



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
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IBLA 2017-101) DOI-BLM-UT-C030_2015-1-EIS
IBLA 2017-102)
WASHINGTON COUNTY,) Resource Management Plans for
UTAH, *ET AL.*) National Conservation Areas
) Appeals Dismissed

ORDER

Washington County, Utah, the Washington County Water Conservancy District, and the City of St. George (appellants) have collectively appealed from the Bureau of Land Management's (BLM) December 21, 2016, decision to approve the Resource Management Plan (RMP) for the Beaver Dam Wash National Conservation Area (NCA). This NCA is within Washington County, in southwestern Utah. In the RMP, BLM designated 63,352 acres of approximately 64,000 acres within this NCA as right-of-way "exclusion areas," *i.e.*, areas that are not available for rights-of-way such as roads, power lines, or pipelines, under any conditions, and 128 acres as right-of-way "avoidance areas," *i.e.*, areas that should be avoided but could be available for a right-of-way with special stipulations.¹ We docketed appellants' appeal as IBLA 2017-101.

Appellants have also appealed from BLM's December 21, 2016, decision to approve the RMP for the Red Cliffs NCA, also situated in Washington County. In this RMP, BLM designated as "exclusion areas" 85% of the entire NCA (38,472 acres), and designated the remaining public lands within the NCA (6,367 acres) as "avoidance areas." We docketed that appeal as IBLA 2017-102.

By Order dated April 6, 2017, we consolidated appellants' appeals for final disposition.

¹ BLM H-1601-1, Land Use Planning Handbook, Appx. C at 21.

*These Appeals Are Dismissed Because We Do Not Have
Jurisdiction to Consider Challenges to Land Designations*

In appellants' single statement of reasons in support of both appeals, they argue that BLM's decision to disallow rights-of-way through the NCAs "immediately impacts the [appellants'] ability to develop an essential east-west travel corridor to alleviate traffic, increase commerce, promote the safety and welfare of its citizens . . . [and] develop new and change diversion structures for existing water rights pursuant to state law."² Appellants present various legal arguments concerning BLM's alleged lack of authority to close or limit these lands from infrastructure development.

Legal challenges to BLM's land designations in RMPs are not within our authority to adjudicate. BLM's planning regulations specify that any member of the public who participated in the preparation of an RMP and whose interests may be adversely affected by the RMP may file a protest with the BLM Director.³ The BLM Director's decision resolving the protest is final for the Department and is subject to judicial review.⁴ Because BLM's decision on an RMP protest is final for the Department, this Board has no jurisdiction to hear an appeal of that decision.⁵

Appellants protested the proposed RMPs to the BLM Director. They presented various legal arguments concerning BLM's alleged lack of authority to close or limit affected lands from infrastructure development. The BLM Director determined that the bureau properly followed all applicable laws, regulations, policies, and pertinent resource considerations in developing the Proposed RMPs and did not make any changes to them.⁶

Now appellants have brought their challenges to the legality of the bureau's public land designations here. However, the BLM Director's decision was final for the Department and appellants' appeals are not subject to review

² Statement of Reasons at 9.

³ 43 C.F.R. § 1610.5-2(a) (2016). While BLM recently finalized new land use plan rules, Congress nullified them on Mar. 27, 2017. *See* Pub. L. No. 115-12. Therefore, all citations to the Code of Federal Regulations herein are to the 2016 edition.

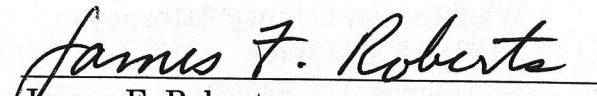
⁴ 43 C.F.R. § 1610.5-3(b) (2016); *see also* BLM Director's Protest Resolution Report, Proposed RMPs for the Red Cliffs & Beaver Dam Wash NCAs (Dec. 21, 2016) (Protest Report), available at <https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports> (last visited on Apr. 19, 2017).

⁵ *See* 43 C.F.R. § 4.1(b)(2); *see Randy L. Witham*, 187 IBLA 298, 301 (2016).

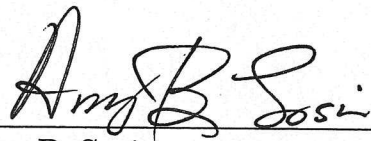
⁶ *See* Protest Report at 37-45, 51-52, 56-57, 62-64, 68-69.

by this Board. When and if BLM makes specific decisions implementing the RMPs' designations of right-of-way exclusion and avoidance areas, adversely-affected parties will have the opportunity to challenge those decisions, *e.g.*, right-of-way grant application denials, before this Board.⁷

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,⁸ we dismiss appellants' appeals.


James F. Roberts
Deputy Chief Administrative Judge

I concur:


Amy B. Sosin
Administrative Judge

⁷ See 43 C.F.R. § 1610.5-3(a) (2016) (“All future resource management authorizations and actions . . . shall conform to the approved plan.”).

⁸ 43 C.F.R. § 4.1.

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