

THE ECOLOGY CENTER, INC.

IBLA 94-620

Decided September 30, 1997

Appeal from a decision of the Area Manager, Cottonwood Resource Area, Idaho, Bureau of Land Management, denying protest of timber sale. ID 060-TS4-005.

Affirmed.

1. Environmental Quality: Environmental Statements--Timber Sales and Disposals

The BLM may properly proceed with a proposed timber sale where the environmental assessment adequately considered all relevant matters of environmental concern, including the impact of the sale and roadbuilding on wildlife, water quality and fish habitat, and where the finding that the sale would not significantly affect the human environment was supported by the record and was reasonable.

APPEARANCES: William Haskins, Missoula, Montana, for Appellant; Fritz U. Rennebaum, District Manager, Coeur d'Alene District, Idaho, and Lanny O. Wilson, Area Manager, Cottonwood Resource Area, Idaho, for the Bureau of Land Management. 1/

OPINION BY ADMINISTRATIVE JUDGE TERRY

The Ecology Center, Inc. (ECI) has appealed from a May 31, 1994, Decision of the Area Manager, Cottonwood Resource Area, Idaho, Bureau of Land Management (BLM), denying its protest against an April 21, 1994, Decision Record and deciding to proceed with the Forgotten 400 timber sale (ID-060-TS4-005). The ECI filed a Petition for Stay of the effect of BLM's Decision which the Board denied by an Order dated September 28, 1994.

In April 1994, consistent with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (1994), BLM

1/ By order dated Sept. 28, 1994, the Board granted amicus curiae status to the Resource Organization On Timber Supply and provided that it would have until Oct. 31, 1994, to file an amicus brief. No brief was filed.

prepared an Environmental Assessment (EA) of the impact of a timber harvest located approximately 2-1/2 miles south of Elk City, Idaho, in secs. 27, 28, 33, 34, and 35, T. 29 N., R. 8 E., Boise Meridian, Idaho County, Idaho. The EA (ID-060-89-13) was prepared by an interdisciplinary team of BLM employees, including a forester, soil scientist, archeologist, outdoor recreation planner, area biologist, and range conservationist. The BLM considered two alternative timber harvests and a no-action alternative.

Of these three alternatives, BLM ultimately selected Alternative 2, which involved the removal of 3.2 million board feet (MMbf) of timber from 172 acres in six units, the construction of 3.6 miles of new road, and the reconstruction of 1 mile of existing road. ^{2/} The area is bordered by American River on the north and Red River on the south. (EA at 7, Appendix at 5 (Map of Alternative 2).) Timber harvesting was to be accomplished by means of overstory removal and tractor yarding, and various measures were included in the EA to mitigate the environmental impact of the harvest. (EA at 3.) In particular, a monitoring plan was developed for the timber sale. (EA at 4, Appendix at 19-21.)

Based on the EA and staff reports, the Area Manager signed a "Finding of No Significant Impacts (FONSI) and Decision Record" in which he approved timber harvesting pursuant to Alternative 2. (Decision Record at 1.) The Area Manager focused on the fish habitat which he recognized as a primary resource concern in the project area. He explained that past actions have severely degraded the fish habitat to the point where further decreases would have a major impact on the resource. He stated that the key limiting habitat factor is winter rearing habitat. The Area Manager pointed out that Alternative 2 reduces by 30 percent (compared to the proposed action, Alternative 1) the amount of sediment predicted to reach the American River which relates to a less than 1-percent decrease in winter rearing potential due to cobble embeddedness. The Area Manager asserted that the initiation of the fish habitat improvement project will provide an improvement in winter rearing habitat of 10 to 20 percent for the reach. He stated that selection of Alternative 2 reduces the volume harvested by 9 percent while reducing the impacts due to sediment to virtually zero. Id.

The Decision Record listed several mitigation measures, recommended in the EA, which will be accepted and developed in this project. Stockpiling 30 straw bales will allow for prompt erosion control. Breaching the old ditch will provide the opportunity for trapped water to be drained with minimal erosion impacts. Closing the road located on the east side of Unit 1 will also reduce the amount of sediment reaching American River. Stabilizing roads for 1 year following construction will minimize potential adverse sediment impacts. ^{3/} Graveling draw crossings, with rock

^{2/} Alternative 1 involved the harvesting of 3.5 MMbf of timber from 185 acres and the construction of 5 miles of new road and the reconstruction of 1 mile of existing road. (EA at 3.)

^{3/} However, this measure is not required for winter logging, nor does this measure apply to Unit 1 which is adjacent to an existing road. (Decision Record at 1.)

size determined by availability, will serve to further reduce already low impacts from the alternative selected. By including this measure, BLM acknowledged that sediment is a key limiting factor for fish habitat in the project area. (Decision Record at 1.)

The Area Manager found that the timber sale was designed with a very high level of erosion mitigation (80 percent) and provided for maintenance of wildlife habitat and other resource values. Based on these factors and the analysis of the potential environmental impacts contained in the EA, he determined that the impacts were not expected to be significant and that an environmental impact statement (EIS) was not required. (Decision Record at 1.)

The ECI filed its protest on May 23, 1994, challenging BLM's decision not to prepare an EIS. Specifically, ECI contended that BLM is required to adopt adequate mitigation measures and complete adequate cumulative effects analyses regarding old growth forest, biological corridors, water quality, and quantity and fish habitat before the decision to forego the preparation of an EIS can be made. (Protest at 3.) In his May 31, 1994, Decision, the Area Manager denied ECI's protest, addressing each of the concerns presented. On June 10, 1994, the timber sale was awarded to Boise Cascade Corporation. The ECI has appealed the Area Manager's Decision.

[1] It is well established that the Board will affirm a finding of no significant environmental impact 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. Blue Mountains Biodiversity Project, 139 IBLA 258, 265-66 (1997); Bill Armstrong, 131 IBLA 349 (1994); G. Jon Roush, 112 IBLA 293, 297 (1990). The record must establish that the FONSI was based on "reasoned decision making." Fritiofson v. Alexander, 772 F.2d 1225, 1236 (5th Cir. 1985). 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. Glacier-Two Medicine Alliance, 88 IBLA 133, 141 (1985). The ultimate burden of proof is on the challenging party. In re Blackeye Again Timber Sale, 98 IBLA 108, 110 (1987). Such burden must be satisfied by objective proof. In re Upper Floras Timber Sale, 86 IBLA 296, 305 (1985). Mere differences of opinion provide no basis for reversal. See Cady v. Morton, 527 F.2d 786, 796 (9th Cir. 1975); Curtin Mitchell, 82 IBLA 275, 282 (1984).

In its Statement of Reasons (SOR), ECI raises essentially the same concerns it raised in its protest. We will address those concerns seriatim.

Biological Corridors

The ECI refers to BLM's Decision, which acknowledges that the issue of biological corridors was not addressed in the Forgotten 400 EA, even

though BLM maintains that there would be roughly 14 percent of the ridge top corridor directly affected by timber cutting. (SOR at 1; Decision at 1.) The BLM stated that because there would be no clearcutting and understory trees and because seed trees and snags would be left in the cutting units, there would be no breaks in the timbered biological corridor. Id. According to ECI, BLM does not understand what a biological corridor represents. The ECI claims that such a corridor must maintain not just some undisclosed amount of undersized "timber," but rather the closed-canopy, contiguous forest cover such as now exists in much of the project area. The ECI asserts that the corridor must be capable of supporting species such as goshawk, wolverine, lynx, and elk that require a significant measure of security habitat. (SOR at 2.)

The BLM admits that it did not consider the impact of timber sale activities on ridgetop biological corridors because no concerns had been raised during the public scoping process that preceded preparation of the EA. (Decision at 1, Answer at 2-3.) The BLM states that loss of cover and security areas would occur for big game. (EA at 32.) Regarding the elk, BLM notes that the Forgotten 400 timber sale analysis area provides the largest unroaded security area within the elk habitat effectiveness (EHE) analysis area, and consequently, values associated with this area are quite high. Id. at 17. The BLM has developed EHE objectives for the area. (Management Framework Plan (MFP) and 1991 BLM Elk City Resource Objective Management Plan; Id.) The EHE evaluation areas are established in specific locations, and a summary of EHE objectives, thresholds, and required mitigation are included in the appendix to the EA at 23. Id. According to BLM, elk habitat effectiveness would increase due to road restrictions and juxtaposition of cover/forage. Id. at 32.

The EA states that the general area does not provide optimum habitat for wolverine, lynx, or goshawk. (EA at 33.) No documented sightings of wolverine or lynx have been reported within 10 kilometers of the area, and no sightings of goshawk have been documented for the area. Id. at 19, 33. The BLM concluded that no adverse impacts to the wolverine, lynx, or goshawk are anticipated from the timber sale. Id.

The ECI accuses BLM of "high grading" the larger grand fir, douglas fir, spruce, and lodgepole, while depleting habitat for wildlife. According to ECI, the larch and ponderosa pine scheduled to be left do not represent a significant structural component in the vast majority of the project area. (SOR at 2.) The BLM points out that stands in the project are mature to overmature lodgepole pine, grand fir, and douglas fir, and that mortality is increasing in the grand fir and lodgepole pine due to old age, insects, and disease. The BLM states that silvicultural prescriptions recommend the removal of the majority of the mature and overmature trees from the identified stands. (Answer at 3; EA at 2, 5.) However, BLM states that it intends to leave all grand and douglas fir less than 12-inches diameter breast height (DBH), and lodgepole pine less than 8-inches DBH, together with all western larch and ponderosa pine. (EA at 2, 5.) This would leave mature trees scattered "throughout the harvested units."

Id. at 25. Further, large portions of the ridgetop in the project area are not to be subjected to timber harvesting. (EA, Appendix at 5.)

We do not find that BLM has erred by failing to consider the affects of the sale on the ridgetop corridor. (Decision at 1.) The ECI has submitted no evidence that any wildlife may be adversely affected by the removal of overstory in the sale units, especially where all of the understory will remain. (EA at 25.) The ECI has offered nothing to suggest that all of the measures taken by BLM will not provide adequate dispersal cover for all wildlife or that, during and after timber harvesting, the ridgetop will not continue to permit the proper dispersment of wildlife through the project area. Appellant has not provided any evidence that any wildlife may be adversely affected in a significant way by the small amount of clearcutting that will occur in connection with the creation of skid trails, landings, and new roads at scattered sites in the project area.

Old Growth Stands

The ECI next contends that BLM failed to determine, using designated criteria, whether there are any stands of old growth timber in the project area, and assuming there are none, that BLM must provide for management of the area so as to restore such a stand. (SOR at 2-3.) The ECI states that the project area contains stands that are the "most capable of providing a large block of contiguous old growth in all of the eastern half of the Elk City township." Id. at 3.

The Area Manager specifically stated, in his May 1994 Decision, that the project area does not contain any timber stands that meet "old growth criteria." (Decision at 2.) We recognize that he did not make those criteria clear. That failing has been rectified on appeal. The BLM states that old growth forests develop with climax plant associations, and that the climax habitat type for the project area is a grand fir forest. (Answer at 4, EA at 10.) The BLM notes that the tracts to be harvested are primarily composed of lodgepole pine. The BLM asserts that field reconnaissance by the area biologist, coupled with the stand type tables and the climax plant association, indicated that the stands included in the timber sale did not present the characteristics of old growth and therefore concluded that old growth was not an issue. (Answer at 4, EA at 10.) See also Upper Mohawk Community Council, 104 IBLA 382, 383, n.1 (1988) ("Old-growth timber is defined by BLM as timber at least 196 years old"); "Silvicultural Prescription Form[s]," Stand ID F-400 (7, 9-12, 14, 17, 21), dated Mar. 29 and Apr. 4, 1989 (Average stand age from 60 to 120 years). The ECI has provided no evidence that the project area contains any stand of old growth timber.

More importantly, ECI's contention that BLM was required to provide for the restoration of old growth timber does not demonstrate any deficiency in the EA. The EA was properly concerned only with analyzing the environmental consequences of the proposed timber sale. It did so.

Further, even assuming that BLM has been responsible for the removal of old growth timber in the general area of the timber sale, and even particularly in the sale area, we know of no authority that requires BLM to restore such timber in the course of its management of the project area, and Appellant has not referred us to any. We thus discern no violation of any Federal statute or regulation.

Water Quality and Fish Habitat

Next, ECI contends that BLM has failed to consider the site-specific impact to fish habitat in the nearby sections of the American and Red Rivers that will occur as a result of increased sediment entering the rivers due to roadbuilding and logging. (SOR at 4.) It indicates that BLM admits that sediment yields in those sections already fail to meet standards for supporting fish habitat established for the entire rivers and asserts that sale activities will only further degrade these local conditions. Id. at 3-4. In particular, ECI states that BLM has failed to consider the site-specific impact of cobble embeddedness, which occurs as a result of the introduction of sediment and then adversely affects fish habitat in those river sections. 4/ Id. at 4. The ECI concludes that this condition, which currently does not satisfy the BLM standard, will significantly increase in those stretches not scheduled for fish habitat improvement, thus significantly affecting winter rearing habitat (which is a key aspect of fish habitat). Id.

Initially, ECI disputes the scope of the analysis performed by BLM, in terms of the anticipated impact to water quality and fish habitat. It argues that BLM focused on the impact to the rivers as a whole, thus diluting the significance of the impact to the particular stretches immediately affected by the nearby planned timber sale activities. (SOR at 3, 4.) The ECI ignores the fact that BLM focused not only on the effect on the rivers as a whole, but also the affect on the "lower reach[es]" of those rivers. 5/ (EA at 23-25.) We are not persuaded that this scope of analysis was not sufficient for BLM to properly assess the impact to water quality and fish habitat from timber sale activities in the project area.

Admittedly, the sections of river in closest proximity to the planned timber sale have degraded fish habitat since they already receive levels

4/ Cobble embeddedness is a condition in a streambed where the rocks become embedded in fine grains of soil, and thus the bed does not properly support fish rearing since juvenile salmonids use the interstitial spaces for overwintering. (EA at 12-13.)

5/ The record does not define what is meant by the "lower reach[es]." We may presume that it includes the stretches of both rivers near where they join to form the South Fork Clearwater River, thus encompassing the approximately 2-mile long sections of both rivers that pass near the project area. The BLM notes that the watersheds for the lower reaches of the rivers total 4,130 and 4,548 acres. (EA at 9.)

of sediment that exceed BLM standards for the rivers in their entirety. (EA at 9.) We start with the fact that the watersheds of the lower reaches of the two rivers naturally contribute sediments to those stretches of river. The BLM reports that they naturally contribute 82.2 (lower American) and 91.1 (lower Red) tons of sediment each year. Id. In addition, past land-disturbing activities in the watersheds continue to add additional sediments to the river sections, bringing the annual totals up to 109.4 (lower American) and 126.6 (lower Red) tons. Id. This is 33 (American) and 39 (Red) percent over baseline (natural) conditions. Id. The BLM's MFP objective for sediment yields from the watersheds of both rivers is 30 percent over baseline conditions. Id.

The understandable consequence of the existing high sediment yields results in an ongoing degradation in the quality of the fish habitat in the two river sections. The BLM reports that the rivers as a whole provide only 55 (American) and 65 (Red) percent of the potential habitat that would be found were the rivers in their pristine natural state. (EA at 11.) This does not satisfy the MFP objective for both rivers of 80 percent. Id. The BLM then broke down its assessment of the current quality of the fish habitat versus its potential into various habitat elements. ^{6/} In each case, the element was degraded. Id. at 12. For instance, the element of cobble embeddedness, which would naturally be less than 25, was 36 percent in the lower reaches of the American River. Id. The BLM noted that there were various factors influencing anadromous fish production. Arranged in terms of their importance to such production, they are: Winter rearing habitat, instream cover, active/potential woody debris, and pool/riffle ratio. Id. The most important, by far, was winter rearing habitat, which in turn was most affected by cobble embeddedness. Id.

The overriding question is whether the introduction of additional sediment as a result of the planned timber harvesting and road building will result in a significant impact to the quality of water and fish habitat in the American and Red Rivers. We start with the fact that ECI has presented no evidence to dispute BLM's determination that the soils in the project area already have a "low-moderate potential for erosion from timber harvest." (EA at 8.) Nevertheless, BLM expects that timber sale activities, by themselves, will in fact result in the introduction of some additional sediment in the rivers due to increased erosion. Id. at 21. The BLM predicts that there will be additional sediment yields of 13.3 (lower American) and 1.6 (lower Red) tons per year in the first year. Id. at 9, 23, 24. Total sediment yields will be 122.7 (lower American) and 128.2 (lower Red) tons per year in the first year. Id. at 23. This represents 50 (lower American) and 41 (lower Red) percent over baseline (natural) conditions. Id. Clearly, this exceeds the MFP objective of

^{6/} These elements are cobble embeddedness, spawning gravels, pool/riffle ratio, summer temperature, active/potential debris, pool quality, instream cover, bank cover, and bank stability. (EA at 12.)

30 percent over baseline conditions. *Id.* at 9. Thus, the BLM standards will, at least initially, be further exceeded as a result of the planned timber sale. However, BLM then expects total sediment yields to decrease to 38 (lower American) and 39 (lower Red) percent over baseline conditions in the second year. *Id.* at 23. The yield would remain at 39 percent in succeeding years, in the case of the lower reaches of the Red River. *Id.* However, it would decrease to 35 percent in the third year and stabilize at that level, in the case of the lower reaches of the American River. *Id.* In neither case, would the MFP objective of 30 percent over baseline conditions be achieved following initiation of timber sale activities. ^{7/} However, it is not currently being achieved. Further, total sediment yields would be at or close to the presale yields after 1 year. ^{8/} In the case of the lower Red River, BLM concluded that the current trend in total annual sediment yields "would continue." *Id.* at 25. In the case of the lower American River, BLM characterized anticipated increases in such yields as "low" adverse impacts. *Id.*

The ECI has presented nothing to dispute BLM's conclusion that the largest increase in sediment yields will be temporary, lasting only 1 year, nor does it demonstrate that the temporary increase, followed by either the same or slightly higher yields as currently exist, constitutes a significant adverse impact.

The BLM also considered the impact of increased sediment yields on the fish habitat. It concluded that cobble embeddedness would increase, at most, by less than 1 percent in the case of both the American and Red Rivers. (EA at 29, 30, 31.) The result would be a similar slight impact on winter rearing habitat. *Id.* at 30, 31. Admittedly, BLM did not

^{7/} It should be remembered at this point that the instant case does not concern whether BLM will, during the course of timber sale activities, satisfy its land use planning objectives, but whether, at the time the Area Manager decided to go forward with the sale, he was sufficiently informed regarding the environmental consequences of such action.

^{8/} The BLM also noted that its analysis did not take into account the beneficial impact of closure of the existing road segment near Unit 1, which is located in the drainage area for the lower American River, and the graveling of the existing 1-mile long road, which is located in the drainage area for the lower Red River. (Decision at 3; Answer at 5.) In the latter case, BLM predicted that sediment yields in the lower Red River would fall below the current level of 39 percent above baseline conditions, even in the first year. (EA at 24; Decision at 3.) Appellant has provided no evidence to the contrary. The BLM also noted that its analysis did not take into account the beneficial impact of fish habitat improvement efforts on the 1/2-mile long stretch of the lower American River. (Decision at 2-3.) The BLM predicted that such efforts would cause sediment yields in the river to fall below the current level of 33 percent above baseline conditions after the first year. *Id.* at 3. Again, Appellant has provided no evidence to the contrary.

indicate the impact on cobble embeddedness in the lower reaches of the two rivers, or even those stretches nearest the project areas. Nevertheless, BLM does know what current sediment yields are in the lower reaches of both rivers, and the resulting impact on fish habitat (particularly in terms of cobble embeddedness) in the lower reaches of the American River (which would be the most affected by the timber sale). (EA at 9, 12.) In addition, BLM knows what increased sediment yields will be in the lower reaches of the two rivers as a result of the sale. (EA at 23, 23-24, 24- 25.) Thus, BLM had enough information to be able to assess the impact on fish habitat in the lower reaches of the American and Red Rivers. That impact was not considered to be significant even in those stretches that would not be subjected to fish habitat improvement. Moreover, it is important to remember that the predicted increase in sediment yields, and thus the resulting impact to fish habitat, is expected to be short-lived. After the first year, sediment yields, and thus the consequent impact on fish habitat, will return to current conditions. The ECI has offered no evidence to dispute BLM's determination that any impact to fish habitat, in terms of cobble embeddedness or otherwise, will not will not be significant.

If nothing else, the record clearly establishes that BLM will not be able to reach the MFP objective that the quality of fish habitat in the entire lower reaches of the American River be 80 percent of its potential, in the absence of habitat improvement efforts. This is due to the lingering impacts from past dredge mining, as well as livestock grazing, road construction, and other activities. As BLM said: "[The] American River [near the project area] * * * has been severely degraded by past dredge mining and would not recover naturally (30 years). Evaluation of past dredged[-]mined sections of river have shown virtually no improvement in the past 15 years unless stream improvement actions were initiated." (EA at 31.) Such efforts are ongoing, to the extent that time and funding permit. (Decision at 3.) Failure to achieve that objective will not be due to the current timber sale. In general, as BLM noted, current sediment yields were already "adversely affecting fish production." (EA at 28.) At worst, the sale will have an adverse impact on sediment yields, and thus fish habitat, in the lower reaches of the American River only for 1 year. (EA at 23.) After that, the impact will return to current levels. All of this weighs in favor of further habitat improvement, rather than against the sale.

Further, the sale will conform with the other MFP objective that it occur concurrent with habitat improvement efforts that show a positive, upward trend in habitat conditions. It is obvious that BLM has not reached its final goal. However, such efforts have improved fish habitat in every part of the lower reaches of the American River that have received such attention. (EA at 5.) There is no reason to expect that the additional 1/2-half mile that BLM intends to treat in conjunction with the sale will not likewise benefit. This is plainly a positive, upward trend.

Mitigation Measures

The ECI asserts that NEPA requires an agency to utilize mitigation measures to support a FONSI. The ECI claims that BLM failed to discuss the adequacy of the mitigation adopted for the Forgotten 400 project and also failed to discuss the justification for adopting some, but not all, of the recommended mitigation measures. The ECI asserts that BLM has an obligation to disclose the likely effectiveness of the measures it has adopted. (SOR at 4.)

A FONSI may be predicated on a finding that changes to or restrictions on a project will sufficiently minimize the environmental impact. Idaho Natural Resources Legal Foundation, Inc., 115 IBLA 88, 91 (1990), and cases cited. However, in such circumstances NEPA requires analysis of any proposed mitigation measures and how effective they would be in reducing the impact to insignificance. See Northwest Indian Cemetery Protective Ass'n v. Peterson, 795 F.2d 688, 697 (9th Cir. 1986), rev'd on other grounds, Lyng v. Northwest Indian Cemetery Protective Association, 485 U.S. 439 (1988); Kendall's Concerned Area Residents, 129 IBLA 130, 139 (1994); 40 C.F.R. § 1502.16(h).

We note that the EA at issue refers to 12 recommended mitigation measures. (EA at 34-35.) However, BLM concluded that "[t]he implementation of these measures [is] not required to prevent significant adverse impacts to any resource." Id. at 34. Therefore, the detailed analysis described by ECI is not required in this instance. The EA stated that the recommended measures taken individually may be accepted, modified, or rejected by the decision maker. Id. at 34. In this case, six mitigation measures were adopted by the Area Manager. (Decision Record at 1.) The ECI has provided no evidence to show that BLM's Decision concerning the mitigation measures was in error.

Clean Water Act—New Information

Finally, ECI states that there was a "significant development" following issuance of the April 1994 Decision Record that the Area Manager failed to take into account before deciding, in his May 1994 Decision, to proceed with the planned timber sale. (SOR at 5.) The ECI notes that, on May 13, 1994, the United States Environmental Protection Agency (EPA) proposed to list both the American and Red Rivers as "Water Quality Limited Segments" (WQLS), under section 303(d) of the Clean Water Act (CWA), as amended, 33 U.S.C. § 1313(d) (1994). (SOR at 5; Answer, Ex. B.) The ECI notes that if the rivers were to be finally listed as WQLS's, the State of Idaho would be required to set a "Total Maximum Daily Load" (TMDL), establishing the total amount of sediments that could be introduced into each of the rivers. (SOR at 5.) The ECI asserts that, in view of the fact that BLM admits that measurable amounts of sediment will be introduced into the two rivers as a result of approved timber sale activities and the possibility that the two rivers will be listed as WQLS's, BLM should be required to preclude such

activities until TMDL's are set and it is demonstrated that they will not cause sediments to exceed those levels. Id. We are not persuaded.

Section 303(d) of the CWA, 33 U.S.C. § 1313(d) (1994), provides for the identification by the State with EPA approval (or, if necessary, by the EPA) of waters where existing effluent limitations restricting point source discharges of pollution are not stringent enough to ensure satisfaction of applicable water quality standards. 33 U.S.C. § 1313(d)(1)(A) and (2) (1994); 40 C.F.R. § 130.7(b) and (d); Environmental Defense Fund, Inc. v. Costle, 657 F.2d 275, 294 (D.C. Cir. 1981); Alaska Center for the Environment v. Reilly, 796 F. Supp. 1374, 1375 (W.D. Wash. 1992), aff'd, 20 F.3d 981 (9th Cir. 1994); Alaska Center for the Environment v. Reilly, 762 F. Supp. 1422, 1424 (W.D. Wash. 1991). These identified waters are known as WQLS's. See 40 C.F.R. § 130.2(j), 7(b), and 10(b)(2); Sierra Club, North Star Chapter v. Browner, 843 F. Supp. 1304, 1307 (D. Minn. 1993); Alaska Center for the Environment v. Reilly, 762 F. Supp. at 1424.

To our knowledge, the American and Red Rivers have not been listed as WQLS's. There is nothing to indicate that the rivers will ever be listed. Even assuming that they are listed, section 303(d) of the CWA provides that TMDL's must then be established by the State with EPA approval or, if necessary, by the EPA. See 33 U.S.C. § 1313(d)(1)(C) and (d)(2) (1994); 40 C.F.R. § 130.7(c)(1) and (d); Environmental Defense Fund, Inc. v. Costle, 657 F.2d at 294; Alaska Center for the Environment v. Reilly, 762 F. Supp. at 1424; Alaska Center for the Environment v. Reilly, 796 F. Supp. at 1375. The TMDL's represent the maximum amounts of pollutants from point and nonpoint sources that a WQLS can receive on a daily basis without violating applicable water quality standards. See 33 U.S.C. § 1313(d)(1)(C) (1994); 40 C.F.R. § 130.2(e)-(I); Alaska Center for the Environment v. Reilly, 762 F. Supp. at 1424. The establishment of TMDL's will only occur in accordance with the statutorily-mandated priority ranking of the rivers on the WQLS list. ^{9/} See 33 U.S.C. § 1313(d)(1)(C) (1994); 40 C.F.R. § 130.7(b)(4) and (c)(1); Alaska Center for the Environment v. Reilly, 762 F. Supp. at 1424. This may take "many years," 59 Fed. Reg. 30933 (June 16, 1994); see also 43 Fed. Reg. 60665 (Dec. 28, 1978) ("EPA recognizes that State development of TMDL's * * * for all [WQLS's] will be a lengthy process"); Alaska Center for the Environment v. Reilly, 796 F. Supp. at 1380 ("CWA requires the EPA to work with the State * * * to establish a reasonable schedule for the development of TMDLs for all waterbodies designated as [WQLS's]"). In any event, the establishment of TMDL's has yet to occur. In general, we discern no violation of any provision of the CWA, including section 303(d), from allowing the timber

^{9/} This list is referred to by EPA as the "Section 303(d) List." (Answer, Ex. A at 2; see Answer at 8, Ex. B at 3.)

sale to proceed, nor has Appellant demonstrated that there will be any violation. See Oregon Natural Resources Council, 116 IBLA 355, 373 (1990).

Further, we note that the ultimate aim of listing rivers as WQLS's is to provide for the attainment of applicable water quality standards. 33 U.S.C. § 1313(d)(1)(A) (1994); 40 C.F.R. § 130.7(b)(1); Alaska Center for the Environment v. Reilly, 762 F. Supp. at 1424. Indeed, a WQLS is simply an identification of waters where applicable water quality standards are not being met or are not expected to be met by application of existing effluent limitations. See 33 U.S.C. § 1313(d)(1)(A) (1994); 40 C.F.R. § 130.2(j). The BLM has provided evidence that it is now complying with State requirements developed in response to the State's designation of both rivers as "Stream Segments of Concern," including best management practices established for the American River. (Answer at 9; EA at 1.) There is no evidence that the instant timber sale, with all of the project design features and mitigation measures intended to minimize erosion, will cause sediment yields that do not satisfy applicable water quality standards. Thus, we see no reason to delay implementation of the Area Manager's May 1994 Decision to proceed with the sale. Cf. Environmental Defense Fund, Inc. v. Costle, 657 F.2d at 295 (declining to take action absent anticipated violation of water quality standards).

Overall, we conclude that ECI has failed to demonstrate that there are any possible adverse environmental impacts not addressed by BLM in its EA or that any of the impacts addressed may, due to a failure of mitigation measures or otherwise, rise to the level of "significant," thus requiring preparation of an EIS. It has offered no independent scientific analysis by any recognized experts of the likely consequences of roadbuilding and timber harvesting in the project area. In short, ECI's case lacks essential proof. See Oregon Natural Resources Council, supra, at 360 (1990).

The NEPA is primarily a procedural statute designed "to insure a fully informed and well-considered decision." Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 558 (1978). It requires that an agency take a "hard look" at the environmental effects of any major Federal action. Kleppe v. Sierra Club, 427 U.S. 390, 410 n.21 (1976). We conclude that BLM took a "hard look" at the environmental consequences of the proposed timber sale, bringing to bear all of its scientific expertise, with the result that it has considered all relevant matters of environmental concern. We further conclude that BLM has made a convincing case, based on its analysis, that no significant environmental impact may occur as a result of proceeding with the sale, and thus preparation of an EIS is not required. For these reasons, we conclude that BLM's environmental review comported with section 102(2)(C) of NEPA. See Kendall's Concerned Area Residents, supra, at 138.

To the extent not expressly or impliedly addressed in this Decision, all other arguments raised by Appellant have been considered and are rejected. See National Labor Relations Board v. Sharples Chemicals, Inc., 209 F.2d 645, 652 (6th Cir. 1954); Glacier-Two Medicine Alliance, 88 IBLA 133, 156 (1985).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

James P. Terry
Administrative Judge

I concur.

Gail M. Frazier
Administrative Judge

