capricious.

Finally, DRPO contends that the pass-through zone restrictions in the area of Segment 4 from Moody Rapids to the upper end of Rattlesnake Rapids should not be imposed on a year-round basis because walk-in use on this segment of the river drops dramatically after October 1. The pass-through zone, which applies to all floating craft except float tubes, was created

for hike-in anglers. The stated management goal for Segment 4 is to manage the area primarily for fishing and provide access for motorized and nonmotorized boats, with opportunities for hiking and mountain bike and horseback riding. The pass-through zone is consistent with the management goal.

We find that appellant DeArmond has not identified any legal or factual basis for reversing BLM's decision. A party challenging a discretionary determination must show that it was premised on an error of law or fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action.

We recognize that appellants hold a different opinion and do not agree with BLM's methodology or findings. However, they have failed to demonstrate that BLM has abused the discretionary authority afforded by the Wild and Scenic Rivers Act. Therefore, we find that appellants have shown no error which would justify modification or reversal of BLM's decision. The Steamboaters, Oregon Rivers Council and Oregon Trout, Inc., 131 IBLA 223 (1994); High Desert Multiple Use Coalition, 124 IBLA 125 (1992).

We deem it appropriate to not further belabor this decision with additional references to contentions regarding errors and omissions in the preparation of the plan and the resulting decision and other errors of fact and law. Except to the extent they have been expressly or impliedly addressed in this decision, they are rejected on the ground they are, in whole or in part, contrary to the facts or law or are immaterial. National Labor Relations Board v. Sharples Chemicals, Inc., 209 F.2d 645 (6th Cir. 1954).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

R. W. Mullen
Administrative Judge

I concur:

James L. Burski
Administrative Judge