

KLAMATH SISKIYOU WILDLANDS CENTER

IBLA 2001-65

Decided October 30, 2002

Appeal from a decision issued by the Field Manager, Butte Falls Resource Area Office, Oregon, Bureau of Land Management, denying a protest of the proposed Ginger Springs Timber Sale. OR-110-TS00-03.

Motion to dismiss denied; decision affirmed.

1. Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact--Timber Sales and Disposals

BLM may approve a timber sale without preparing an EIS, if, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4332(2)(C) (1994), it has taken a hard look at the environmental consequences of the timber sale and reasonable alternatives, considering all relevant matters of environmental concern, including the expected individual and cumulative impacts, and made a convincing case that no significant impact will result, or that the impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. BLM's decision not to prepare an EIS will be affirmed if an appellant does not demonstrate, with objective proof, that BLM failed to consider a substantial environmental problem of material significance, or otherwise failed to abide by the statute.

APPEARANCES: Lori J. Cooper, Esq., Ashland, Oregon, and Tom Dimitre, Williams, Oregon, for Klamath Siskiyou Wildlands Center; Lance E. Nimmo, Field Manager, Butte Falls Resource Area Office, Oregon, Bureau of Land Management, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Klamath Siskiyou Wildlands Center (KSWC) has appealed an October 13, 2000, decision of the Field Manager, Butte Falls Resource Area, Oregon, Bureau of Land Management (BLM), denying its protest of the proposed Ginger Springs Timber Sale (No. 00-03). 1/

On August 30, 2000, the Field Manager issued a Decision Record to proceed with a timber harvest on lands in the Butte Falls Resource Area, including the Ginger Springs Timber Sale area, and a Finding of No Significant Impact (FONSI). The result of an examination of the potential environmental impacts of the proposed timber harvest, other activities and three alternative actions (including no action) was memorialized in the August 1, 2000, "Environmental Assessment for Bieber Wasson" (EA) (No. OR-110-99-15). 2/ The FONSI was based on the EA BLM had prepared in compliance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4332(2)(C) (1994), to address whether it was likely that the proposed actions, including the Ginger Springs timber sale and related activities, would result in a significant impact upon the human environment. If they would, an environmental impact statement (EIS) would have been required.

In his Decision Record the Field Manager adopted "Alternative 4," and authorized partial cutting ("modified even-aged regeneration harvest" under

1/ The record also refers to the Siskiyou Project (SP) as an appellant. BLM states that SP did not file a protest or otherwise participate in the decisionmaking process which led to the Field Manager's Decision. KSWC's notice of appeal purports to be filed on behalf of itself and SP. However, there is no reference to SP in KSWC's statement of reasons (SOR) and no SOR has been filed by SP. The appeal filed on behalf of SP is hereby dismissed for failure to file a SOR. See 43 CFR 4.412(a); Helmut Rohrl, 132 IBLA 279, 281-82 (1995); Robert L. True, 101 IBLA 320, 324 (1988).

2/ The EA addressed the Bieber Wasson comprehensive proposed forest management program covering 17,702 acres of BLM managed land. The program contemplates timber harvest in the Little and Big Butte Creek 5th field watersheds. The four alternatives involve the following harvests:

<u>Alternative Number</u>	<u>Action Contemplated</u>	<u>Acres Affected</u>	<u>Million board feet harvested</u>
1	No action	0	0
2	Treatment of Dense Forest Stands and Dwarf Mistletoe Infestation	1,864	18.20
3	Canopy Retention	1,642	10.60
4	Landscape Treatment	1,901	15.66

The program would authorize fuel treatment to reduce fire hazards, fencing a spring/stream channel, replacing undersized culverts to promote fish passage, instream log placements, and road improvement, maintenance, and closure.

the Green Springs Timber Sale of 21 acres and "mortality salvage" on 242 acres) of public land in Jackson County, Oregon. 3/ These lands, which are mostly within the Big Butte Creek 5th field and Central Big Butte Creek 6th field watersheds, are "Matrix" lands, as defined by the Northwest Forest Plan (NFP), and are thus available for timber harvest. 4/ (Decision Record at 1; Decision at 2.)

The harvest is expected to produce 2.361 mmbf of merchantable timber, which will be yarded using skyline cables, tractors, and helicopters. (Prospectus at 1; Exh 16.) The modified even-aged regeneration harvest and mortality salvage harvests are generally used in timber stands that are deteriorating because there are more trees than the site can sustain or timber stands with trees that are declining and at high risk of mortality from Dwarf mistletoe infestation, moisture limitations, insects, or root diseases. In a mortality salvage harvest, individual and groups of trees in deteriorating stands would be removed. The removed trees would be of low vigor, insect infested, or Douglas-fir trees with a mistletoe rating of 4, 5, or 6. Canopy closure following entry would be approximately 70 percent. In a modified even-aged regeneration harvest a minimum of 6-8 trees per acre greater than 20 inches diameter at breast height would not be cut. Canopy closure would be approximately 10-15 percent. Conifer seedlings would be planted following harvest. See EA at 4; EA, Appendix E at 3-4, 8-10, 12-13. A total of 25.5 miles of existing road would be renovated to facilitate timber harvest and 5.6 miles of road would be decommissioned. (EA at 19.)

The Field Manager concluded that the timber harvest and other silvicultural management actions would move forest stands toward a healthy, sustainable condition, thereby providing a sustainable supply of timber

3/ The Ginger Springs Timber Sale would authorize timber harvest on 263 acres in 14 sale units in secs. 21, 23, 25, and 27, T. 35 S., R. 2 E., Willamette Meridian, Jackson County, Oregon. The overall timber sale area is 875.96 acres, but 612.96 acres are reserved. KSWC asserts that one cannot discern from the EA which units are in the Ginger Springs Timber Sale Project. (SOR at 6.) That timber sale had not been designated when the EA and Decision Record were issued. However, the EA and Decision Record described the general location of all of the units identified for timber harvest under Alternative 4 by section, township, and range and depicted them on a map of the Bieber Wasson project. See EA at 22, Map ("Alternative 4"); Decision Record at 1. BLM first published notice of the Ginger Springs Timber Sale on Aug. 31, 2000, setting out the description, by section, township, and range, and the "Prospectus" for the sale clearly identifies the units and their location. See Prospectus, dated Sept. 28, 2000, at 1, "Exhibit A" (Units 25-2, 27-1 and 27-23 are regeneration harvests).

4/ NFP is the title given to the "Standards and Guidelines for Management of Habitat for Late - Successional and Old - Growth Forest Related Species Within the Range of the Northern Spotted Owl," which was adopted by the Secretaries of Interior and Agriculture, in an Apr. 13, 1994, Record of Decision (ROD). Generally, the NFP outlines the comprehensive management

and other forest products to the community while promoting desired tree species, tree survival, and tree growth. (Decision Record at 2; see also Decision at 4.)

On August 31, 2000, BLM published a Notice of Sale authorizing the Ginger Springs Timber Sale, pursuant to 43 CFR 5003.2(a) and (b).

On September 15, 2000, KSWC filed a protest of the Ginger Springs Timber Sale, generally challenging the adequacy of the EA and asserting that BLM had failed to substantiate its finding that there is not likely to be any significant impact to the human environment.

In his October 2000 decision, the Field Manager denied KSWC's protest. After addressing the points raised by KSWC, he held that KSWC had failed to identify any environmental impact that was likely to occur as a consequence of the proposed timber sale which BLM had not adequately considered in its EA, and that no EIS was required. KSWC appealed to this Board.

By memorandum dated December 20, 2000, BLM notified the Board that it had decided to award the timber sale contract (No. OR-110-TS00-03) to the Boise Cascade Corporation, pursuant to 43 CFR 5003.3(f). The contract was issued on December 27, 2000.

By order dated February 27, 2001, the Board denied KSWC's petition for a stay of the effect of the Field Manager's October 2000 decision during the pendency of the appeal.

Before addressing the substantive issues, we will address a motion to dismiss filed by BLM. BLM contends that KSWC's appeal should be dismissed because it was filed and is being pursued by a party not shown to be qualified to practice before the Board, under 43 CFR 1.3(b). It contends that there is "no submission from [KSWC] indicating whether Tom Dimitre is an attorney representing [KSWC], or whether he is an officer or full-time employee of KSWC." (Motion to Dismiss, dated Apr. 3, 2001, at 2.).

The regulation at 43 CFR 1.3(b) sets out various categories of persons entitled to practice before the Department, and this Board. Resource Associates of Alaska, 114 IBLA 216, 218 (1990). BLM asserts that KSWC's representative, Tom Dimitre, has not been shown to fall into any of these categories. The Board is not required, by statute, regulation, or Departmental policy, to dismiss an appeal filed by someone not qualified to practice before the Department. Rather, the appeal is subject to

fn. 4 (continued)

of timber and other natural resources on Federal lands in California, Oregon, and Washington, within the geographic range of the Northern spotted owl (designated as a threatened species under the Endangered Species Act of 1973 (ESA), as amended, 16 U.S.C. §§ 1531-1543 (1994)).

dismissal for that reason. Klamath Siskiyou Wildlands Center, 155 IBLA 347, 350 (2001); Resource Associates of Alaska, 114 IBLA at 218; Ganawas Corp., 85 IBLA 250, 251 (1985); Henry H. Ledger, 13 IBLA 356, 357 (1973).

When the person filing an appeal fails to demonstrate that he is qualified under 43 CFR 1.3(b) to practice before the Department, and the record does not otherwise establish the requisite qualification, the appeal will be dismissed. 5/ Gail Schmardebeck, 142 IBLA at 161-62; Resource Associates of Alaska, 114 IBLA at 218-19; Robert G. Young, 87 IBLA at 250. Thus, if Dimitre is unable to demonstrate that he is qualified to practice under 43 CFR 1.3(b), we would promptly dismiss this appeal.

In response to BLM's motion, KSWC states that Dimitre is qualified to practice because KSWC is a "501(c)(3) non-profit organization registered with the U.S. Internal Revenue Service," and Dimitre is one of its officers. 6/ (Response to BLM's Motion to Dismiss at 1; see 26 U.S.C. § 501(c) (1994). As supporting evidence, KSWC provides a declaration by Spencer Lennard, a KSWC Director, who attests that KSWC considers Dimitre to be an officer, responsible for commenting on BLM's timber sale planning documents and appealing adverse BLM decisions to the Board. (Lennard Affidavit dated May 14, 2001.) This presentation is essentially the same as was presented in Klamath Siskiyou Wildlands Center, 155 IBLA 347, 352 (2001). Our determination here is the same as it was in that case. BLM's motion to dismiss is denied.

In its SOR, KSWC contends that the Field Manager erred when denying its protest and permitting the timber sale to go forward because BLM did not adequately consider all of the potential environmental impacts of the timber harvest and related activity in its EA. KSWC also asserts that because the sale (and resulting harvest) will likely result in significant impacts to the human environment, BLM must prepare an EIS, and its failure to prepare an EIS violates section 102(2)(C) of NEPA. KSWC asks this Board to reverse the Field Manager's decision to proceed with the timber sale and remand the case to BLM for preparation of an EIS, or an "adequate EA." (Notice of Appeal at 2; see SOR at 11.)

[1] A BLM decision to proceed with a proposed action without preparing an EIS will be deemed to be in accordance with section 102(2)(C) of

5/ The burden is on the person purporting to represent an appellant to demonstrate qualification under 43 CFR 1.3(b) to practice before the Department. Klamath Siskiyou Wildlands Center, 155 IBLA at 349-51; Gail Schmardebeck, 142 IBLA 160, 161-62 (1998); Resource Associates of Alaska, 114 IBLA at 218-19; Robert G. Young, 87 IBLA 249, 250 (1985); Allen Duncan, 53 IBLA 101, 103, 88 I.D. 345, 346 (1981). "Although this regulation may seem harsh for occasionally penalizing an otherwise qualified appellant, its enforcement is necessary to protect those who do business with the Department against the risk of inadequate or false representation." Ganawas Corp., 85 IBLA at 251 (1985).

6/ KSWC's response to BLM's motion to dismiss was filed by an attorney who was qualified to practice under 43 CFR 1.3(b).

NEPA if the record demonstrates that BLM has, considering all relevant matters of environmental concern, taken a "hard look" at potential environmental impacts, and made a convincing case that no significant impact will result, or that the impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. Cabinet Mountains Wilderness v. Peterson, 685 F.2d 678, 681-82 (D.C. Cir. 1982); In Re North Murphy Timber Sale, 146 IBLA 305, 310 (1998) 7/ ; Nez Perce Tribal Executive Committee, 120 IBLA 34, 37-38 (1991). An appellant seeking to overcome a decision to proceed with a proposed action without preparing an EIS must demonstrate, with objective proof, that BLM failed to or did not adequately consider a substantial environmental question of material significance to the proposed action, or that it otherwise failed to abide by section 102(2)(C) of NEPA. In Re North Murphy Timber Sale, 146 IBLA at 310; Southern Utah Wilderness Alliance, 127 IBLA 331, 350, 100 I.D. 370, 380 (1993); Red Thunder, 117 IBLA 167, 175, 97 I.D. 263, 267 (1990); Sierra Club, 92 IBLA 290, 303 (1986).

When BLM has complied with the procedural requirements of section 102(2)(C) of NEPA, by taking a hard look at all of the environmental impacts of a proposed action, it will be deemed to have complied with that statute, regardless of whether a different substantive decision could be reached by this Board or a court. Strycker's Bay Neighborhood Council v. Karlen, 444 U.S. 223, 227-28 (1980); Natural Resources Defense Council v. Morton, 458 F.2d 827, 838 (D.C. Cir. 1972); Oregon Natural Resources Council, 116 IBLA 355, 363 (1990). In Oregon Natural Resources Council, supra at 361 n.6, we said:

[Section 102(2)(C) of NEPA] does not direct that BLM take any particular action in a given set of circumstances and, specifically, does not prohibit action where environmental degradation will inevitably result. Rather, it merely mandates that whatever action BLM decides upon be initiated only after a full consideration of the environmental impact of such action.

KSWC argues that BLM failed to adequately consider the potential site-specific impacts of the approved timber harvest and related activity, by generalizing impacts and including no discussion at all regarding wildlife, plants, old growth trees, and other important issues. (SOR at 5.)

BLM considered potential site-specific impacts of the proposed timber sale, focusing on those impacts posing the likelihood of being significant. See EA at 49-53 (Alternative 4). Thus, the EA addressed individual and/or cumulative effects of the proposed timber harvest and related activity in

7/ Rev'd on other grounds, Oregon Natural Resources Council v. United States Forest Service, No C98-942WD (W.D. Wash. Aug. 2, 1999), slip op. at 11-12.

terms of the health and vitality of the tree stands. It specifically considered tree density and dwarf mistletoe infestation, the magnitude of surface water runoff from the Transient Snow Zone (TSZ), the condition of the aquatic habitat in the local drainages, and the likelihood of fires resulting from fuels build-up. See id. at 13-14. The EA addressed the impact on wildlife caused by alternative 4 in Appendix C to the EA. BLM specifically noted that the level of its analysis was limited to that which is necessary to determine if significant environmental impacts are anticipated. (See EA at 9, 34). In its answer at 2, BLM states that only those resource values BLM identified as pertinent are addressed in detail. KSWC provides no evidence to the contrary, and therefore fails to justify requiring BLM to address these issues in its EA. We find no fault with the scope or depth of analysis in the EA sufficient to warrant vacating BLM's decision.

KSWC argues that BLM has not provided site-specific analysis or supporting evidence that the timber harvest and related activity will maintain or improve long-term soil productivity in the contract area, and that this showing is required by BLM's RMP. (SOR at 5.) KSWC asserts that BLM provides no credible scientific data or other evidence (including that based on past experience) supporting the conclusion in its October 2000 decision that the loss of soil productivity on tractor logged sale units will be "'less than 5%'." Id. (citing Decision at 3). KSWC contends that there must be evidence supporting this conclusion because over 50% of the soil has been displaced and/or compacted in "many" sale units BLM has tractor logged in the past; that these units have been previously entered; and, for those reasons, these units are likely to suffer from cumulative impacts. (SOR at 5.) KSWC also asserts that BLM has failed to substantiate that ripping skid trails after regeneration harvest helps to keep soil losses to less than 5 percent. It states that "BLM provides no data regarding how ripping has effectively mitigated soil productivity losses in the past, by comparing growth charts of undisturbed soils vs. soils that have been ripped." Id.

BLM is required to adequately study any measure identified as having a reasonable chance of mitigating a potentially significant impact of a proposed action and reasonably assess the likelihood that the impact will be mitigated to insignificance by the adoption of that measure. "NEPA requires an analysis of the proposed mitigation measures and how effective they would be in reducing the impact to insignificance." Powder River Basin Resource Council, 120 IBLA 47, 60 (1991); see, e.g., National Wildlife Federation, 126 IBLA 48, 61 (1993); National Wildlife Federation, 82 IBLA 303, 315 (1984). An appellant must establish that BLM failed to properly consider appropriate mitigation measures, including that those considered will be inadequate to accomplish their intended purpose. See Oregon Natural Resources Council, 116 IBLA at 362 n.7. Mere differences of opinion, even by experts, regarding the efficacy of certain mitigation measures will provide no basis for reversal. See County of San Diego v. Babbitt, 847 F. Supp. 768, 775 (S.D. Cal. 1994); National Wildlife Federation, 126 IBLA at 62.

BLM concluded that, by implementing various mitigation measures, long-term soil productivity losses on tractor-logged sale units would not exceed the 5-percent threshold set by the RMP, and that these measures would adequately mitigate levels of soil compaction.

With the implementation of the project design features * * * for proper soil moisture conditions (less than [2]5 [percent]) and proper equipment (winged toothed subsoiling [or ripping])[], and skid trail spacing (150 ft.),[] it is expected that amelioration efforts will be effective at meeting identified targets for soil productivity. * * *

Existing soil compaction in proposed tractor harvest units in this project area are currently at 15 [percent] to 40 [percent] impacted by past harvest entries. As these previously impacted areas will be treated under this action, the amount of existing soil compaction is expected to be reduced from current levels to below the 12 [percent] threshold for untreated impacted areas, with a subsequent gain in soil productivity to below the 5 [percent] loss threshold with this proposed action and implementation of it[]s project design features. [8/]

(Answer at 3; see EA at 23-25; Decision at 3.) BLM also noted that the amelioration of soil compaction by ripping and other means of tillage is well documented. (Answer at 3.) KSWC provides no evidence that it is likely that soil productivity losses would exceed five percent after the harvest and related activity (including mitigating measures), or that otherwise contradicts BLM's expert opinion and analysis.

KSWC contends that, in its EA, BLM failed to adequately consider the potential cumulative impacts of the approved timber harvest and related activity, and the past, present, and future "public and private projects in the area." (SOR at 5.) It states that BLM did not address the cumulative impacts likely to result from the Ginger Springs Sale, BLM's planned Indian Soda timber sale, and the Forest Service's planned Bibbits and Buck Point timber sales, all of which are "in the same watershed," KSWC describes as "an area of large clearcuts, that extend to the horizon." Id. at 10.

8/ BLM explained it was likely that the 5-percent threshold would be exceeded if more than 12 percent of the contract area was compacted: "[R]esearch * * * indicated that the loss in soil productivity of a given harvest unit was equivalent to approximately one half of the amount of area subjected to compaction. The threshold of approximately 5 [percent] soil productivity loss from timber harvest activities * * * equates to an allowance of approximately 12 [percent] area impacted by tractors." (Answer at 3.)

KSWC alleges that BLM failed to consider that the Ginger Springs Timber Sale and the past, present, and future sales in the contract area will cumulatively reduce the canopy cover in the TSZ, despite BLM's conclusion that openings in the canopy will be minimized. It argues that contrary to BLM claims that it is minimizing openings, a KSWC field review of the area shows that a large number of acres of public and private lands have already been clearcut, and the portion of the TSZ having little or no canopy is already high. (SOR at 6.) In its protest at 2, KSWC contended that large, landscape size openings already exist in the TSZ due to very heavy private and BLM logging, and that more is planned. It claims that this sale, through regeneration and other clearcut techniques, will further increase openings in the TSZ, and that in many areas the only large trees left are targeted for cutting in this sale.

BLM must consider the potential cumulative impacts of a proposed action, together with past, present, and reasonably foreseeable future actions. 40 CFR 1508.7; see Park County Resource Council, Inc. v. United States Department of Agriculture, 817 F.2d 609, 623 (10th Cir. 1987); Howard B. Keck, Jr., 124 IBLA 44, 53 (1992), aff'd, Keck v. Haste, No. S92-1670-WBS-PAN (E.D. Cal. Oct. 4, 1993).

In his Decision Record, the Field Manager stated that when he approved the proposed timber sale, he had "take[n] into consideration cumulative impacts of past harvesting and silviculture practices both on nearby private and Federal lands." (Decision Record at 2; see EA, Appendix E (Silvicultural Prescription) at 3, 8, 12.) The EA reflects the consideration of cumulative impacts, and focuses on the salient aspects of the environment. See EA at 51-53. BLM notes that the EA was tiered to the EIS for the RMP, and the cumulative effects of timber harvest within Matrix Lands were analyzed at the programmatic level. (Decision at 9) This statement is not effectively challenged by KSWC. See In Re North Murphy Timber Sale, 146 IBLA at 314-15.

KSWC fails to "demonstrate that, because of geographic proximity and/or other reasons, there is a likely interaction between other projects and the proposed project which may result in an enhanced or modified impact that BLM did not consider." Wyoming Outdoor Council, 147 IBLA 105, 109 (1998). Nor does it identify any other past, present, or reasonably foreseeable future "projects" or actions that might result in a significant cumulative impact. It provides no specific evidence that the Ginger Springs Timber Sale, the Indian Soda, Bibbits, and/or Buck Point timber sales are likely to have any significant cumulative impact on the environment. 9/ See SOR at 5, 9, 10; Protest at 4, 5. Thus, KSWC fails to show that BLM did not adequately consider the type or magnitude of cumulative impacts likely to occur as a consequence of the proposed timber sale. The reasons for this failure are set out in greater detail below.

9/ The Indian Soda timber harvest will take place in T. 37 S., Rs. 2 and 3 E., and T. 38 S., R. 3 E., Willamette Meridian, Jackson County, Oregon, which is some distance from the Ginger Springs sale.

The cumulative impact to the canopy cover in the TSZ portion of the contract area was thoroughly addressed by BLM. (EA at 7, 14, 31-32, 49-52; Decision at 3, 5; Answer at 10.)

The TSZ is the zone (elevation from 3,500 to 4,500 feet) where snow will accumulate in existing openings in the forest canopy. The magnitude of the impact of a rain-on-snow event increases with an increase in the openings in the forest canopy. A canopy cover greater than 60-70 percent is considered adequate by BLM. (EA at 31.) BLM concluded that, even given existing openings in the canopy of the TSZ made by past timber harvest, canopy cover would be decreased from 80-100 percent to approximately 60-70 percent with mortality salvage and to 10-40 percent (depending on the level of green tree retention) with regeneration harvest. (EA at 50.)

There would be an increase of approximately 21 acres of non-recovered openings within the TSZ from Alternative 4. (See EA at 51.) This increase equates to a 3 percent increase in openings. (EA at 51.) In its Decision at 5, BLM states that canopy closures would be maintained at 60 to 70 percent except in the case of regeneration harvest. At page 10 of its Answer, BLM states that "[m]ortality salvage harvest units were designed to maintain 60-70% canopy cover to minimize openings in the TSZ and not create openings of more than 2 acres in size to maintain edge effect for snow pack accumulations * * *. This design equates to a very low percent (approximately 3%) increase in non-recovered openings in addition to the current 25 [percent] of non-recovered openings." A canopy cover of 60 to 70 percent, which can be found on most of the lands included in the Ginger Springs sale following harvest, is considered adequate to reduce the potential effect of increased surface runoff from rain-on-snow events. (EA at 31; see Biological Assessment (BA), dated Mar. 13, 2000, at 27; BLM Answer at 10.) KSWC provides no evidence demonstrating that BLM did not adequately consider the potential cumulative impacts of canopy reductions in the TSZ portions of the contract area. 10/

KSWC challenges BLM's conclusion in its FONSI that because no significant impact is likely to occur by going forward with the Ginger

10/ KSWC has submitted no evidence that canopy cover reduction (as a direct result of the Ginger Springs Timber Sale or cumulatively with other timber sales in the area) is likely to lead to "higher peak flows" in streams, in violation of the BLM's Watershed Analysis (WA) recommendation that in-stream flows be maintained and enhanced in a manner that is "'sufficient to create and sustain riparian, aquatic, and wetland habitats and to retain patterns of sediment, nutrient, and wood routing.'" (SOR at 10 (quoting from WA at 36); see Protest at 3, 4.) It has failed to contradict BLM's conclusion that there would be no substantial impact on peak flows in the drainage from canopy reductions. (EA at 31, 51-52; Decision at 3, 6.) Nor has it established that BLM failed to show compliance with the WA recommendation, or shown why the WA recommendation is not being followed. (SOR at 10.)

Springs Timber Sale it is not necessary to prepare an EIS. (SOR at 3, 6, 8-9.) However, KSWC's entire argument seems to be that BLM was not justified in reaching that conclusion because it lacks the supporting scientific analysis and data. See, e.g., its allegation at page 6 of its SOR that "[i]t is impossible to tell if there are significant impacts, because the BLM has not adequately analyzed th[ese] issue[s] in the EA, as required by NEPA." We find that the Field Manager's FONSI is sufficiently backed by scientific analysis and/or data, and that KSWC has failed to identify a significant impact likely to occur as a consequence of the sale and related activity not identified and addressed in the EA, or to provide evidence supporting this allegation.

KSWC argues that BLM failed to consider a reasonable range of alternatives to the proposed action, and focused on "nearly identical" alternatives involving the "same sale units," altering only the "type of harvest and logging systems." (SOR at 6.) It asserts that BLM should have thoroughly addressed deferring timber harvest in some of the sale units, helicopter logging, and decommissioning more roads in the contract area. 11/ Id. at 7.

BLM is required by section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (1994), to consider "appropriate alternatives" to a proposed action and their environmental consequences. See 40 CFR 1501.2(c) and 1508.9(b); City of Aurora v. Hunt, 749 F.2d 1457, 1466 (10th Cir. 1984); Howard B. Keck, Jr., 124 IBLA at 53; Powder River Basin Resource Council, 120 IBLA at 55-56. The alternatives should be reasonable alternatives to the proposed action, designed to accomplish its intended purpose, and technically and economically feasible. 40 CFR 1500.2(e); Headwaters, Inc. v. BLM, 914 F.2d 1174, 1180-81 (9th Cir. 1990); City of Aurora v. Hunt, 749 F.2d at 1466-67; Howard B. Keck, Jr., 124 IBLA at 53-54. This requirement is imposed to ensure that the BLM decisionmaker "has before him and takes into proper account all possible approaches to a particular project." Calvert Cliffs' Coordinating Committee, Inc. v. United States Atomic Energy Commission, 449 F.2d 1109, 1114 (D.C. Cir. 1971).

We are not persuaded that BLM erred by failing to consider the alternative of deferring timber harvest on the sale units. The deferral of harvest on all units is the no action alternative, which was addressed in the EA and underlying EIS. It basically results in none of the impacts associated with harvest, save the benefits associated with the harvest: reduced stand densities, reduced competition for moisture, sunlight and material, and increase in tree growth. (EA at 35; Decision at 2.) Similarly, the deferral, or even elimination, of harvest on some of the

11/ KSWC asserts that BLM must "greatly reduce system road miles in the watershed by decommissioning/obliterating roads," to comply with a specific recommendation of BLM's WA. (SOR at 10.) We find no requirement that BLM undertake this effort in connection with the Ginger Springs Timber Sale, and thus no violation of the recommendation because that effort was not incorporated in the sale.

units, while not specifically addressed in the EA, results in the absence of impacts associated with harvesting the units subject to deferral or elimination. Since these impacts have been analyzed in the EA, BLM is fully aware of what would be entailed if harvest is deferred on these units. Further, this is already covered under the umbrella of BLM's analysis of the no action alternative. We see no point in requiring BLM to separately address the alternative of deferring harvest on some of the units, and find no violation of section 102(2)(E) of NEPA.

We are also not persuaded by KSWC that BLM failed to consider the alternatives of helicopter logging and decommissioning more roadways in the contract area. The primary purpose of the proposed timber sale was to provide a sustainable supply of timber while benefiting the health and vitality of trees, tree stands, and the forest ecosystem. (EA at 3-4, 7.) The selection of logging method (skyline cables, tractors, and helicopter) was based on the features of the tract to be logged. See Prospectus at 3-5. All of the alternatives, save no action, provide for permanent or temporary decommissioning of a total of 5.6 miles of road. Id. at 5, 17.

KSWC advances the alternative of engaging in additional helicopter logging and decommissioning more roadway because it believes that doing so would have more of a beneficial impact on the environment than the proposed action. BLM concluded that roads do not generally pose a major adverse environmental impact in the project area. (EA at 4.) The fact that some alternative might achieve other or even greater purposes, including benefiting the environment in more or different ways, does not render that action an alternative which BLM is required to consider. Howard B. Keck, Jr., 124 IBLA at 53-54.

KSWC argues that BLM failed to abide by NFP's "Survey and Manage" (S&M) requirements, because its surveys were not correctly completed in accordance with "established protocols." (SOR at 6.) In his Decision Record and FONSI, the Field Manager reported that BLM had completed all of the required S&M surveys, and that his approval of the Ginger Springs Timber Sale was in compliance with the NFP. (FONSI at 1-2; Decision Record at 2; see Decision at 3; EA at 9-13, 30, Appendix B; EA, Appendix C (Wildlife Report, dated July 15, 2000) at 3-4; BLM Answer at 4.) The EA at 9-13 documents the surveys conducted by BLM. KSWC has submitted no evidence in support of its assertion that the surveys were not properly conducted, and merely relies on its allegation that "we have yet to find one [timber sale] where surveys have been correctly completed to established protocols." (SOR at 6.) We find no violation of the S&M requirements of the NFP.

KSWC asserts that BLM failed to provide scientific data and other evidence that it will meet the Aquatic Conservation Strategy (ACS) requirements of the NFP. (SOR at 7-8.) KSWC asserts that BLM did not show that timber harvest and related activity will maintain or enhance the quality and quantity of water in affected local streams, in satisfaction of the ACS. It also asserts that BLM has not substantiated its conclusion that

the ACS does not require a riparian buffer zone next to certain ephemeral streams in the contract area. (SOR at 8.)

BLM concluded that the Ginger Springs Timber Sale will comply with the requirements of the ACS, and will not prevent the attainment of ACS objectives for the affected watersheds. 12/ (FONSI at 2; Decision at 5-6; Answer at 6.) This is amply supported by evidence in the record. See BA at 5-30; EA at 51-52. BLM held that, other than a potential short-term increase in sediment levels, the water quality and quantity in local streams would not be adversely impacted. (BA at 24-28; EA at 49; Decision at 3, 5.) KSWC provides no evidence to the contrary. In addition, BLM concluded that no buffer is needed for the ephemeral streams in the contract area because those streams do not meet the definition of "intermittent streams" under the ACS, "because they do not have a definable channel and annual scour and deposition." (Decision at 5; Answer at 6; see ROD, Attachment A at C-31.) KSWC offers no evidence or argument disputing this conclusion, and we are not persuaded that permitting the Ginger Springs Timber Sale to go forward will violate any of the requirements of the ACS. See In Re Red Top Salvage I Timber Sale, 142 IBLA at 115.

KSWC argues that even after taking into consideration the mitigating measures (including "Best Management Practices" (BMP) and "Project Design Features" (PDF)), BLM failed to demonstrate that timber harvest and related activity will not result in a violation of the Clean Water Act (CWA), as amended, 33 U.S.C. §§ 1251-1387 (1994). It states that "BLM does not provide any data showing that BMPs and/or PDFs successfully mitigate impacts from a project such as this one. * * * [J]ust because BMPs and PDFs are being used, it does not mean that they are in compliance with the CWA." (SOR at 11.)

In its Decision, BLM concluded that there would be no CWA violation. (Decision at 9; Answer at 10-11.) "The treatment would be expected to indirectly result in an acceleration of achieving the characteristics of

12/ KSWC argues that BLM's failure to include its analysis of whether the nine ACS objectives will be satisfied is itself violative of section 102(2)(C) of NEPA, because members of the public are not afforded notice and an opportunity to comment. (SOR at 8.) BLM's analysis is found in a Mar. 13, 2000, BA, which was not a part of the EA. "This assessment included a complete evaluation of the effects of the project for consistency with the nine ACS objectives." (Decision at 6.) Nonetheless, we agree with BLM that it is not required by section 102(2)(C) of NEPA to make its analysis regarding compliance with the ACS objectives of the NFP in its EA. (Answer at 6; see In Re Red Top Salvage I Timber Sale, 142 IBLA 109, 113-15 (1998).) Further, there is an opportunity to challenge this analysis during the protest/appeal period following BLM's decision to go forward with the sale. We are not persuaded that BLM failed to comply with any Federal court directive to demonstrate compliance with ACS objectives, "on a site, watershed and landscape scale." (SOR at 8.)

healthy, mature stand that would provide sufficient tree canopies to provide the long-term habitat elements necessary for healthy aquatic ecosystems." (EA at 52.) KSWC provides no evidence to the contrary, and has failed to show that a CWA violation is likely to occur.

Finally, KSWC argues that BLM erred when determining, without supporting data, that timber harvest and related activity are not likely to adversely affect a threatened or endangered species of fish, thus violating section 7 of the ESA, as amended, 16 U.S.C. § 1536 (1994). (SOR at 11.)

Fish listed as threatened or endangered species and their critical habitat are afforded protection under section 7 of the ESA. BLM may not take action likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat. 16 U.S.C. § 1536(a)(2) (1994); Natural Resources Defense Council v. Houston, 146 F.3d 1118, 1125, 1127 (9th Cir. 1998). To avoid a taking, BLM is required, by section 7(a)(2) of the ESA, to consult with the National Marine Fisheries Service (NMFS), U.S. Department of Commerce, regarding whether the proposed activity is likely to result in a taking, whenever it finds that the activity may affect a listed species and/or its critical habitat. 16 U.S.C. §§ 1532(15) and 1536(a)(2) (1994); 50 CFR 402.01 and 402.14(a) and (b)(1); Natural Resources Defense Council v. Houston, 146 F.3d at 1125-27. Consultation may be informal when BLM determines that the proposed activity is not likely to adversely affect a listed species and/or its critical habitat, and NMFS concurs. 50 CFR 402.14(a) and (b)(1); Natural Resources Defense Council v. Houston, 146 F.3d at 1126.

BLM determined that proceeding with the Ginger Springs Timber Sale might, but was not likely to, adversely affect any threatened or endangered fish species, or its critical habitat, and that the timber harvest was expected to have a beneficial effect on the long-term health of the aquatic ecosystems. (Letter to NMFS from District Manager, Medford District, Oregon, BLM, dated Apr. 14, 2000, at 2; BA at 31; EA at 31-33, 48-49, 51-53; Decision at 7; Answer at 11.) After making this determination, BLM informally consulted with NMFS, and NMFS concurred with BLM's assessment. (Letter to District Manager from Regional Administrator, Northwest Region, NMFS, dated June 21, 2000, at 1-2, 8-9; see FONSI at 2; Decision at 7.)

KSWC makes no effort to demonstrate that the proposed action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat. Nor has it shown that BLM was required, by section 7(a)(2) of the ESA and 50 CFR 402.14(a), to formally consult with NMFS. We find no violation of section 7 of the ESA. See Natural Resources Defense Council v. Houston, 146 F.3d at 1125-27.

In summary, we conclude that the record supports a finding that the Field Manager properly determined, in his August 2000 Decision Record and

FONSI, that no significant adverse impact would result from the proposed Ginger Springs Timber Sale. Further, the record supports a finding that BLM has considering all relevant matters of environmental concern, taken a hard look at potential environmental impacts and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by adoption of the identified mitigation measures, supporting a determination that no EIS is required. Nez Perce Tribal Executive Committee, 120 IBLA at 37-38.

KSWC has failed to demonstrate, with objective proof, that BLM failed to or did not adequately consider a substantial environmental problem of material significance to the proposed action, or otherwise failed to abide by section 102(2)(C) of NEPA. Southern Utah Wilderness Alliance, 127 IBLA at 350, 100 I.D. at 380; Red Thunder, 117 IBLA at 175, 97 I.D. at 267; Sierra Club, 92 IBLA at 303. KSWC's differing opinion regarding likely environmental impacts and preferable courses of action do not demonstrate a violation of the procedural requirements of NEPA. San Juan Citizens Alliance, 129 IBLA 1, 14 (1994).

To the extent not addressed herein, all other arguments of fact and law asserted by KSWC are rejected on the grounds that they are either contrary to the facts or law, or are immaterial.

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

R.W. Mullen
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge