United States Department of the Interior

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WILDERNESS WATCH

IBLA 2008-52 Decided September 25, 2008

Appeal from a Decision Record Rationale/Finding of No Significant Impact of the Field Manager, Las Vegas (Nevada) Field Office, Bureau of Land Management, approving a request by the Las Vegas Metropolitan Police Department to land helicopters in conducting search-and-rescue training exercises in portions of the Rainbow Mountain and La Madre Mountain Wilderness Areas, Clark County, Nevada. NV058-07-386.

Affirmed.

1. Wilderness Act

   Landing helicopters in designated wilderness areas as part of necessary training of search and rescue pilots and crews comes within the exception from the prohibition against landing aircraft in wilderness areas in section 4(c) of the Wilderness Act of 1964, 16 U.S.C. § 1133(c) (2000), as "necessary to meet minimum requirements for the administration" of a wilderness area.

2. Wilderness Act

   The authorization in section 4(d)(1) of the Wilderness Act, 16 U.S.C. § 1133(d)(1) (2000), for the continued use of aircraft within wilderness areas where such use has "already become established" is not limited to use by private parties and applies to a local governmental agency performing tasks on behalf of the Bureau of Land Management.

3. National Environmental Policy Act of 1969: Generally--National Environmental Policy Act of 1969: Finding of No Significant Impact

An area is not "unique" under 40 C.F.R. § 1508.27(b)(3), for purposes of determining whether environmental effects are significant, simply by virtue of having been designated as a wilderness area.

APPEARANCES: Collette L. Adkins Giese, Esq., and Jonathan W. Dettmann, Esq., Minneapolis, Minnesota, for appellant; Luke Miller, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEATH

Wilderness Watch has appealed from a Decision Record Rationale/Finding of No Significant Impact (DRR/FONSI) of the Field Manager, Las Vegas (Nevada) Field Office, Bureau of Land Management (BLM), dated November 20, 2007, approving a May 19, 2006, request (Request) by the Las Vegas Metropolitan Police Department (LVMPD) to use and land helicopters in conducting search-and-rescue (S&R) training exercises in portions of the Rainbow Mountain and La Madre Mountain Wilderness Areas. BLM's DRR/FONSI was based on (1) an October 30, 2007, Environmental Assessment (EA) (NV058-07-386), prepared under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2000), and 40 C.F.R. §§ 1501.3 and 1508.9, and (2) a November 20, 2007, Minimum Requirements Decision Guide (MRDG), a worksheet prepared to analyze the applicability of an exception for aircraft landing in wilderness areas in section 4(c) of the Wilderness Act of 1964, 16 U.S.C. § 1133(c) (2000). For the reasons explained below, we affirm.

FACTUAL AND LEGAL BACKGROUND

A. *Wilderness Area Designations*

On November 6, 2002, the Clark County Conservation of Public Land and Natural Resources Act of 2002 designated the La Madre Mountain and Rainbow Mountain areas as wilderness and required that those areas be administered in accordance with the Wilderness Act. Pub. L. No. 107-282, §§ 202(8), 202(15) and 203, 116 Stat. 1994, 2000-2002. Section 2(c) of the Wilderness Act of 1964, 16 U.S.C. § 1131(c) (2000), defines "wilderness," in relevant part, as an area of underdeveloped Federal land without permanent improvements or human habitation, which is "managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation . . . ." Section 2(a) of the Act,

16 U.S.C. § 1131(a) (2000), provides that wilderness areas "shall be administered for the use and enjoyment of the American people" in a manner that will leave them unimpaired for future enjoyment as wilderness and preserve their wilderness character. Section 4(b) of the Act, 16 U.S.C. § 1133(b) (2000), further provides that "[e]xcept as otherwise provided in this chapter, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use."

Both the La Madre Mountain and Rainbow Mountain Wilderness areas are within the Red Rock Canyon National Conservation Area, an area characterized by deep, narrow, and extensive sandstone canyons in the Mojave Desert, situated west of the City of Las Vegas. The area attracts hundreds of thousands of recreational users annually, especially hikers and rock climbers, from around the world.

B. *The LVMPD Request*

LVMPD is responsible for all S&R operations in Clark County, Nevada, including on BLM-managed lands. LVMPD sent the May 19, 2006, Request seeking authorization "for continued training in the Red Rock Wilderness Area." Request at 1. The Request proposed a total of 34 sites for helicopter landings identified by specific coordinates in 13 named canyon locations in the two wilderness areas for pilot training and S&R crew training. (Eleven sites would be used for both pilot training and S&R crew training; 10 other sites would be used for S&R crew training; and 13 other sites would be used for pilot training.) *Id.* at 3-4. LVMPD stated that pilot training would occur approximately 10 times per year, mostly at night on weekdays "after the visitors have left the area" and because "the majority of rescue pilot training is done at night with and without night vision goggles." *Id.* at 5. LVMPD proposed six S&R crew training exercises per year (involving the deployment and retrieval of crews and equipment), during the daytime on Saturdays and mostly in the summer months "when the majority of the tourist climbers have gone to the cooler areas to climb." *Id.*

The Request noted that the LVMPD Air Support/Search & Rescue Section "has been training in the Red Rock Area for the past 36 years." *Id.* at 1. The signatory of the Request, Sergeant and Chief Pilot Michael J. Petricka, stated that he had "personally been training there for the past 18 years." *Id.* The Request explained:

> The canyons . . . [within the two wilderness areas] present some of the most confined and difficult flying due to terrain, winds, and weather. We can duplicate this flying nowhere else in our jurisdiction of nearly 8,000 square miles. To try and train elsewhere is impractical due to

costs and the inability for the pilots to learn the nuances of flying in this terrain, day and night, in all weather conditions.

Id. The Request further explained that "[t]here are no other areas in southern Nevada that allow for the big walls in the Red Rock Wilderness areas, nor can we duplicate the known routes, landing zones and the weather conditions of the canyons," and that "[s]ome of these walls are over 1000 feet vertical and there are no other places around to simulate the flight conditions experienced while conducting these types of maneuvers." *Id.* at 6. LVMPD also requested authorization to continue to conduct training "as before" in the Calico Ridge and Sandstone Quarry areas, which are outside the designated wilderness areas, and noted that it was currently conducting most of its training in the Calico Hills area.[1] *Id.* at 2, 7. LVMPD noted that it had not been able to conduct a big wall training exercise in two years, with the result that two pilots out of a total of five (and nine rescue personnel) had not been in the wilderness area. Because of the winds and lack of knowledge of the landing zones, the two pilots were not allowed to conduct operations in the wilderness areas until they could be trained there. *Id.* at 7. Finally, the Request explained that of the 57 rescues conducted in the Red Rock area annually, 15-20 per year were in the wilderness areas, all of which were supported by helicopter. *Id.*

C. *The EA*

The October 30, 2007, EA evaluated the potential environmental impacts of a proposed action approving specific levels of training in the wilderness areas, and alternatives thereto. It stated that rescues in these areas involve "some of the most challenging and dangerous terrain in the country, including confined canyons, high-angle rescues, variable wind patterns, and inclement weather," and may occur "24 hours a day, 7 days a week, in all weather conditions," all of which are supported by helicopter and ground crews. EA at 1. The EA noted that the LVMPD trains rescue pilots through a 25-hour course, of which 12 hours are in the wilderness area. It noted that to be effective, the training needs to be in like terrain, and that LVMPD had conducted training in this area since 1970. *Id.* at 2. The EA stated that the 34 landing sites had been selected "because they were locations of previous rescues and exhibited unique challenges for high-angle rescues and a variety of wind patterns that would be encountered in rescue operations." *Id.* at 2-3.

Under the proposed action analyzed in the EA, training in the wilderness areas under the proposed action would be limited to a total of 48 hours in any given year: "No limitation is placed upon the number of days during which the training could

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[1] This request was approved and is not in dispute here, but is relevant to the overall S&R training scheme.

occur, or time of season except that the total number of hours of training in designated wilderness cannot exceed 48 hours a year."[2] EA at 5.[3]

In the EA, BLM concluded that because the proposed S&R training did not involve surface-disturbing activity and would occur mostly in areas resistant to change or impact, no impacts to the natural environment were anticipated. EA at 9. The only impacts BLM anticipated were that aircraft noise (amplified by the confinement of the narrow canyons) would significantly but temporarily reduce the opportunity to enjoy the solitude and tranquility normally found in the isolated reaches of the canyons, as would the presence of personnel associated with training. *Id.* at 8, 9. BLM stated: "Noise is ephemeral in nature and of relative limited duration depending upon the length of the exercise and the frequency of training during the year." *Id.* at 9. The EA further said that the noise and visitor experience impacts "are fleeting and of relatively short duration and will have no long-term impacts on the area. Use of multiple training sites will disperse the audio impacts over a large area reducing the duration at any one site." *Id.* at 11.

The EA recommended certain mitigation measures, including LVMPD giving prior notice of at least 5 days to BLM of proposed training dates, times, duration, and personnel involved (so that BLM could then notify the public), prohibiting installation of permanent anchors for training purposes, and prohibiting removal of trees, brush, or other vegetation to construct helicopter landing pads. *Id.* at 10.

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[2] BLM noted that historically, training had occurred "for up to 14 days a year, with no limitation on duration or locations." EA at 10.

[3] BLM considered the proposed action, two action alternatives, and a no-action alternative. EA at 6-7. Neither the proposed action nor either of the action alternatives restricted flights that do not involve landings, because such flights are managed under Federal Aviation Administration (FAA) rules. The preamble to the 2001 revised BLM rules for management of designated wilderness areas explained: "BLM asserts no authority in this rule to regulate the use of airspace or any form of aviation, including military, regardless of altitude. The rule only prohibits the landing of aircraft in wilderness, subject to various exceptions." 65 Fed. Reg. 78358, 78366 (Dec. 14, 2000). Alternative A would have limited pilot and crew training involving landings to two calendar days. Alternative B would have precluded landings in the wilderness areas entirely and limited both pilot training involving landings and crew training to locations outside the wilderness areas. Under the no-action alternative, no training in the wilderness areas would be authorized.

D. *The MRDG*

BLM prepared the November 20, 2007, MRDG for the purpose of determining whether the proposed S&R training was permissible under section 4(c) of the Wilderness Act, 16 U.S.C. § 1133(c). It provides in relevant part that "*except as necessary to meet minimum requirements for the administration of the area* for the purpose of this chapter (including measures required in emergencies involving the health and safety of persons within the area), there shall be . . . no landing of aircraft" in a wilderness area. (Emphasis added.) Implementing BLM rules at 43 C.F.R. § 6302.20 provide in relevant part: "Except as specifically provided in the Wilderness Act . . . or the regulations of this part . . . in BLM wilderness areas you must not: . . . (e) Land aircraft, or drop or pick up any material, supplies or person by means of aircraft, including a helicopter . . . ."

BLM regulations at 43 C.F.R. § 6303.1, implementing the exception in section 4(c) of the statute italicized above, provide in relevant part: "As necessary to meet minimum requirements for the administration of the wilderness area, BLM may: (a) . . . land aircraft, in designated wilderness; . . . and (d) Prescribe measures that may be used in emergencies involving the health and safety of persons in the area, including, but not limited to, the conditions for use of . . . aircraft . . . ."

The MRDG described why BLM believed that training activity exclusively outside the wilderness areas was not adequate. Noting that the areas have a "unique combination of terrain and weather patterns that are not common to other areas within Clark County," the MRDG explained that rescues in the wilderness areas "include confined canyons, thousand foot cliffs, high angle rescues, variable wind patterns, and inclement weather." MRDG at 3. BLM stated that the majority of training could be conducted on cliff sides outside of the wilderness areas that can provide the same kind of high angle conditions on which to practice most helicopter supported rescue simulations. "However, some training needs to occur on landing sites within the very canyons and cliffs of the wilderness where rescue operations will take place in order for pilots to simulate actual rescue conditions and prepare for future rescue operations." *Id.* at 3-4; *see also id.* at 6.

The MRDG's summary of the impacts of the proposed training on the wilderness character of the areas was similar to the EA. *Id.* at 4-5. With respect to whether the administrative action is consistent with the public purposes of the wilderness, BLM stated that S&R activity may support primitive and unconfined recreation "in an area of known hazards with a history of injury to recreationists" and that "[a] poorly trained crew, during an actual rescue mission, would be at risk of an accident which would harm the natural conditions of the area." *Id.* at 5. BLM concluded that the proposed action, allowing 48 hours of training time within the

wilderness areas annually, was "the minimum necessary to train search and rescue personnel capable of conducting rescues in the wilderness under most weather conditions." *Id.* at 11.[4] This was less than what the LVMPD proposed in the Request, which could have totaled more than 70 hours annually. The EA noted that the proposed action was a reduction in the training that historically had been allowed.

The MRDG also cited section 4(d)(1) of the Wilderness Act, 16 U.S.C. § 1133(d)(1) (2000), which provides in relevant part that "[w]ithin wilderness areas designated by this chapter the use of aircraft . . . where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary . . . deems desirable. . . ." The MRDG further stated: "Helicopter landing associated with search and rescue training occurred prior to wilderness designation." MRDG at 2. This provision and its implementing regulations are discussed below.

E. *The DRR/FONSI and the Instant Appeal*

In the DRR/FONSI, issued on the same day as the MRDG, the Field Manager approved LVMPD's request, thus authorizing the proposed action analyzed in the EA.[5] Wilderness Watch timely appealed from the DRR/FONSI, also petitioning for a stay of the effect of the decision during the pendency of its appeal.[6] The Board denied the petition for stay by order dated March 14, 2008.

In this appeal, Wilderness Watch asserts that the DRR/FONSI violates the Wilderness Act on three grounds:

1. The allowed training flights impair the character of the Rainbow Mountain and La Madre Mountain areas as wilderness. SOR at 7-9; Appellant's Reply (Reply) at 2-3.

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[4] Though the MRDG was signed and issued after the EA, the proposed action in the EA was selected from preparation of the MRDG and after consultation with the National Park Service on S&R training in Yosemite National Park. EA at 5. The proposed action analyzed in the EA was Alternative 2 in the MRDG.

[5] The DRR/FONSI concluded that an environmental impact statement (EIS) was not required. The DRR/FONSI appears at page 17 of the EA, but will be cited separately.

[6] Wilderness Watch states that its appeal is limited to challenging "the use of helicopters in the two designated wilderness areas," and that it does not object to the use of helicopters or other motorized equipment "during actual emergencies involving the health or safety of persons within the areas," or such use for S&R training exercises "in areas outside designated wilderness." Statement of Reasons (SOR) at 5-6.

2. The exception in section 4(c) of the Wilderness Act, 16 U.S.C. § 1133(c) (2000), from the prohibition against use of motorized equipment and landing of aircraft in wilderness areas does not apply to use of helicopters in S&R training, and even if it does apply to training, BLM violated section 4(c) by authorizing more than what is necessary to meet minimum requirements. SOR at 9-14; Reply at 3-9.

3. The authorization in section 4(d)(1) of the Wilderness Act, 16 U.S.C. § 1133(d)(1) (2000), for continued use of aircraft within wilderness areas where such use has "already become established" applies only to uses by the public rather than government agencies, and BLM has not shown that the use was established at the time the areas were designated as wilderness. SOR at 14-17; Reply at 3.

Wilderness Watch also asserts that BLM failed to comply with NEPA in three respects, namely, (1) the EA identifies significant impacts that require BLM to prepare an EIS, SOR at 18-22; Reply at 8-12; (2) the EA's analysis is not sufficient to support a FONSI, SOR at 22-24; and (3) the EA failed to consider an adequate range of alternatives, and none of the action alternatives analyzed preserve the wilderness character of the areas. SOR at 24-25.

ANALYSIS

I. *The Wilderness Act*

A. *Impairment of Wilderness Character*

Wilderness Watch argues that noise from the use of helicopters during training would violate the requirement of 16 U.S.C. § 1133(b) to preserve the wilderness character of the designated areas, citing statements from the EA and the MRDG that the noise would negatively affect solitude, tranquility, and opportunities for a primitive and unconfined type of recreation. SOR at 8-9; Reply at 2.

While engine and rotor noise plainly interrupts solitude and recreation in the portion of the wilderness area within hearing range while a training exercise is in progress, those effects vanish as soon as a helicopter leaves the area. If a visitor arrives in the wilderness area the next day or even minutes after a training exercise has concluded, the visitor presumably could not tell that the exercise had occurred. Moreover, the time authorized for training within the wilderness areas — 48 hours in a year — amounts to approximately one-half of one percent of the hours in a year. (It is appropriate to include all the hours in a year in that calculation (8,760), not just daylight hours, because, as noted above, BLM and LVMPD anticipate that the majority of the training in the wilderness areas will be conducted at night.)

It is not at all clear that these occasional and ephemeral effects of the authorized helicopter training rise to the level of failing to preserve the wilderness character of the area within the meaning of the statute. Wilderness Watch asserts that they do, but has cited no authority supporting that proposition. However, the statute and the implementing regulations expressly prohibit aircraft landing unless it is "necessary to meet minimum requirements for the administration of the area," 43 U.S.C. § 1133(c) (2000) (*see also* 43 C.F.R. § 6303.1), or unless use of aircraft has "already become established" under 43 U.S.C. § 1133(d)(1) (2000). If the aircraft use comes within the section 1133(c) exception or the section 1133(d)(1) authorization, then it is legally permissible in wilderness areas. We therefore move to consideration of those provisions.

B. *"Minimum Requirements for Administration" of the Wilderness Area*

Wilderness Watch acknowledges that landing helicopters in S&R operations in actual emergencies is permissible and comes within the exception in section 1133(c) as necessary to meet minimum requirements for administration of the wilderness areas, because "measures required in emergencies involving the health and safety of persons within the area" are expressly included within that exception. SOR at 10. However, Wilderness Watch maintains that Congress did not extend the exception to *training* for such operations and that training has nothing to do with preserving the wilderness character of the designated areas. *Id.*

[1] In our view, Wilderness Watch reads the statutory exception too narrowly. As quoted above, 16 U.S.C. § 1131(a) (2000) provides that wilderness areas "shall be administered for the use and enjoyment of the American people" in such a manner as will leave the wilderness unimpaired for future enjoyment. Section 1133(b) provides that wilderness areas "shall be devoted to the public purposes of recreational [and] scenic . . . use." The purpose of the Wilderness Act is not to prevent any public use of wilderness areas. The statute expressly contemplates administration of wilderness areas for uses including public recreation, of a primitive and unconfined nature, consistent with the character of the area. That administration, as Wilderness Watch concedes, includes proper action in emergencies involving the health and safety of those who use a wilderness area.

In this light, it makes little sense to read section 1133(c) and the regulation at 43 C.F.R. § 6303.1 as authorizing landing of aircraft (such as helicopters) in health and safety emergencies but prohibiting the training opportunity necessary to safely and capably accomplish the task. If training is necessary for pilots and rescuers that cannot be accomplished outside the designated wilderness area, it follows that administration of the area for the safe use by the public would include the training that needs to be conducted within the designated area. Thus, in our view, the phrase

"necessary to meet minimum requirements for administration" of the wilderness areas encompasses not only the actual measures undertaken to respond to an emergency, but also the training in wilderness areas necessary to make such measures safe and effective.

Moreover, use of the phrase "*including* measures required in emergencies involving the health and safety of persons within the area" in the parenthetical clause in the section 1133(c) exception shows that such measures are one example of what is necessary to meet minimum requirements for administration of the area, not a statement of the only circumstance in which activities that otherwise would be prohibited are necessary to meet those requirements. Since helicopter landings associated with responses to actual emergencies clearly are "measures required in emergencies" — and therefore constitute activities "necessary to meet minimum requirements for administration" — helicopter landings associated with training for simulated emergencies, designed to make actual responses both safe and effective for pilots, crews, and affected members of the public, similarly should be considered "necessary to meet minimum requirements for administration" under section 1133(c).

Wilderness Watch devotes considerable space to arguing that even if training is not excluded from the section 1133(c) exception, the DRR/FONSI's approval of training within the wilderness areas still was improper because it is more than the "minimum" required. Wilderness Watch advances a number of arguments to the effect that, in its view, sufficient training could be undertaken entirely outside the wilderness areas. Among other things, Wilderness Watch asserts that (1) two other sites outside the wilderness areas have sufficiently similar topography; (2) no other wilderness area has such training except Yosemite National Park; (3) the two-full-day training conducted in Yosemite allegedly is less than the 48 hours authorized in this case, while Yosemite has several times the number of rescues annually; (4) the hours authorized are more than the Department's minimum standard for short haul rescue training, etc. *See* SOR at 11-13; Reply at 4-8.

The notion underlying these arguments is that BLM's authorization of training within the wilderness areas is improper because Wilderness Watch is certain that the pilots and rescue crews can get away with less or different training without detracting from the safety and effectiveness of rescue operations. Wilderness Watch effectively is asking this Board to defer to Wilderness Watch's judgment or conjecture regarding what training is sufficient over the experience, expertise, and considered judgment of the LVMPD's rescue personnel who conduct the operations and the BLM officials and managers who are most familiar with the two wilderness areas. We are unwilling to adopt such an approach, particularly in view of Wilderness Watch's lack of

documented expertise or experience in flying and landing helicopters and conducting dangerous rescue operations in the canyons of southern Nevada.

Wilderness Watch does not provide any convincing argument or supporting evidence overcoming BLM's conclusion that the two wilderness areas present unique challenges that require some on-site training. *See* Request at 1, 6; EA at 2; MRDG at 3-4, quoted above. *See also* Declaration of Michael J. Petricka, dated March 31, 2008, attached as Ex. 1 to BLM Response to Appellant's Supplemental Brief, at 2. It was reasonable for BLM to conclude that training exercises in the particular wilderness areas where emergencies have occurred in the past, and will occur in the future, requiring a response by LVMPD S&R pilots and crews, will be essential to properly prepare those pilots and crews to safely and effectively respond to actual emergencies in those areas. It is the appellant's burden to show error in BLM's decision. *E.g., Thomas S. Budlong*, 165 IBLA 193, 198 (2005); *Larry Amos*, 163 IBLA 181, 190 (2004). With respect to the level and location of training necessary, Wilderness Watch has not met that burden.

C. *Established Use of Aircraft*

As noted previously, section 4(d)(1) of the Wilderness Act, 16 U.S.C. § 1133(d)(1) (2000), provides that within wilderness areas "the use of aircraft . . . *where these uses have already become established*, may be permitted to continue . . . ." (Emphasis added.) BLM regulations at 43 C.F.R. § 6304.21(a) provide: "Subject to such restrictions as BLM determines necessary to protect wilderness values, we may authorize you to land aircraft . . . at places within any wilderness area if these uses were established and active at the time Congress designated the area as wilderness."

[2] Wilderness Watch argues that the section 1133(d)(1) authorization does not apply here "because an agency charged with administration of the wilderness is seeking the exception, rather than a member of the public." SOR at 14-15; Reply at 3. The statutory language, which simply refers to "uses [that] have already become established," contains no such limitation. Moreover, the regulation at 43 C.F.R. § 6304.21(a) states that "we may authorize *you* to land aircraft" (emphasis added). The term "you" is not defined in the regulation. However, the regulation implementing the section 1133(c) prohibitions, 43 C.F.R. § 6302.20, provides that "[e]xcept as specifically provided in . . . the regulations of this part . . . *you* must not" land aircraft, etc. (Emphasis added.) If the term "you" in section 6203.20 includes a local agency performing tasks on BLM's behalf under an agreement (the LVMPD), as Wilderness Watch necessarily asserts that it does, then the term "you" in section 6304.21(a) also includes that agency. Therefore, the section 1133(d)(1) authorization is not limited to uses by private parties.

That leaves the question of whether the uses sought in the Request were "established and active at the time Congress designated the area as wilderness," *i.e.*, in November 2002. As quoted above, the Request noted that the LVMPD "has been training in the Red Rock Area for the past 36 years . . . ." Request at 1. The EA states: "The LVMPD has conducted this training in this area since 1970. The areas were designated as wilderness as included within the National Wilderness Preservation System in 2002." EA at 2. The MRDG states that helicopter landings, associated with S&R training, generally occurred in the wilderness areas prior to wilderness designation. MRDG at 2. BLM states that "LVMPD had been routinely training with helicopters since 1970 in the subject areas that became designated Wilderness Areas in 2002." Response at 7. Wilderness Watch has not contended or introduced any evidence to the contrary. We thus conclude that helicopter use and landing associated with S&R training had "already become established" within the meaning of section 1133(d)(1) and 43 C.F.R. § 6304.21(a) when the areas were designated as wilderness in 2002.

As quoted previously, the BLM regulation states that BLM may authorize landings "*at places* within any wilderness area if these uses were established and active" at the time of wilderness designation. 43 C.F.R. § 6304.21(a) (emphasis added). In the context of helicopter search and rescue, we do not construe this provision as authorizing the agency to permit landings only at the precise locations where helicopter skids had touched rock within some recent period before the wilderness designation. This contrasts with a situation involving fixed-wing wheeled aircraft that require a landing strip or field to land. It appears that the intent of section 6304.21(a) is that the agency could permit established use of existing landing strips to continue after wilderness designation. In the case of rotary-wing aircraft used for purposes such as rescue operations, the exact points where helicopter skids would touch down necessarily will vary to some degree because of the nature of the activity in which the aircraft is engaged. As is the case here, experience would show where rescue operations would occur most frequently and where training would be most beneficial. In addition, a helicopter touchdown, unlike a landing strip, does not affect the character or condition of the land itself; the land (in the instant case, mountain rock) looks the same after the helicopter takes off as it did before the helicopter landed. For all of these reasons, we construe section 6304.21(a) as authorizing the agency to permit continued rotary-wing aircraft operation in the same general locations where operations had been conducted and established before wilderness designation, not limited to exact prior touch-down points.

In view of the many years over which these operations and training exercises have been conducted, and the prior experience which led to the selection of the several points for which LVMPD requested authorization, we believe that use and landing of helicopters at these locations had been established within the meaning of

43 C.F.R. § 6304.21(a). We therefore conclude that section 1133(d)(1) grants BLM sufficient authority to permit the aircraft use and landing involved in this case.

Therefore, the activity authorized in the DRR/FONSI comes within both the section 1133(c) exception and the section 1133(d)(1) authorization.

II. *NEPA*

To support a FONSI an EA must take a "hard look" at the environmental consequences of a proposed action, identify the relevant areas of environmental concern, and make a convincing case that environmental impacts from it are insignificant. *See, e.g., Oregon Natural Desert Association*, 173 IBLA 348, 352 (2008), and cases cited; *Wilderness Watch*, 168 IBLA 16, 35 (2006), and cases cited. A party challenging a BLM decision based on an EA has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or a demonstrable error of fact, or that BLM failed to consider a substantial environmental question of material significance to the proposed action. *E.g., Biodiversity Conservation Alliance*, 174 IBLA 1, 22 (2008), and cases cited; *Oregon Natural Desert Association*, 173 IBLA at 352, and cases cited.

A. *"Significant Impacts"*

Wilderness Watch argues that the EA identifies significant impacts that require BLM to prepare an EIS. SOR at 18-22; Reply at 8-12. Specifically, Wilderness Watch asserts that BLM "concedes in its FONSI that there is a potential for significant impacts." SOR at 19. The language in the DRR/FONSI on which Wilderness Watch relies is the Field Manager's statement: "I have determined that the potential for significant impacts to wilderness and natural resources are [sic] adequately addressed and that an environmental impact statement is not required." *Id., citing* DRR/FONSI. This statement is not a concession that the environmental impacts of the proposed action are significant within the meaning of NEPA. BLM simply stated that it had addressed the "potential for" significant impacts — *i.e.*, whether there are any. That is the purpose of an EA. *See, e.g.*, 40 C.F.R. §§ 1501.4 and 1508.9; *High Sierra Hikers Association v. Blackwell*, 390 F.3d 630, 639-40 (9th Cir. 2004). Having done so, BLM found that significant impacts were not likely.

Further, BLM's statement that S&R training exercises "would significantly, albeit it [sic] temporarily, reduce the opportunity to enjoy the solitude and tranquility normally found in the isolated reaches of the canyons in Red Rock Canyon" does not constitute a finding of significant impacts. EA at 8, *quoted in part in* SOR at 20 and Reply at 9, 12. A "significant" reduction in solitude and tranquility for a short period of time (measured in a relatively few hours in each instance) does not imply a

significant environmental impact within the meaning of NEPA and implementing rules at 40 C.F.R. §§ 1502.1 and 1508.27. BLM maintains that by limiting the effects to a maximum of 48 hours annually, combined with the requirement to provide a 5-day notice of the locations, duration, type of exercise, and number of personnel involved in an exercise, "the general negative effects of helicopter noise are greatly reduced." BLM Response to Appellant's Notice of Appeal at 15, *citing* EA at 10. BLM further observes that in view of the limited training hours, the potential to be affected by the training "is substantially reduced[,] as the possible amount of time per year to actually be at or near any of these training exercises is quite remote," particularly since "the LVMPD wants to perform a lot of their helicopter training in poor weather and wind conditions, and at night." *Id.* In addition, the prior notice requirements enable BLM to inform the public of any upcoming training exercise, which "affords the public the opportunity to avoid such areas during those very limited times. This forewarning and the limited amount of yearly time allotted to train are reasonable methods of mitigating the negative effects of helicopter noise to insignificant levels." *Id.* We agree.

In arguing that the impacts are significant, Wilderness Watch relies on two of the criteria regarding intensity or severity of impact in the CEQ regulations at 40 C.F.R. §§ 1508.27(b)(3) and 1508.27(b)(10). The section 1508.27(b)(3) criterion is the "[u]nique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas." Wilderness Watch argues that impacts are likely to be significant in light of "the unique characteristics of the La Madre Mountain Wilderness and Rainbow Mountain Wilderness." SOR at 21. The unique characteristics on which Wilderness Watch relies are the technical rock climbing recreational opportunities, and "more importantly," the fact that the areas are wilderness. *Id.*

This argument is not persuasive. First, while helicopter noise may temporarily affect solitude and tranquility, the fact that a rock climber may hear a helicopter somewhere in the distance for a time is not likely to deter the climber from climbing, unless the climber is at or very near the location where a helicopter is landing and a crew might be temporarily deployed.

[3] Second, we have found no authority for the proposition that an area is "unique" for purposes of the NEPA regulation at section 1508.27(b)(3) simply by virtue of having been designated as a wilderness area. The result under such a theory would be that almost any impact on the area may be deemed "significant." That is not an accurate view of the law.

The criterion in 40 C.F.R. § 1508.27(b)(10) is "[w]hether the action threatens a violation of federal, state, or local law or requirements proposed for protection of the environment." Wilderness Watch asserts that "the proposed action is significant because it threatens a violation of the Wilderness Act." SOR at 21. For the reasons explained above, the proposed action does not violate the Wilderness Act. Therefore, section 1508.27(b)(10) is not applicable.

Wilderness Watch has not shown that pilot and crew training for a maximum of 48 hours, though disruptive to any persons recreating in the immediate area at the time of an exercise, results in an individually or cumulatively significant environmental impact, considering the context and intensity (or severity) of impact criteria in 40 C.F.R. § 1508.27.

B. *Sufficiency of Analysis to Support a FONSI*

Wilderness Watch argues that the EA's analysis is not adequate to support a FONSI under 40 C.F.R. § 1508.9(a)(1), and that BLM failed to take the requisite "hard look" at the environmental impacts of its proposed action. Wilderness Watch criticizes BLM for not citing any scientific studies to support its statement that the proposed training "will have limited impact on wildlife in the area." SOR at 22, *quoting* EA at 9. Wilderness Watch notes that the EA lists the Desert Tortoise as a "species of concern," and criticizes BLM for not mentioning that the Mojave population of the Desert Tortoise is listed as threatened under the Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1544 (2000). SOR at 22, *citing* EA at 9. While the EA acknowledges that the Desert Tortoise is found within proposed training locations, Wilderness Watch has not identified any impact to the Desert Tortoise — much less a significant impact — that BLM allegedly failed to analyze (or for which a separate "scientific study" would be needed).[7]

Wilderness Watch also argues that there is insufficient analysis to support BLM's finding in the EA that "[t]here would not be any impact to the naturalness of the area due to search and rescue training," because helicopter noise and deployment of equipment and crews during training is not natural. SOR at 23, *quoting* EA at 8. This argument overlooks the applicable standard. Under section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (2000), "naturalness" is determined by whether an area "generally appears to have been affected primarily by the forces of nature,

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[7] The EA notes that Bighorn Sheep "may be temporarily displaced due to increased activity but this is anticipated to be isolated to individual training sites and for very short duration throughout the year." EA at 9. Wilderness Watch appears not to dispute this conclusion, and in any event does not explain why a separate "scientific study" would be needed to support it.

with the imprint of man's work substantially unnoticeable." *See, e.g., Square Butte Grazing Association*, 67 IBLA 25, 28 (1982); *Sierra Club - Rocky Mountain Chapter*, 75 IBLA 220, 224-25 (1983). Wilderness Watch does not suggest any reason why the approved helicopter flights and crew deployments for short periods of time leave any noticeable imprint of man's work. *See The Wilderness Workshop*, 175 IBLA 124, 140 (2008).

Wilderness Watch further argues that the EA does not sufficiently analyze impacts on solitude because there is no quantitative analysis of decibel levels from training operations, citing *Izaak Walton League of America, Inc. v. Kimbell*, 516 F. Supp. 2d 982, 995-97 (D. Minn. 2007). In that case, BLM issued a FONSI for construction of a snowmobile trail alongside the boundary of the Boundary Waters Canoe Area Wilderness. BLM had estimated the noise effect, at 600-800 feet inside the wilderness area, from one snowmobile on the trail to be 49 decibels, without any supporting data or analysis. The court was concerned with potential snowmobile use throughout the winter months, which was to continue indefinitely. (Snowmobile use also often involves several snowmobiles at once.) The court reversed the decision to prepare an EA and remanded for BLM to prepare an EIS.

We think the present case is distinguishable from *Izaak Walton League*. It appears that the court anticipated much more than the snowmobile equivalent of the helicopter use and landing activity authorized in this case — *i.e.*, a total of 48 hours of use by one or perhaps two snowmobiles at one time during an entire year. *See* 516 F. Supp. 2d at 984-85, 996-97. Wilderness Watch has not shown that the impacts that BLM has described for the training here are comparable to the impacts the court appears to have anticipated in *Izaak Walton League*, or that a quantitative analysis of decibel levels is legally compelled to accurately assess the effects of the activity approved in the DRR/FONSI.

Wilderness Watch's arguments that the EA's analysis is insufficient do not meet its burden to show that the DRR/FONSI is premised on a clear error of law or a demonstrable error of fact, or that BLM failed to consider a substantial environmental question of material significance to the proposed action. Wilderness Watch has not offered any evidence that there is, in fact, likely to be any impact that BLM overlooked, or that BLM erred in assessing the nature or extent of any impact. Therefore, Wilderness Watch has not shown that BLM failed to take a "hard look" at potential impacts.

C. *Alternatives*

Lastly, Wilderness Watch argues that the EA failed to consider an adequate range of alternatives. SOR at 24-25. Under section 102(2)(E) of NEPA, 42 U.S.C.

§ 4332(2)(E) (2000), BLM must consider reasonable alternatives which accomplish the intended purpose of a proposed action, are technically and economically feasible, and have a lesser impact. *E.g.*, *The Wilderness Workshop*, 175 IBLA at 125, and cases cited; *Biodiversity Conservation Alliance*, 174 IBLA at 25, and cases cited; 40 C.F.R. §§ 1501.2(c) and 1508.9(b).

Specifically, Wilderness Watch argues that BLM failed to consider action alternatives that would "preserve wilderness character," by precluding pilot training in the wilderness areas, rather than simply restricting the number of landings or even precluding landings. SOR at 24-25. BLM considered two alternatives involving S&R training. Alternative A would authorize landings and crew training in the wilderness areas as the proposed action does, all to be conducted in a 2-calendar-day window. Alternative B would not authorize any landings or crew training within the wilderness areas. EA at 7. The EA also considered a no-action alternative, under which no flights or landings or crew training would occur in the wilderness areas. Under both Alternative B and the no-action alternative, both pilot and crew training would continue in the Calico Hills area outside the designated wilderness areas "in the same manner and degree as has historically occurred." *Id.*[8]

The no-action alternative, at least, was effectively an "action alternative that did not impair the wilderness" under Wilderness Watch's interpretation, even though it may not have been completely legally feasible. Regardless of whether Wilderness Watch's interpretation of "not impair[ing] the wilderness" is meritorious, and regardless of whether BLM was legally required to consider (or legally could have selected) an alternative that precluded all LVMPD flights in the wilderness areas, Wilderness Watch's argument that BLM did not consider such an alternative is without merit.

In connection with its argument that BLM should have considered an alternative that precluded pilot training in the wilderness areas entirely, Wilderness Watch argues that BLM should have analyzed an alternative that "lessened the need for the most dangerous search and rescue operations" by employing "a range of public use management techniques that might reduce the number of rescues and associated risks, and that would place greater responsibility on visitors to be mindful for their own safety." SOR at 25. Those would include "regulating visitor use, closing areas to climbing where search and rescue is too dangerous, or engaging in a

[8] If BLM, in its revised rule for wilderness area management, does not assert authority to regulate the use of airspace not involving landings and such flights are managed under FAA regulations, as quoted above, it is unclear how BLM would prohibit all flights over the wilderness areas under the no-action alternative. Thus, in practical effect, Alternative B may be indistinguishable from the no-action alternative.

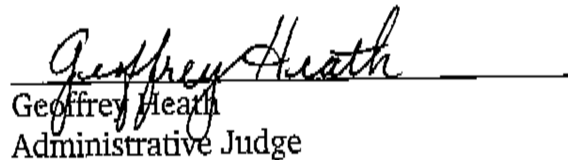
significant educational effort aimed at visitors that are entering the area unprepared for the rigors or risks of wilderness travel." *Id.*

Alternatives aimed strictly at "public use management" would not accomplish the intended purpose of the proposed action, which is to facilitate the training necessary for safe and effective search for and rescue of stricken hikers, climbers, and other recreational users of the two wilderness areas. *See* EA at 1-2. Therefore, BLM was not required to consider them. *E.g., Headwaters, Inc. v. Bureau of Land Management*, 914 F.2d 1174, 1180-81 (9th Cir. 1990); *In re Stratton Hog Timber Sale*, 160 IBLA 329, 337-38 (2004); *Bales Ranch, Inc.*, 151 IBLA 353, 363 (2000).

For all of these reasons, we reject Wilderness Watch's argument that the EA failed to consider a reasonable range of alternatives.

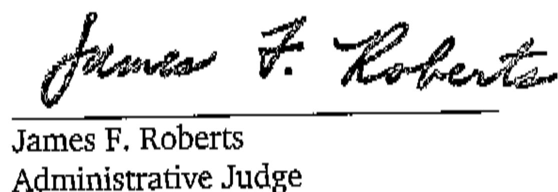
CONCLUSION

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the DRR/FONSI is affirmed.



Geoffrey Heath
Administrative Judge

I concur:



James F. Roberts
Administrative Judge