

BARK  
(IN RE RUSTY SAW TIMBER SALE)

IBLA 2002-70

Decided September 29, 2005

Appeal from a decision of the Cascades, Oregon, Field Manager, Bureau of Land Management, denying protest of the Rusty Saw Timber Sale (OR080-TS01-504). EA OR080-99-08.

Affirmed; petition for stay denied as moot.

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: Generally

The Board will ordinarily uphold a BLM determination that a proposed project, with appropriate mitigation measures, will not have a significant impact on the quality of the human environment if the record establishes that a careful review of environmental problems has been made, relevant environmental concerns have been identified, and the final determination is reasonable. A party challenging BLM's decision to approve a timber sale based on a finding of no significant impact has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal. If the appealed decision is the denial of a protest, the appellant must affirmatively point out error in the protest decision.

2. Timber Sales and Disposals: Northwest Forest Plan: Aquatic Conservation Strategy

Review of a challenge to a timber sale's consistency with the Aquatic Conservation Strategy of the Northwest Forest Plan is guided by principles generally relevant to review of environmental compliance. The record must provide a rational basis for a finding of consistency. A party challenging such a finding must demonstrate either an error of law or fact or a failure to consider a significant impact of the timber sale. The challenging party bears the ultimate burden of proof which must be satisfied by objective evidence rather than differences of opinion.

APPEARANCES: Natalie Shapiro and Greg Dyson, Portland, Oregon, for Bark; Richard C. Prather, Cascades Field Manager, Salem District Office, Bureau of Land Management, Salem, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Bark has appealed the October 11, 2001, decision of the Cascades, Oregon, Field Office Manager (Field Manager), Bureau of Land Management (BLM) (Administrative Record (AR), Tab 2), denying its protest of the Field Manager's July 23, 2001, Final Decision Documentation and Decision Rationale (FDD/DR), implementing the Rusty Saw Timber Sale. The timber sale was analyzed as Alternative A in the May 28, 1999, environmental assessment (EA) and finding of no significant impact (FONSI) (EA OR080-99-08) (AR, Tab 5), and was modified by the FDD/DR (AR, Tab 4).<sup>1/</sup>

BACKGROUND

The EA for the sale was prepared pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4332(2)(C) (2000). The EA identified the purpose of the proposed timber sale as meeting the need for forest products and forest habitat as described in the 1995 Salem District Resource Management Plan (Salem RMP) by providing a supply of timber and other

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<sup>1/</sup> Bark requested a stay of the sale and of any logging, road construction, or other site preparation pursuant to the sale pending issuance of the final decision in this appeal. In view of our resolution of this appeal on the merits, we deny Bark's request for stay as moot.

forest products while retaining important ecological components within the forest management area. (EA at 1.) The EA was tiered to the Salem District Record of Decision (ROD) and RMP, the Proposed RMP/Final Environmental Impact Statement (EIS), and other environmental documents. See EA at 1. The EA states that the Salem RMP “provides a comprehensive ecosystem management strategy for BLM managed lands in the Salem District in strict conformance with the Northwest Forest Plan (NFP) and the Record of Decision [(ROD)] for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl (April 1994).” (EA at 1.) <sup>2/</sup>

The EA described the proposed action (Alternative A) as the commercial thinning of approximately 176 acres of Matrix lands, <sup>3/</sup> with an expected timber yield of 2,052 hundred cubic feet (CCF), and the treatment of 6 acres of riparian reserve <sup>4/</sup>

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<sup>2/</sup> In response to emerging environmental issues related to timber harvests in old growth forests in this area of the Pacific Northwest, including impacts to watersheds and protected species habitat, BLM, together with the Forest Service, U.S. Department of Agriculture, prepared a Final Supplemental Environmental Impact Statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (FSEIS), dated February 1994, which analyzed alternatives for the comprehensive management of timber and other natural resources on all Federal lands in California, Oregon, and Washington, within the geographic range of the Northern spotted owl. On Apr. 13, 1994, the Secretaries of Interior and Agriculture, based on the FSEIS, issued their ROD which adopted Alternative 9. See ROD at 4. That alternative incorporated Standards and Guidelines for timber harvesting and related activity. See ROD at 4; ROD, Attachment A. Included in the Standards and Guidelines is the Aquatic Conservation Strategy (ACS) “developed to restore and maintain the ecological health of watersheds and aquatic ecosystems contained within them on public lands.” (ROD, Attachment A at B-9.) These documents are collectively referred to as the NFP.

<sup>3/</sup> Lands allocated as Matrix lands in the Salem RMP (RMP at 20) may be managed for harvesting of trees while retaining important ecological components of forest stands. See EA at 2.

<sup>4/</sup> “Riparian reserves are areas along all streams, wetlands, ponds, lakes, and unstable or potentially unstable areas where the conservation of aquatic and riparian-dependent terrestrial resources receives primary emphasis.” (NFP ROD at 7.) The Salem RMP allows silvicultural practices within riparian reserves to control stocking, reestablish and manage stands, and acquire desired vegetation characteristics needed  
(continued...)

to help restore large diameter conifers and coarse woody debris. (EA at 5.) The project would be located in sec. 11, T. 3 S., R. 5 E., Willamette Meridian, Clackamas County, Oregon, within the Eagle Creek watershed. Id. at 2, 5. <sup>5/</sup> Although no new roads would be constructed, 8,000 feet of existing road would be renovated by brushing, grading, spot rocking, tree removal, and culvert replacement, if needed, during the dry season from June 1 to November 1, to bring the road back into condition to support log hauling. Approximately 8,000 feet of road would be blocked or gated. Id. at 5, 7. To prevent the spread of noxious weeds, all ground disturbing equipment would be cleaned before entering BLM lands. Id. at 5.

The EA divided the lands to be thinned into four Units. Unit A included thinning on approximately 86 acres, 52 acres of which would be logged using a ground-based system confined to designated skid trails and the remainder of which would be yarded using a cable yarding system with at least one end of the logs being suspended off the ground. Work would include renovation of approximately 5,500 feet of existing road and blocking or gating the same amount of road at the conclusion of operations, as well as removal of the tops of some of the retained trees to provide structural diversity, wildlife habitat, and improved wind firmness. (EA at 5.) Unit B entailed thinning on approximately 40 acres, with 24 acres harvested using a ground-based logging system confined to existing skid trails and the rest using a cable yarding system with at least one end of the logs suspended during yarding. Id. Operations in Unit B would include removal of the tops of some of the retained trees. Id. Unit C involved thinning on about 30 acres using a ground-based yarding system with at least one end of the logs suspended and removal of some of the tops of the retained green trees. Id. at 5-6. Unit D encompassed thinning on about 20 acres, 12 of which would be harvested using a ground-based yarding system and the remainder of which would be logged using a cable yarding system, renovation of about 2,500 feet of road and blocking or gating the same amount of road at the conclusion of operations, and removal of tops from some of the retained trees. Id. at 6.

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<sup>4/</sup> (...continued)

to achieve ACS objectives. See EA at 2; Salem RMP at 11.

<sup>5/</sup> The EA noted that the forest management treatments incorporated into the proposed action and alternatives were described in the Salem RMP at Appendix C, Best Management Practices (BMPs) and Timber Production Capability Classification Fragile Code Guidance, and complied with the Standards and Guidelines specified in Appendix A of the ROD for the NFP. (EA at 5.)

The EA also delineated the structural restoration treatment planned for the six acres of riparian reserve, noting that riparian reserve widths and treatment would reflect the standards established in the RMP (p. 10), the Eagle Creek Watershed Analysis (WA) (p. 95), and the Water/Riparian section of the EA (p. 9). (EA at 6.) The EA explained that

[T]rees occupying the immediate and co-dominant canopy positions would be thinned to a range of approximately 50 to 100 leave trees per acre. \* \* \* No hardwoods would be cut in the density management areas. This would hasten the development of late-successional stand characteristics on the treatment area. It is anticipated that this treatment would increase the growth rates on the residual trees resulting in larger diameters and deeper, rougher crowns. In addition, it is anticipated that understory conifer, brush, and herbaceous layer development would be initiated where it is absent, and enhanced where it is already present. Most of the cut trees would be removed from the site for lumber. Within 2 years following logging, a goal of having approximately 480 lineal feet per acre of Class 1 down logs would be adhered to in these thinned areas. This time frame would allow the area to be assessed for any down wood that may be created by natural disturbances. If the goal of 480 feet is not realized by then, it would be created. Where logs are removed from the Riparian Reserve, a cable system suspending one end of the logs off of the ground would be employed. For additional structural diversity, up to 4 snags per acre would be created from green residual trees following logging. This would be accomplished by either top girdling, base girdling, or top blasting. Western redcedar would be underplanted in the thinned area following logging operations. No thinning would be done within approximately 75 feet of any stream. The actual distance would be dependent on terrain features and existing vegetation characteristics. It is anticipated, however, that single trees could be selected from this area to create snags \* \* \* where it is deemed appropriate. These trees would only be selected from stands dense enough so that the action would not reduce canopy closure or stream shade. The stream protection buffers would provide ample protection and provide the shade levels required to maintain current water temperature.

(EA at 6.)

The tree topping incorporated into the proposed action involved top-girdling, base-girdling with hand tools, or blasting the tops of up to four green trees per acre

on approximately 100 acres within the Matrix and riparian reserve thinning units, and within the remaining unthinned riparian reserves, with the expectation that one or more of the lateral branches would develop terminal dominance over the next several decades as the tree gained in diameter. (EA at 6-7.) The EA noted that the objective of topping trees was to create structural diversity and to make the trees more wind-firm and that, although the treatment was not designed to kill the trees, if some died as a result of insects or disease or as a result of the treatment, they would contribute to the snag density in the selected stands. According to the EA, the treatment would add an immediate benefit to wildlife by providing additional stand structure and would also help attain compliance with the ACS objectives by assisting in promoting landscape level structural diversity. Id. at 7.

The EA also identified the Deferred Harvest or No Action alternative (Alternative B). This alternative envisioned deferral of thinning on one or more of the proposed harvest units and continuance of natural processes and on-going management activities. (EA at 7.) The EA also described alternatives considered but eliminated from further consideration, including allowing some type of harvesting on a total of 290 acres, which was dropped due to potential conflicts with other resources, and the construction of an additional road. Id.

The EA discussed the project design features and mitigation measures applicable to the proposed timber sale, pointing out that they conformed with the Standards and Guidelines found in the NFP and the BMPs and Timber Production Capability Classification Fragile Code Guidance incorporated into Appendix C of the RMP. (EA at 8-9.) The EA divided these design features and mitigation measures into six categories. The Forest Productivity design features and mitigation measures included prohibiting falling or yarding operations between April 1 and July 1 when sap is flowing and bark is loose to prevent excessive damage to the trees. Id. at 8. The measures affecting soils consisted of limiting ground-based yarding to dry soil conditions and ripping compacted areas around the landings; utilizing a cable yarding system designed to suspend at least one end of the log to reduce compaction and erosion; limiting cable yarding roads by the use of a slack pulling carriage to minimize compaction, gouging, and accelerated erosion; restricting any downhill cable logging to summer months or periods of dry conditions; restricting road renovation to dry soil conditions (generally June 1 to November 1) to limit surface runoff and potential erosion; and blocking or gating 8,000 feet of existing roads following operations. Id.

The features and measures incorporated to protect water/riparian resources entailed maintaining the riparian reserves to the standards for streams and wetlands found in the RMP and the Eagle Creek WA, and establishing riparian reserve

boundaries of 200 feet on each side of the stream or wetland boundary, based on the site potential tree height and the lack of any fish-bearing streams in or adjacent to the proposed harvest units. Id. at 8-9. Thinning in six acres of riparian reserve would be done to “promote attainment of the ACS objectives” with no thinning within 75 feet of any stream channel with tree tops to remain on site in the riparian reserve to provide snag and large woody debris habitat where appropriate. Id. at 9. Road renovation would be limited to periods of dry soil condition and access roads would be surfaced with rock if hauling were to occur during wet conditions to limit surface runoff and erosion. Id. Further, blocking or gating of 8,000 feet of existing road would occur following operations. Id.

As to wildlife/botany issues, the specified measures to protect Northern Spotted Owls included prohibiting all disturbance activities between March 1 and July 1 of each year, with the caveat that this seasonal limitation could be waived if no owls were found during surveys conducted pursuant to U.S. Fish and Wildlife Service (FWS) protocol, and restricting blasting operations from March 1 through September 30. (EA at 10.) Additional mitigation measures to protect wildlife and vegetation called for surveying and managing mollusk sites as necessary to maintain known populations; topping by blasting, girdling, or sawing up to four trees per acre in a portion of the thinning units to promote long-term snag and cull development; closing 8,000 feet of existing road to improve the value of the remaining habitat to wildlife species, reduce the potential spreading of noxious weeds, and lessen the potential for dumping hazardous wastes or household garbage; using seed mixes free from noxious weeds containing either native or non-native sterile annuals or short-lived, non-invasive species; washing all ground disturbing machinery prior to entering the job site; and eradicating or containing any uncovered noxious weed infestations according to BLM-sanctioned methods. Id. The EA added that additional mitigation measures would be incorporated into the proposed timber sale upon the discovery of any affected animal, plant, or fungal species requiring special management, and that the project impacts would be mitigated or the project abandoned if any part of the proposal would impact a protected species, including Federal listed, proposed for listing, and candidate species, Bureau sensitive species, State listed species, and Survey and Manage component 1 and 2 species. Id. at 9-10.

The EA also briefly discussed project design features and mitigation measures relating to late-successional forest and cultural resources. According to the EA, Federal forest lands within Eagle Creek watershed would be managed to retain a minimum of 15 percent in late-successional forest, including mature (80 to 200 years) and old-growth (older than 200 years) seral stage classes. (EA at 11.) As to cultural resources, the EA indicated that, if any cultural or archeological resources were identified during timber operations, the operations would be immediately

halted, the Field Manager notified, and operations resumed only with the Field Manager's approval. Id.

In its discussion of the affected environment, the EA addressed several issues including forest productivity, analyzing existing vegetation and fire risk; soil characteristics; the status of streams and riparian reserves in the watershed; and the status of wildlife and botanical resources, including snags, culls, and woody debris, special habitats, thermal cover and mature forest, special status and special attention species such as the Federally listed Northern Spotted Owl and the NFP survey and manage species including the Oregon Red Tree Vole, the Larch Mountain Salamander, the lynx, bats, mollusks, herpetofauna, raptors, fisheries and aquatic species, and special attention and special status botanical species and noxious weeds. (EA at 12-22.) The EA also briefly discussed the extent of late successional forest on public lands in the watershed. Id. at 22.

The EA evaluated the consequences to the affected environment of implementing the proposed action and the no action alternative. Id. at 23-34. The EA's analysis of the project's environmental effects on water and riparian reserves included a detailed assessment of the proposal's compliance with ACS objectives. As to ACS objective 1: "Maintain and restore the distribution, diversity, and complexity of watershed and landscape-scale features to ensure protection of the aquatic systems to which species, populations and communities are uniquely adapted," the EA noted that the Eagle Creek WA identified the North Fork sub-watershed <sup>6/</sup> as exhibiting less than optimal riparian conditions because of its low, 0-16 percent level of late-seral stands as compared with the natural range variation of 34-78 percent. (EA at 24, citing Eagle Creek WA at 102.) The EA found that, while the proposed treatments would have limited effect on the overall distribution, diversity, and complexity of the sub-watershed because of the small percentage of Federal land in the watershed, the treatments would be a positive step to help restore habitat diversity and complexity by hastening the onset of high large woody debris (LWD) recruitment potential; expediting the development of large diameter trees with large crowns; increasing standing and down dead wood habitat, and green trees with deformities; and advancing the onset of a multi-layered canopy by encouraging the development of understory vegetation. (EA at 24-25.) With respect to ACS objective 2, maintaining and restoring spatial and temporal connectivity within and between watersheds, the EA concluded that since the North Fork sub-watershed lacked connectivity, the project would have little impact on connectivity between watersheds, but would

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<sup>6/</sup> Since the project area fell within the North Fork sub-watershed of the Eagle Creek watershed, the EA focused on that sub-watershed in discussing the ACS issues.

strengthen lateral connection between stream channels and adjacent uplands by restoring late-seral habitat attributes lost through past management. Id. at 25.

The proposed action would also meet ACS objective 3, “[m]aintain and restore the physical integrity of the aquatic systems, including shorelines, banks, and bottom configurations,” because it would increase peak and high flows by less than one percent above existing levels in both normal and unusual storm events, while “[r]iparian treatments in the proposed action would hasten the recruitment of long term woody debris creating pools in the aquatic system to trap sediment and reduce flow rates.” (EA at 25.) As to ACS objective 4, which requires maintaining and restoring water quality necessary to support healthy riparian, aquatic, and wetland ecosystems by retaining water quality in the range that preserves the biological, physical, and chemical integrity of the ecosystem to benefit the survival, growth, reproduction, and migration of individuals composing the aquatic and riparian communities, the EA noted that the project would not alter stream temperatures because the riparian reserves would perpetuate the existing shading of the streams and would filter the project’s minimal and temporary increase in sedimentation before it reached a stream. Id. at 25-26.

The EA determined that the project also conformed to ACS objective 5, “[m]aintain and restore the sediment regime which the aquatic system evolved,” including “the timing, volume, rate, and character of sediment input, storage, and transport.” The EA based this determination on its conclusion that the riparian reserves would adequately filter any sediment from the uplands before it reached the stream due to the low risk of both hill slope erosion and significant sediment input, as well as on the mitigation measures for ground disturbing activities and the decommissioning of new and existing roads. The EA observed that all these factors would limit the scope, duration, and intensity of project generated sediment, which would decrease as natural vegetative recovery took place. Id. at 26.

As to ACS objective 6, “[m]aintain and restore in-stream flows sufficient to create and sustain riparian, aquatic, and wetland habitats and to retain patterns of sediment, nutrient, and wood routing,” protecting the timing, magnitude, duration, and spatial distribution of peak, high, and low flows, the EA found the riparian reserves capable of maintaining and restoring the affected habitats, especially since the project did not involve new road construction and renovated roads would be blocked or gated after logging, commercial thinning generally created minimal increases in sediment delivery, and mitigation measures incorporated into the project would minimize erosion potential from ground disturbing activities. (EA at 26.) The EA added that peak flows from rain-on-snow events would increase by less than one percent and would not affect the magnitude, duration, or spatial distribution of

flows. Id. The riparian reserves included in the proposal would also maintain and restore the timing, variability, and duration of flood plain inundation and water elevation in meadows and wetlands in compliance with ACS objective 7, the EA noted, and the projected minimal increases in peak flows from rain-on-snow events would not alter the critical parameters beyond the range of natural variation. Id. at 26-27.

The EA also concluded that the project complied with ACS objective 8 which called for the maintenance and restoration of species composition and plant community structural diversity “in riparian zones and wetlands to provide adequate summer and winter thermal regulation, nutrient filtering, appropriate rates of surface erosion, bank erosion, and channel migration and to supply amounts and distributions of large wood sufficient to sustain physical complexity and stability.” (EA at 27.) The EA pointed out that the treatments proposed for the riparian reserves would retain existing overstory species diversity, foster new understory development, and augment existing understory species diversity by encouraging western hemlock regeneration. Additionally, the project would promote structural diversity through larger trees, horizontal and vertical canopy diversity, and adequate dead wood; adequate thermal regulation would be sustained and improved over time as the understory developed; and the 75-foot no-thin buffer adjacent to streams and wetlands would prevent any negative impacts to nutrient filtering capacity, bank erosion rates, or channel migration rates. Id.

As to the final ACS objective, objective 9, “[m]aintain and restore habitat to support well-distributed populations of native plant, invertebrate, and riparian-dependent species,” the EA found that the proposed treatment to the riparian reserves would promote the restoration of structural attributes commonly found in late-seral forests, including large trees, horizontal and vertical spacing diversity, and adequate standing and down dead wood. (EA at 27.) According to the EA, the development and maintenance of this habitat type over the long term would create a riparian system well connected to its adjacent uplands with late-seral type forest characteristics and beneficial to local species populations dependent on those attributes. Id.

The EA also observed that, given the very low quantities of snags and culls and the susceptibility of down logs to yarding, the proposed action’s effect on these features was anticipated to be high. (EA at 29.) The EA noted, however, that the proposed thinning in the riparian reserves would, among other things, promote understory regeneration by creating snags and woody debris which would help diversify stand structure, enhance wildlife habitat for species utilizing dead wood, and create small canopy gaps allowing accelerated hemlock growth. Id. at 27-28.

The EA added that treatment of the riparian reserves for density management would also quicken the restoration of a more diverse stand structure, promote species diversity, help create large diameter trees by hastening growth of the residual trees, and encourage properly functioning riparian systems. Id. at 28.

The FONSI, signed on May 27, 1999, concluded, based on the analysis in the EA, that the proposed action, Alternative A, would not result in significant impacts affecting the quality of the human environment beyond those addressed in the Salem RMP and final EIS, the NFP, and the October 7, 1998, EA to Change the Implementation Schedule for Survey and Manage and Protection Buffer-Species. Hence, BLM found that no new EIS or supplement to the existing EIS was necessary.

Although the EA and FONSI were completed in May 1999 and made available for public comment on June 1, 1999, the Field Manager did not issue the FDD/DR until July 23, 2001. He explained that the delay arose from the need to incorporate updated information uncovered during field reconnaissance and additional component 2 Survey and Manage surveys and to modify the proposed action and the EA's analysis and determination of effects in light of that new information. (FDD/DR at 2.) The alterations to the proposed action included reducing unit acreage to reflect the additional Survey and Manage reserves identified in the surveys and increasing the projected timber volume due to the greater than anticipated volume per acre yields determined through a plot cruise of the sale area. These changes consisted of eliminating Unit D and its 20 acres, renaming Unit A as Unit 1 and dropping 24 acres from that unit, and consolidating Units B and C and the riparian reserves into Unit 2 and reducing the total acreage for those areas by five acres, for a total of reduction of 49 acres, while increasing the total anticipated volume from 2088 CCF to 3128 CCF. Id. and Table 1a.

The estimates of yarding by type were also revised as a result of the survey and analysis leading to the decrease of one acre of ground-based yarding and 48 acres of cable yarding. (EA at 2-3 and Table 1b.) The road lengths set out in the EA were modified by the addition of 5,255 feet of road renovation (13,255 feet total), 200 feet of road improvement (200 feet total), and 210 feet of road closing (8,210 feet total). Id. at 3 and Table 2. Changes in the length of road being renovated were attributed to the addition of road segments which are presently open and driveable as contrasted with the proposal considered in the EA which would limit renovations to road segments for which surrounding vegetation had rendered the road undriveable. Id. at 3. The Field Manager also identified changes to the project design features and mitigation measures including topping trees by girdling or chainsaw cutting only, with no blasting; ripping portions of designated tractor skid roads and compacted areas around landings; and restricting all road work, yarding,

and hauling operations to dry soil conditions, generally between July 1 and November 1. Id. at 3-4.

As to changes to the affected environment, the Field Manager stated that three surveys for Larch Mountain Salamanders, a survey strategy 2 species, conducted between March and July 2001 pursuant to prescribed protocols, had discovered no specimens, obviating any need to update the relevant analyses in the EA. (FDD/DR at 4.) Additionally, he modified the vegetation, soil and water, and wildlife components of the environmental consequences discussed in the EA to reflect that there would be a loss of less than one acre of fragmented mature <sup>Z/</sup> forest habitat caused by the additional 200 feet of road improvement (vegetation); that the decrease of 49 acres of area to be thinned would reduce compaction and sedimentation (soil and water); that the 5,255 feet of road renovation and 200 feet of road improvement should result in only a short term increase in sedimentation, given the limitation of all road work, yarding, and hauling operations to dry soil conditions (soil and water); that the closing of an additional 210 feet of road renovation following use would reduce long term impacts (soil and water); and that the likelihood of spotted owl disturbance was remote because no spotted owl dispersal habitat would be removed by the project, no nesting habitat existed within the project's boundaries, and seasonal restrictions had been imposed on all activities between March 1 and July 1 (wildlife). Id.

The Field Manager decided to implement Alternative A of the EA along with the project design features and mitigation measures listed in the EA, as modified in the FDD/DR. He summarized the selected alternative as follows:

1. Commercial thinning of approximately 133 acres of Matrix and Riparian lands from 2 units (Units 1 and 2). It is expected that this will yield approximately 3128 hundred cubic feet (CCF) in the following land allocations.
  - a. 127 acres of Matrix lands from 2 units (Units 1 and 2).
  - b. 6 acres of Riparian lands (Unit 2).
2. Tree Topping: Up to 400 trees per acre would be topped within proposed units, adjacent stands, and riparian reserves to provide structural diversity, wildlife habitat and to improve wind firmness.

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<sup>Z/</sup> The use of the term "mature" was a typographical error; the word should have been "immature." See Protest Decision at 13.

3. Road Renovation: Road maintenance or renovation (brushing, blading, or rocking) would occur on approximately 13,255 feet of existing road.

4. Road Closing: Approximately 8,210 feet of existing roads would be blocked. Roads required to access private lands would not be closed.

5. Road Improvement: Approximately 200 feet of road improvement consisting of the alteration of two road intersections to allow log trucks to haul out a shorter route.

(FDD/DR at 5.)

The Field Manager noted that the selected action conformed to the applicable land management documents including the Salem RMP, the NFP, the February 1994 Final Supplemental [EIS] on Management of Habitat for Late-Successional Forest Related Species Within the Range of the Northern Spotted Owl (FSEIS), the February 1989 Western Oregon Program-Management of Competing Vegetation Final [EIS] and August 1992 ROD, the October 1998 [EA] to Change the Implementation Schedule for Survey and Manage and Protection Buffer Species, the March 2000 Plan Maintenance Documentation: Decision to Delay the Effective Date for Surveying 7 "Survey and Manage" and Protection Buffer Species, and the January 2001 [ROD] and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and Other Mitigation Measures Standards and Guidelines. (FDD/DR at 5-6.) He also stated that the component 2 Survey and Manage surveys for the project complied with the August 2, 1999, Stipulation for Order Dismissing the Action entered in Oregon Natural Resources Council v. U.S. Forest Service and Bureau of Land Management, Civil No. 98-0942WD (D. Or.); that five species were found during the Survey and Manage Mollusk surveys and the areas of sightings were either excluded from the final harvest area or buffered; that the eight discovered Survey and Manage botanical species were all protected with buffers; and that, although Red Tree Vole transects were run and two trees were climbed in the harvest area, no nests were found. Additionally, he indicated that monitoring activities related to the sale would be conducted as described in Appendix J to the Salem RMP. (FDD/DR at 6.)

The Field Manager explained his rationale for approving the selected action as follows:

The selected alternative addresses the identified purpose and need for action in that it will meet the demand for forest products and

forest habitat as described in the [Salem RMP] (\* \* \* pp. 1 and 2). The proposal would also provide for retention of important ecological components within the forest management area. (EA pp. 1). Also, the selected action provides social and economic benefits to local communities through the supply of approximately 3,128 hundred cubic feet of merchantable timber to local mills and some contract work. In addition, the thinning prescription would insure maximum utilization of the site, allow for varied stand densities and maintain the existing species diversity of the upland area of the units.

The “no action” alternative was not selected because it does not address the purpose and need for action.

(FDD/DR at 6.)

The Field Manager briefly responded to the two major concerns expressed in the public comments on the EA. First, he rejected the complaint that the sale did not follow the recommendations of the Eagle Creek WA limiting the amount of timber to be harvested from Federal lands in the watershed every decade. He pointed out that inaccuracies in the assumptions underlying the probable sale quantities forecast in the WA had subsequently been uncovered and observed that, in any event, the intent of the WA, which was prepared by the U.S. Forest Service, was not to set an upper harvest limit for the watershed. (FDD/DR at 7-8.)

The Field Manager also addressed comments that, because the existing road segments identified for renovation had not been used for some time and had revegetated, road renovation was essentially new road construction that should not be allowed since the area had a high road density of 6.6 miles per square mile. He acknowledged that 6,550 of the 13,255 feet of existing road segments included for renovation were overgrown and not driveable, but observed that the remaining 6,705 feet were currently in use. He also pointed out that the running surface and drainage structures were intact on all 13,255 feet, so the only activities needed on the 6,550 feet were brushing the shoulders to improve visibility and increase useable road width, blading the running surface to remove irregularities, and cleaning the ditches and culvert inlets to maintain necessary drainage. Id. at 8. He added that, after completion of the project, the 6,550 feet would be blocked and waterbarred and left to revegetate naturally until the final harvest in about 20 years. He further found that the gentle grades of the road and lack of water course crossings minimized the potential for sediment runoff. Finally, he indicated that, while BLM could not control road construction activities on other ownerships, no plans existed to increase miles of current roads on BLM lands, and that, in fact, another timber harvest project in the

watershed was scheduled to reduce the amount of current roads by 4,445 feet during the summer of 2001. Id.

The Field Manager stated that BLM had informally consulted with the U.S. National Marine Fisheries Service (NMFS) and FWS and had received their concurrences that the sale was not likely to adversely affect any listed species of fish (NMFS August 6, 1999, concurrence, AR Doc. 7) or the Northern Spotted Owl (FWS May 29, 2001, concurrence, AR Doc. 12). (FDD/DR at 9.) He concluded that the FONSI for the sale remained appropriate because the EA, along with the additional information in the FDD/DR, fully covered the modified project, the modified project fell within the scope of the alternatives identified in the EA and had the same or less environmental impact than anticipated for the original proposed action analyzed in the EA, and no significant new relevant circumstances or facts not addressed in the EA existed. (FDD/DR at 9.) He added that the surveys conducted completed the applicable survey requirements for the sale and fulfilled the Survey and Manage commitment identified in the EA. Id. The Field Manager also advised interested parties of their right to protest the approval of the sale which was planned for August 29, 2001. Id.

On August 15, 2001, Bark protested the decision to implement the Rusty Saw Commercial Thinning Plan, the EA, FONSI, and FDD/DR. (AR Doc. 3.) Bark sorted its objections into several categories: water quality and fisheries; thinning in riparian reserves; range of alternatives considered; inadequate analysis of alternatives; wildlife and botany impacts; road construction impacts; effects on soils; effects on vegetation; fire risk impacts; cumulative effects; and significant changes made in the FDD/DR. See Protest at 1-4. Specifically, Bark challenged the sale's conformance with the Eagle Creek WA, the NFP, and the ACS objectives, the range of alternatives considered, and the adequacy of the analysis of the no action alternative. (Protest at 1-2.) Bark also contended that the EA insufficiently evaluated wildlife and botany, omitted any discussion of road related sediment increases, neglected to address soil compaction and soil integrity degradation caused by ground-based logging systems, only vaguely described the details of the thinning, deficiently assessed the project-related increased fire risk, and failed to comprehensively consider cumulative impacts including impacts from other sales in the watershed. Id. at 2-4. Bark further maintained that the significant changes made in the FDD/DR mandated preparation of an EIS. Id. at 4-5.

In his October 11, 2001, decision (AR Tab 2), the Field Manager addressed each of the issues raised in the protest, category by category. As to water quality and fisheries, he agreed that road mileage in a Tier 2 watershed such as Eagle Creek should be reduced and that watershed restoration should be given the highest

preference. He pointed out that in furtherance of those goals, BLM had reduced the length of an existing road on the Delph Creek Timber Sale by approximately 4,440 feet in September 2001 and had improved approximately 2.5 miles of stream in the watershed over the last eight years through the placement of logs, with an additional mile planned for treatment in 2002, and had planted Western Red Cedar and Western Hemlock along stream banks. (Protest Decision at 1.) He rejected Bark's challenge to the sale's conformance to the Eagle Creek WA. He also noted that BLM had selected the no action alternative for the Upper Eagle Timber Sale adverted to by Bark and had dropped that sale from the 2002 timber sale plan signed on September 14, 2001. Id. at 1-2.

The Field Manager acknowledged a mistake in the EA's identification of Eagle Creek as included in the 1994/1996 Oregon Department of Environmental Quality (ODEQ) 303(d) list for not meeting summer temperature standards, noting that ODEQ had removed the stream from the list in 1998. (Protest Decision at 2.) He addressed Bark's concerns about sediment from logging within the riparian reserves by stating that the 75-foot no-logging buffer on each side of the stream, as well as the listed mitigation measures, would protect shade and prevent sediment additions to the stream, while limiting road renovation and improvement and yarding and hauling activities to dry soil conditions would greatly limit sediment production since wet season traffic created most sediment from roads. Id. As to the size of the buffers in the project area outside the riparian reserves, he found that, contrary to Bark's assertion, the streams were not fish bearing and were adequately protected by a "one site tree buffer" (200 feet). He further noted that the project boundary had been adjusted to ensure that two streams where fish had been discovered were buffered by at least "two site-potential tree heights" (400 feet). Id. at 3.

The Field Manager rejected Bark's challenges to thinning in the riparian reserves. He noted that both the NFP and the Salem RMP supported thinning young and mid-seral riparian reserve stands to increase individual tree size. (Protest Decision at 3, citing NFP at B-31 and Salem RMP at 7, 11.) He indicated that the riparian reserves designated for thinning exhibited the same characteristics considered insufficient in the Eagle Creek WA to meet four ACS objectives (Nos. 2, 3, 8, and 9), and that numerous studies validated thinning as a means to achieve those objectives by increasing diameter growth of the residual trees, enhancing potential for large snags and large woody debris, and improving vertical structural diversity. (Protest Decision at 3-4.) As to potential negative impacts of thinning near watersheds, the Field Manager explained that the adopted mitigation measures either conformed to or were more protective than the BMPs designed to maintain or improve water quality and soil productivity and mitigate adverse impacts, listed in Appendix C of the Salem RMP. (Protest Decision at 4-5.) He also explained that,

consistent with all current scientific research related to structure-based land management goals, the trees to be left on site had been chosen to restore both large trees and a more varied horizontal and vertical stand structure. Id. at 5. <sup>8/</sup>

The Field Manager defended the range of alternatives considered in the EA by noting that the selection of alternatives depended on the purpose and need for the project, which in this case was to provide for forest products as described in the Salem RMP, while retaining important ecological components within the forest management area. Citing 40 CFR 1508.28, he noted that the EA was tiered to the Salem RMP and its EIS and did not need to revisit the decisions made in those documents every time a site specific implementation project was proposed, but could appropriately limit the range of alternatives to those actions which would fulfill the requirements of the RMP to which it was tiered. (Protest Decision at 5-6.) Accordingly, he concluded that the range of alternatives considered was appropriate given the limited options for resource management in the project area, the scope and context of the project, and the decisions already made in the Salem RMP to which the EA was tiered. (Protest Decision at 6.)

The Field Manager also found no flaws in the EA's analysis of the identified alternatives. He dismissed Bark's objections to the scope of the analysis of the no action alternative on the ground that the no action alternative simply represented the continuance of the existing conditions as described in the Affected Environment section of the EA. Since Bark had not presented any specific or substantive overlooked impacts of the timber sale nor proffered any information justifying reconsideration of the decision to approve the sale, the Field Manager concluded that the EA's analysis sufficed to determine that the impacts fell within those described in

<sup>8/</sup> The specific principles underlying the selection included:

- “• Maintain the existing species mix presently on the site.
- Reserve all western red cedars and hardwoods from cutting.
- Reserve any biological legacy remnant trees from past logging activity.
- Retain and release a component of mid-story, small diameter western hemlock that exhibit high crown ratios.
- Retain a component of trees with obvious deformities and the existing dead and down where safe to do so.
- Retain small clumps of leave trees where feasible.
- Vary spacing of leave trees to provide for between 80 and 120 leave trees per acre.”

Id.

the Salem RMP and EIS and that preparation of a project-specific EIS was not required. (Protest Decision at 6-7.)

The Field Manager next addressed Bark's complaints about the EA's treatment of wildlife and botany, including the sale's impacts on the Northern Spotted Owl and the surveys for and/or documented presence of Survey and Manage species in the sale area. He indicated that the closest owl nest site or owl activity center requiring retention of a 100-acre core area was approximately six miles to the northeast of the sale area, and that no owls had been discovered during surveys of the sale area for the presence of the owl, nor was there suitable nesting, roosting, or foraging owl habitat in the area. He added that the seasonal restrictions on activities during primary nesting season further ensured that the potential impacts to the owl fell within those described in the EIS for the Salem RMP. (Protest Decision at 7.) The Field Manager also pointed out that, as noted in the FDD/DR, surveys had been conducted on the sale area for all possibly affected Survey and Manage species identified in the NFP, including mollusks, Larch Mountain Salamander, and Oregon Red Tree Voles, and that additional surveys had been conducted during the appropriate survey season to identify all Survey and Manage species within and proximate to the sale area, as well as other special status botanical species. He noted that the detected mollusks and botanical species had been protected through a system of buffers and that additional reserves of more than 40 acres had been set aside for survey and manage species. (Protest Decision at 7-9.)

The Field Manager disagreed with Bark's characterization of the planned road renovation as new road construction. He pointed out that the proposed brushing, grading, spot rock, tree removal, and possible culvert replacement were standard road maintenance work on any gravel road intended to be kept open for use, would be done completely within the existing road right-of-way, and would not affect the forest stand. (Protest Decision at 9.) He added that, in addition to increasing the safety of the roads, the road maintenance work would keep drainage facilities (road crowns, ditches, and culverts) working properly and protect aquatic resources by reducing the potential for sediment to reach streams. *Id.* As to road density, he noted that the 6.6 miles per section cited by Bark referred to the entire Eagle Creek watershed and that the road densities for the North Fork Eagle Creek sub-watershed, the relevant ambit for the water quality cumulative effects evaluation, was 4.4 miles per section, within the moderate range for water quality, and would not be increased by the timber sale. *Id.* He further determined that the BMPs incorporated into the mitigation measures for the project, the gentle grades of the roads in the project area, the lack of water course crossings, and the project's location behind locked gates minimized the potential for increased sedimentation, a conclusion bolstered by the

fact that, although the roads were constructed 20 years ago, sedimentation from unauthorized vehicular traffic had never been an issue. Id. at 9-10.

In response to Bark's complaint that the EA failed to analyze the effect of ground-based logging on soil integrity, the Field Manager noted that the Salem RMP requires use of the project design features (BMPs) including the use of designated skid roads to limit compaction from ground-based logging to less than 10 percent. (Protest Decision at 10.) As to the vegetation issues raised by Bark, he explained the calculations underlying the EA's determination that the average age of the stands to be thinned was between 50 and 55 years. Id. at 10-11. He recognized that the existing 10-inch diameter, 40-foot high snags and down logs were providing good habitat, but stated that, although some existing habitat might possibly be degraded in the short term, the thinning was designed to accelerate the growth of the largest trees and ensure a supply of future large trees that could become snags and down logs. He added that all non-hazardous snags and most down logs would be retained if possible to assist in the transition to the future stand. Id. at 11.

The Field Manager differentiated between fire hazard, which would increase in the sale area, and fire risk, which would not. Fire hazard, he explained, expanded with the addition of available fuel in the 10 and 100 hour time-lag fuel classifications (1/4" - 3"), while fire risk represented the probability of ignition. (Protest Decision at 11.) He indicated that, although the increase from 5 to 12 tons per acre of fuel in the relevant fuel classifications would elevate the fire hazard, that rise would be mitigated in the short term by the fuel discontinuity created by the adjacent wildlife and riparian reserves and in the long term by the rapid decomposition of the fuel in these small size classes. Fire risk in the area, he noted, had been rated as low because the two primary sources of ignition, human and/or natural causes, had little impact in the project area since human activity was low and lightning activity was low to nonexistent in that geographical location. Id.

The Field Manager responded to Bark's objections to the EA's cumulative impacts analysis by first noting that, although the completed written watershed cumulative effects analysis was not in the file when the FONSI was signed, it was assembled and available within two weeks and that, in any event, the summary contained in the EA was consistent with the full document. He also acknowledged that the now dropped Upper Eagle Timber Sale had not been specifically included in the cumulative impacts analysis for the North Fork Eagle Creek Sub-watershed, but stated that the analysis had considered future harvests on both BLM and private lands. (Protest Decision at 12.)

Finally, the Field Manager addressed Bark's contention that significant changes had been made in the FDD/DR which mandated preparation of an EIS. Specifically, he pointed out that the increase in volume between the EA and the FDD/DR was due to a refinement in the volume calculation and was irrelevant to the analysis of environmental impacts in the EA, and that, in any event, the increase accompanied a 49-acre reduction in the area treated. (Protest Decision at 12.)

The Field Manager explained that the increase in road renovation and improvement arose from further field work which revealed that only 6,500 feet out of the estimated 8,000 feet of road needed renovation because surrounding vegetation had rendered the roads undriveable, but that an additional 6,705 feet of currently driveable road could benefit from some up-front maintenance or renovation, for a total of 13,255 feet of renovated roads. *Id.* at 12-13. He indicated that the proposed road improvement, which was needed to allow use of a longer vehicle such as a logging truck than the roads were originally designed to accommodate, would involve excavation of about 100 cubic yards of soil from the road cut bank, placement of the material adjacent to the road grade, application of 130 yards of crushed rock surfacing, and extension of an existing culvert by 20 feet. He posited that the source of Bark's confusion about the road improvement stemmed from a typographical error on page 4 of the FDD/DR, which should have stated that the operation would result in a loss of less than one acre of fragmented immature forest, not mature forest. (Protest Decision at 13.) He added that only two 16-inch diameter trees, other than those needed to satisfy the thinning prescription, would be removed to facilitate the road improvement. *Id.*

The Field Manager further pointed out that, although the EA had stated that the fungus Gymnopilus punctifolius had been found in the riparian reserve between Units B and C, the project boundaries had been adjusted in the FDD/DR and the discovery locations were now over 200 feet outside the proposed harvest area. (Protest Decision at 13.) He concluded that Bark had not submitted any evidence undermining the EA and FONSI or establishing that an EIS is required for the sale. Since Bark had failed to demonstrate any substantive problems in BLM's analysis, the Field Manager determined that BLM had conducted a sound environmental review, had sufficiently described the impacts of the proposed action in the EA, and had designed the proposed action to meet the standards and guidelines of the Salem RMP, the NFP, and associated laws. He therefore denied Bark's protest and stated that he would proceed with implementation of the timber sale in accordance with 43 CFR 5003.3(f). *Id.* at 14.

ARGUMENTS ON APPEAL

On appeal, Bark repeats and expands upon the issues raised in its protest. Bark alleges that the sale could negatively affect water quality and fisheries, pointing out the sale location falls within the Eagle Creek watershed, a designated Tier 2 Key Watershed which, according to the NFP, requires reduction of road mileage and priority for watershed restoration, neither of which this sale accomplishes. (Statement of Reasons (SOR) at 3.) Specifically, it avers that BLM failed to discuss the project's potential impacts on fish, including the proposed-for-listing sea-run cutthroat trout; inadequately addressed the potential impacts of sediment caused by logging activities, road renovation, surface erosion, landslides, and debris; erroneously considered peak flows exceeding the levels occurring in a fully forested condition by 10 percent or less to be low; incompletely revealed and evaluated road work associated with other timber sales, including the Delph Creek sale, in the cumulative impacts analysis for the sale; and failed to explain how the increase in road renovation and improvement conformed to the NFP's direction to reduce road density and improve watershed health. Id. at 3-8.

Bark questions the legality and professional and scientific integrity of (1) BLM's failure to perform any quantitative analysis or modeling of possible sediment from the thinning and road work and (2) BLM's reliance, without proof, on the BMPs to mitigate any problems the project might have on water quality and aquatic systems. Id. at 8-9. Bark submits that thinning in the riparian reserves also violates the ACS objectives in the NFP by authorizing logging activities that are not needed to attain those objectives, but simply hasten natural processes, and by retarding or preventing the attainment of ACS objectives through the removal of trees which could potentially provide large and small woody debris. Id. at 9-10. Bark further contends that the sale also does not follow the per decade volume recommendation in the WA, <sup>2/</sup> citing the Forest Service's Eagle Creek timber sale's planned removal of more than the 10-year limit in three years, part of which has already been removed. Bark additionally continues to question BLM's failure to address the Upper Eagle Creek timber sale, averring that even though the sale has recently been dropped, it was still pending when the EA was prepared and, therefore, should have been discussed in that document. Id. at 10-11.

Bark repeats its claim that the range and analysis of alternatives in the EA were insufficient. Bark maintains that the three-paragraph analysis of the no action alternative improperly failed to discuss that alternative's effect on any component of the affected environment, including water quality, fisheries, and Red Tree Voles.

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<sup>2/</sup> The WA calls this number the probable sale quantity. See WA at 110-11.

Bark also considers the range of alternatives evaluated too narrow to satisfy the project's purpose and need of both providing forest products and retaining important ecological components within the area and suggests additional alternatives including thinning without removing trees in certain areas, horse logging, and no thinning in riparian reserves. According to Bark, BLM's limitation of the range of alternatives and cursory discussion of the no action alternative violate relevant precedent. *Id.* at 11-13.

Bark argues that BLM failed to thoroughly analyze the sale's impact on the Northern Spotted Owl or to provide a mitigation plan for owl habitat within the sale area. Bark cites conflicting statements in the EA and FDD/DR, averring that the EA states that the sale might adversely affect the owl and degrade 167 acres of dispersal habitat while the FDD/DR indicates that the likelihood of owl disturbance is remote because the project will not remove dispersal habitat, no nesting habitat exists in the project vicinity, and seasonal restrictions have been imposed on all activities between March 1 and July 1. This inconsistency, Bark submits, violates NEPA's requirement for scientific accuracy. Bark claims that BLM omitted any explanation of how seasonal restrictions would prevent impacts to the owl nor did it consider the impacts of other timber sales on the owls and their habitat. (SOR at 13.) Bark further faults the dearth of adequate discussion of the effects of the project on the Red Tree Vole and its habitat and on herpetofauna habitat and the lack of adequate plans for protecting the habitat of other sensitive and special attention species, asserting such omissions violate the NFP and the National Forest Management Act of 1976 (NFMA), 16 U.S.C. §§ 1600-1614 (2000), directives to maintain species viability. (SOR at 13-14.)

Bark complains that, despite the known soil compaction associated with ground-based logging operations, the EA fails to evaluate how that compaction affects short and long term soil health, vegetation growth, and erosion. *Id.* at 14. Bark avers that the EA's admission that the proposed action would destroy some of the minimal number of snags currently found in the project area and its failure to discuss this impact in light of the project's goal of improving habitat through thinning demonstrate that the project violates the NFP, the NFMA, and NEPA. *Id.* at 14-15. Bark disputes the Field Manager's reliance on the low risk of fire in minimizing the effects of the increase in fire hazard, asserting that, not only do many fires originate from logging operations, but that the large fires occurring in the 1900-1950 period and the 1850-1900 period demonstrate that fire is a normal occurrence in this watershed. Bark reiterates its contention that the EA improperly failed to explain how the riparian reserves and adjacent wildlife reserves would mitigate fire, how those areas would be protected, and how wildlife and habitat would be affected by fire. *Id.* at 15.

Bark again objects to the EA's presentation of a summary rather than a full analysis of cumulative impacts to watersheds. Bark maintains that the EA also failed to consider other sales in the watershed, including the then planned Upper Eagle Sale, and logging activities by adjacent private land owners. Id. at 15-16. Additionally, Bark contends that BLM has failed to meet its burden of showing that the approved timber sale conforms to all NFP requirements. Id. at 16.

Finally, Bark avers that the FDD/DR made significant changes to the project which warrant preparation of an EIS. Except for the addition of an allegation that the increase in timber volume constitutes a substantial modification of the project, Bark repeats verbatim the contentions raised in its protest. Compare SOR at 16-17 with Protest at 5. Essentially, Bark asserts that the increase in road renovation from 8,000 to 13,255 feet and the addition of 200 feet of road improvement represent sizeable augmentations to the project; that BLM failed to discuss what road improvement involves or why road improvement and additional road renovation are needed; and that BLM's admission that old growth forest will be logged requires an analysis and explanation of how the sale will affect the Survey and Manage fungus Gymnopilus punctifolius. (SOR at 16-17.) <sup>10/</sup>

In response, BLM generally argues that most of the issues on appeal either were comprehensively addressed in the Field Manager's decision or were not raised at all in the protest and thus are not properly before the Board. See BLM Answer at 2. Nevertheless, BLM responds point by point to each of the issues and sub-issues raised in the appeal.

As to water quality and fisheries issues, BLM avers that the Field Manager outlined activities designed to reduce road mileage and prioritize watershed restoration in key watersheds, pointing out that the NFP does not require that every project in a key watershed meet all the goals for such watersheds. (Answer at 2.) BLM contends that the Field Manager correctly found that the streams in the project

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<sup>10/</sup> As related above, the Field Manager addressed all these issues concerning the purportedly significant changes made in the FDD/DR. An appellant must point out error in the decision from which it appeals and merely reiterating the arguments considered by the decision maker as if there were no decision addressing those points does not satisfy that requirement. See Edward C. Faulkner, 164 IBLA 204, 210-11 (2004), citing Watts v. United States, 148 IBLA 213, 217 (1999); In re Mill Creek Salvage Timber Sale, 121 IBLA 360, 362 (1991). Because Bark has neither acknowledged nor challenged the Field Manager's response to these issues, we find it has failed to affirmatively point out any error in the Field Manager's decision on those issues and will not address them further.

area were all non-fish-bearing and that the 200-foot buffers conformed to the NFP and the Salem RMP. Id. According to BLM, not only was the issue of the proposed listing of the sea-run cutthroat trout not mentioned in the protest, but NMFS explicitly concurred with BLM's determinations that the project was not likely to adversely affect that and other species, found that the project included appropriate measures to avoid or minimize adverse impacts to the species, and that the project features are consistent with the ACS objectives. Id., citing AR Doc. 7, Aug. 6, 1999, NMFS informal consultation concurrence. BLM refutes Bark's claim that none of the NEPA documents in the record discusses the impact of logging and road work on fish by pointing to the discussions in the EA at pages 24-27 (ACS objectives), 24, 28, and 29 (water quality), and 31 (aquatic habitat) and in the FDD/DR at page 4 (water quality). (Answer at 3.)

BLM counters Bark's claim that the sale planning documents failed to address the impacts of sediment from logging by citing the numerous references to those issues found in the NEPA and other planning and decision documents underlying the timber sale. In addition to highlighting the relevant discussions in those documents, BLM amplifies the discussions and addresses the issues raised for the first time on appeal. Specifically, BLM submits that the record shows the soundness of its evaluation of the impacts of erosion and compaction, the rationale for using a 75-foot no-cut riparian buffer, the riparian reserve buffer's viability as a sediment filter, and the design standards' and BMPs' effectiveness in addressing sedimentation. (Answer at 3-5.) BLM also points out that no landslides and debris flows warranting further analysis exist in the project area and that the riparian reserve buffer exceeds the minimum distance recommended for protection of ecological values set in the FSEIS for the NFP, a fact which distinguishes this sale from the Forest Service sales relied upon by Bark. Id. at 5-6. BLM disputes Bark's claim that the watershed protection analysis was inadequate and avers that the adopted BMPs will effectively protect the project area from Bark's newly raised concerns about surface erosion and landslides related to roads and soil types. Id. at 6-7. BLM further notes that the area's mild stream slopes and good to fair stream channel stability undermine Bark's previously unmentioned concern about debris flows, slides, and stream bank failures. Id. at 7. According to BLM, Bark has presented no evidence or argument undermining the adequacy of the analysis.

BLM rejects Bark's challenge to the peak flow analysis, another issue not raised in the protest. BLM explains that the parameters used to determine the significance of the estimated change in peak flows conform to the Washington Forest Practices Board Manual: Standard Methodology for Conducting Watershed Analysis (Answer, Attachment 1), and asserts that Bark has not provided any site-specific information

demonstrating the existence of a real risk of increased peak flows from the sale. (Answer at 7-8.)

As to the impacts from road work and the NFP requirement to reduce miles in key watersheds, BLM first discounts Bark's allegation that the EA improperly failed to mention the 2,000 feet of road construction associated with the Delph Creek timber sale. Since its standard practice is to limit the scale of an EA's cumulative impacts analysis to the sub-watershed containing the sale at issue, BLM maintains that it did not need to advert to the Delph sale which is located in the Delph Creek sub-watershed of Eagle Creek. BLM adds that, in any event, the Delph sale actually led to an overall reduction of 4,445 feet of road in that watershed. (Answer at 8.) BLM asserts that Bark's other concerns about road density were all adequately addressed in the Field Manager's response to the protest. Id. at 8-9. BLM avers that the programmatic planning documents to which the EA is tiered analyze the possibility of increased erosion, runoff, and sedimentation and prescribe measures to minimize those impacts, including the BMPs identified in Appendix C to the Salem RMP. Since the EA adopts the relevant BMPs, BLM contends that the EA did not need to repeat those discussions or re-evaluate the efficacy of those practices, especially since Bark failed to provide any new information showing that the BMPs and design features adopted in the EA do not conform to those programmatic documents, will not be implemented, or will create impacts beyond those described in the EIS for the RMP. (Answer at 9-11.)

BLM maintains that thinning is needed in the riparian reserve involved in this case to attain ACS objectives because the riparian reserve area proposed for thinning exhibits the parameters outlined in the WA as contributing to the watershed's inability to meet those objectives. (Response at 11.) BLM avers that not only do the studies referenced in the Protest Decision show the relationship between increased growth diameter and the number of trees removed, but newer studies also demonstrate thinning's positive role in accelerating stand diversity development. Id. Additionally, BLM notes that, according to a stand growth simulator (Stand Projection System) applied to the site specific data, if management activities do not change, it would take up to 80 or more years for the average stand diameter to exceed the 24-inch threshold for small woody growth (SWD) and well past 100 years to reach the 36-inch threshold for LWD, while if the proposed thinning were implemented, the average stand diameter would be expected to reach 24 inches in only 40 years. Id. at 12.

BLM adds that the trees designated for removal average between 8 and 12 inches diameter at breast height (dbh) and would most likely never attain the size needed to be classified as SWD or LWD. (Answer at 12.) BLM asserts that the

proposed riparian reserve thinning would not deplete the area of SWD and/or LWD, as Bark contends, but, in addition to increasing the structural diversity of the treated area, would hasten the development of large diameter conifers and the subsequent development of pieces of wood large enough to form effective components of a well-functioning aquatic ecosystem. Id. BLM therefore contends that the treatment prescription for the riparian reserve thinning, which follows the criteria set in the Salem RMP and the ROD for the NFP, will facilitate the realization of the ACS objectives and alleviate Bark's concerns about the lack of structural diversity and the existence of degraded landscapes in the Eagle Creek watershed. Id. at 12-13.

Bark's objections to the volume of timber to be removed fail, BLM submits, because the Field Manager fully addressed the sale's consistency with the volume recommendations set out in the WA. Id. at 13. Additionally, BLM reiterates that Bark's concern about the EA's failure to include the impacts of the Upper Eagle Timber Sale in the cumulative effects analysis is misplaced because that sale does not fall within the North Fork Eagle Creek sub-watershed. Id. BLM also explains that the EA's conclusions presuppose that harvest levels in the North Fork Eagle Creek sub-watershed over the next 10 years will be similar to previous harvest levels for all ownerships. Id. at 13-14.

BLM avers that Bark's challenges to the range and analysis of alternatives considered in the EA have been comprehensively addressed in the Protest Decision, and do not merit further discussion. Id. at 14-15.

BLM denies Bark's contention that the sale planning documents failed to thoroughly analyze the sale's impacts on the Northern Spotted Owl and provide a mitigation plan for those impacts. Not only were the effects of the Rusty Saw Timber Sale included in the 1998 Willamette Province Fiscal Year 1999 Habitat Modification Biological Assessment for the Effects to Listed Species (BA) (Answer, Attachment 2), but, BLM adds, FWS issued a biological opinion (BO) on September 29, 1998 (Answer, Attachment 3), concluding that the habitat modification projects included in the BA would not likely jeopardize the continued existence of the Northern Spotted Owl. (Answer at 16.) The BO also included reasonable and prudent measures, terms and conditions, and discretionary conservation recommendations, which, BLM notes, were incorporated into the Rusty Saw EA and FDD/DR to the extent applicable. Id.

According to BLM, the purported conflict between the EA and FDD/DR stems from Bark's incorrect interpretation of the terms "degrade," which means "to affect the quality of, but not remove the functionality of either suitable or dispersal habitat," and "remove," which means "to eliminate the functionality of either suitable or dispersal habitat such that there is no longer spotted owl habitat of either type

present.” (Answer at 16, citing BA at 3.) BLM explains that for dispersal habitat functionality to be sufficiently impaired to disqualify it as spotted owl dispersal habitat, “the crown closure would have to be reduced below 40% and/or the average stem dbh to less than 11 inches.” (Answer at 16.) Since the Rusty Saw Timber Sale would leave a post treatment crown of above 60%, with an average stem diameter of 16 inches dbh, BLM avers that the sale would not remove dispersal habitat, which is the only type of owl habitat included in the sale area. Id. at 17. BLM adds that, even though no Northern Spotted Owl nests have been discovered in the vicinity of the sale, it nevertheless imposed a seasonal operating restriction of March 1 to June 30 on certain operations to further minimize any risk of disturbance. Id. BLM counters Bark’s claim, not raised in its protest, that the sale documents did not address the cumulative effects of degrading dispersal habitat on multiple timber sale areas by noting that the Salem RMP, the NFP, the BA, and the BO all discussed the cumulative effects of multiple timber harvests, including the Rusty Saw sale, on the Northern Spotted Owl. Id.

Bark’s challenges to the EA’s consideration of the Red Tree Vole fail, BLM submits, because Red Tree Vole nests were not found when BLM ran transects for the voles in accordance with the February 2000 protocols for such surveys (Answer, Attachment 4), and therefore no further mitigation was required by the September 27, 2000, Management Recommendations for the Oregon Red Tree Vole, Version 2.0 (Answer, Attachment 5). (Answer at 17.) BLM also contends that project design features, such as the maintenance of at least a 60 percent crown cover, will assure that the acknowledged degradation to the suitable Red Tree Vole habitat extant in the area caused by the reduced canopy closure will be short term and that the canopy closure level will return to pre-harvest level within 10 to 15 years. Id. at 18. BLM avers that Bark’s concerns about the lack of protection for the Oregon Slender Salamander and the Red Legged Frog are similarly misplaced. According to BLM, the Oregon Slender Salamander is classified as a BLM Tracking Species which does not require surveys and management under the Bureau Special Status Species Management Policy. BLM further asserts that the proposed action with mitigation measures, including riparian and upland reserves, adequately protects the Red Legged Frog, a Bureau Sensitive Species, and will not contribute to the need to further list the species. Id.

BLM asserts that the Field Manager’s decision also fully addressed Bark’s concerns about the impact of the timber sale on snag habitat. Id. at 18-19. BLM explains that, although the impact to snags currently found in the sale area would be high because the majority of those snags are small, highly decayed, and extremely susceptible to damage from the impact of falling trees, the goal of the thinning is to produce larger trees which would create larger future snags. Id. at 19. BLM

maintains that the EA addressed the goal of improving the snag component of the area and that the proposed thinning comports with the NFP's direction that six to eight green trees be left per acre to provide for future snags. Id. at 19, citing EA at 6 and NFP at C-42.

BLM reiterates that the EA addressed fire hazard or fuel loading as distinguished from risk or probability of ignition. (Answer at 19.) Bark's attempt to counter the rationale for the Field Manager's conclusion that fire risk is low fails, BLM submits, because the conditions leading to the fires occurring during the settlement period from the 1850's through 1910 no longer exist. Id. at 20.

As to the purported omissions in the cumulative effects analysis, BLM argues that, although neither the Upper Eagle Creek Timber Sale nor private logging activity was specifically mentioned, the analysis assumed that harvest levels over the next 10 years would be similar to previous harvest levels for all ownerships and that logging on private land would conform to the Oregon Forest Practices Act requirements to protect water quality, an assumption which, BLM avers, also underlies the NFP and RMP. (Answer at 20.) BLM maintains that the EA took into account all known past and reasonably likely future actions in its cumulative effects analysis and that Bark has failed to provide any new or previously unknown information demonstrating flaws or inadequacies in that analysis. Id. at 21.

Bark's challenge to the sale's consistency with the NFP similarly fails, BLM avers, because Bark has not shown that the timber sale fails to conform to the NFP. (Answer at 21.) BLM contends that the EA was tiered to the Salem RMP and EIS which were adopted in conformance with the NFP, and that Bark's objections to the sale represent nothing more than opinion unsupported by fact. Id.

Finally, BLM denies that an EIS is warranted in this case. <sup>11/</sup> BLM maintains that it considered the factors relevant to a determination of significance under NEPA and concluded that the project did not present any significant impact on the environment other than those considered in the FEIS for the RMP to which the EA was tiered. (Answer at 22-23.) According to BLM, Bark has failed to provide any supporting information showing the presence of a significant impact and has not demonstrated that BLM's analysis failed to consider a substantial environmental

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<sup>11/</sup> Although BLM responds to Bark's discussion of the purportedly significant changes to the project made in the FDD/DR, asserting that the Field Manager comprehensively addressed those issues, we do not repeat them here since we have already summarily dismissed Bark's appeal of those issues for failure to point out any error in the Field Manager's decision on those issues. See note 10 supra.

question of material significance to the project or shown that the decision to approve the project rests on a clear error of law or fact. Id. Therefore, BLM insists that the Protest Decision must be affirmed. Id. at 23.

### DISCUSSION

Section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C) (2000), requires Federal agencies to prepare an EIS for a major Federal action significantly affecting the quality of the human environment. In making the threshold determination of whether an EIS is necessary, the agency may prepare an EA documenting its consideration of all relevant matters, and the agency may go forward with the project if the analysis in the EA establishes that the project will not have a significant impact on the human environment. A BLM decision to approve an action based on an EA and FONSI will generally be affirmed if BLM has taken a “hard look” at the proposed action, identified relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. Armando Fernandez, 165 IBLA 41, 49 (2005); Great Basin Mine Watch, 159 IBLA 324, 352 (2003); Southern Utah Wilderness Alliance, 158 IBLA 212, 219 (2003); Owen Severance, 118 IBLA 381, 392 (1991).

[1] The Board will ordinarily uphold a BLM determination that a proposed project, with appropriate mitigation measures, will not have a significant impact on the quality of the human environment if the record establishes that a careful review of environmental problems has been made, relevant environmental concerns have been identified, and the final determination is reasonable. Armando Fernandez, 165 IBLA at 49; Great Basin Mine Watch, 159 IBLA at 352; The Ecology Center, Inc., 140 IBLA 269, 271 (1997); Blue Mountains Biodiversity Project, 139 IBLA 258, 265-66 (1997). A party challenging BLM’s decision has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Armando Fernandez, 165 IBLA at 49; Great Basin Mine Watch, 159 IBLA at 353; Southern Utah Wilderness Alliance, 158 IBLA at 219-20; The Ecology Center, 140 IBLA at 271. Mere differences of opinion provide no basis for reversal. Rocky Mountain Trials Association, 156 IBLA 64, 71 (2001). It is not sufficient for an appellant to simply speculate and request more information or “pick apart a record with alleged errors and disagreements without connecting those allegations to an affirmative showing that BLM failed to consider a substantial environmental question of material significance.” In re Stratton Hog Timber Sale, 160 IBLA 329, 332 (2004); see also Edward C. Faulkner, 164 IBLA 204, 209 (2004). Additionally, if the appealed

decision is the denial of a protest, the appellant must establish error in the actual BLM protest decision. In re Stratton Hog Timber Sale, 160 IBLA at 332; see also Watts v. United States, 148 IBLA at 217 (an appellant must affirmatively point out error in the decision from which it appeals); In re Mill Creek Salvage Timber Sale, 121 IBLA at 362 (summary dismissal of the appeal is appropriate where BLM “provided a comprehensive decision fully addressing each of the allegations contained in the protest and appellant has not attempted to show any error in the decision”).

An EA or EIS may be tiered to another NEPA document which has considered particular impacts of a broader Federal action. In re Stratton Hog Timber Sale, 160 IBLA at 331. The Council on Environmental Quality regulations define “tiering” as “coverage of general matters in broader [EISs] \* \* \* with subsequent narrower statements or environmental analyses \* \* \* incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.” 40 CFR 1508.28. An EA tiered to an EIS or other environmental document need not repeat the cumulative impacts analysis or a no action alternative considered in the document to which the EA is tiered. In re Stratton Hog Timber Sale, 160 IBLA at 331; Blue Mountains Biodiversity Project, 139 IBLA at 267; Oregon Natural Resources Council, 115 IBLA 179, 186 (1990); In re Long Missouri Timber Sale, 106 IBLA 83, 87 (1988), reconsideration denied (1989); In re Upper Floras Timber Sale, 86 IBLA 296, 311 (1985).

[2] Review of a challenge to a timber sale decision on the ground of consistency with the ACS objectives of the NFP is guided by the principles generally applicable to review of environmental compliance. Klamath Siskiyou Wildlands Center, 157 IBLA 322, 328 (2002). The record must demonstrate that there is a rational basis for the finding of consistency with ACS objectives. Id. The party challenging that conclusion must show either an error of law or fact or that the analysis failed to consider a substantial environmental problem of material significance to the timber sale. Id. The appealing party bears the ultimate burden of proof which must be satisfied by objective proof rather than differences of opinion. Id.

Applying these principles to the appeal before us, we find that Bark has not shown error in the Protest Decision or in the underlying analysis in the EA and FDD/DR. Accordingly, we affirm the Field Manager’s decision.

As our exhaustive discussion of the EA, FDD/DR, Protest Decision, and BLM Response makes abundantly clear, BLM thoroughly analyzed all the relevant environmental issues. We have carefully considered all the issues raised in Bark’s

appeal and find none of them sufficient, either singularly or collectively, to convince us that BLM failed to take the requisite “hard look” at the proposed action, to identify relevant areas of environmental concern, or to make a convincing case that the environmental impacts are insignificant or that any such impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. To the contrary, the record establishes that a careful review of environmental problems has been made, relevant environmental concerns have been identified, and the final determination is reasonable. Further, Bark has not shown with objective proof that the Field Manager’s Protest Decision or the underlying analysis in the EA and FDD/DR is premised on a clear error of law or demonstrable error of fact, or failed to consider a substantial environmental question of material significance to the proposed action.

Although Bark challenges BLM’s consideration of the project’s effects on water quality and fisheries, it has not even attempted to show error in BLM’s determination that none of the streams affected by the project are fish bearing. Nor has Bark presented any objective proof that the impacts of sediment from logging and road work will exceed those considered in the EA and the environmental documents to which the EA was tiered, or that peak flows less than 10 percent higher than the level occurring in a fully forested condition should be considered high regardless of the models and guidance indicating otherwise. Bark’s questions about the actual implementation and efficacy of the BMPs rely on documents addressing Forest Service, not BLM activities, and simply speculate, without explanation or proof, that these measures are inadequate and will not be properly enforced. Additionally, Bark’s contention that the thinning in the riparian reserves violates the ACS objectives and the NFP completely ignores the discussions of how the riparian reserve thinning and the project as a whole further those objectives. Similarly Bark’s argument that the road renovation and improvement countermand ACS and NFP directives fails to disprove BLM’s claim that the project does not involve new road construction or the rationale underlying its determination that the project will not increase road density in the North Fork Eagle Creek sub-watershed. Bark’s objection to the volume of timber proposed for removal as exceeding the WA’s recommendations does not even acknowledge, much less refute, BLM’s explanation of the derivation and intent of the WA’s estimated probable sale quantity. In short, Bark’s unsupported and insufficiently supported disagreements with BLM’s analysis on these issues do not suffice to show error in BLM’s determinations.

Bark has not shown that the range and analysis of alternatives in the EA was inadequate. An EA must include a brief discussion of alternatives as mandated by section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000). See 40 CFR 1508.9(b); 516 DM 3.4(A); see also Great Basin Mine Watch, 159 IBLA at 354, and cases cited.

Section 102(2)(E) of NEPA requires, independent of the necessity to file a formal EIS, that every Federal agency “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(2)(E) (2000); see also 40 CFR 1501.2(c), 1508.9(b). The requirement that appropriate alternatives be studied applies to the preparation of an EA even if no EIS is found to be warranted. Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228-29 (9th Cir. 1988), cert. denied, 489 U.S. 1066 (1989); Great Basin Mine Watch, 159 IBLA at 354.

Section 102(2)(E) requires BLM to consider “appropriate alternatives” to the proposed action as well as 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); Friends of the Clearwater, 163 IBLA 1, 12 (2004); Southern Utah Wilderness Alliance, 158 IBLA at 217; Larry Thompson, 151 IBLA 208, 219 (1999). “Such alternatives should include reasonable alternatives to a proposed action, which will accomplish the intended purpose, are technically and economically feasible, and yet have a lesser impact. 40 CFR 1500.2(e).” Headwaters, Inc. v. BLM, 914 F.2d 1174, 1180-81 (9th Cir. 1990); City of Aurora v. BLM, 749 F.2d at 1466-67; Friends of the Clearwater, 163 IBLA at 12; see also 43 CFR 1501.2, 1502.14, 1508.9; Wyoming Outdoor Council, 147 IBLA 105, 114 (1998). Mere disagreement or difference of opinion as to the proper alternative does not suffice to establish error in BLM's choice of alternatives. Great Basin Mine Watch, 159 IBLA at 354.

As discussed above, the EA discussed two alternatives, the proposed action and the no action alternative, and identified alternatives considered and rejected without further analysis. See EA at 7. Although Bark suggests several additional alternatives, including thinning without removing trees in certain areas, horse logging, and no thinning in riparian reserves, it has not shown that those alternatives will meet all the project's goals, including fostering the attainment of ACS objectives, and have a lesser impact. The Board has held that, as long as the EA discusses in detail the environmental impacts of the timber sale, BLM need not address a plethora of possible alternatives; setting forth the implications of either its proposed action or the no action alternative, which form the ends of the spectrum, suffices. In re Blackeye Again Timber Sale, 98 IBLA 108, 111 (1987).

Bark's contention that the analysis of the no action alternative is deficient because it does not address the effect of taking no action on the Red Tree Vole, among other resources, is unpersuasive. As BLM notes, the effect of taking no action would be the perpetuation of the currently existing conditions amply described in the Affected Environment section of the EA. Since the surveys uncovered no Red Tree Voles, Bark has not shown fault in the EA's failure to further address the no action

alternative's impact on that species. In any event, the fact that the no action alternative is given a brief discussion does not mean that it has been insufficiently addressed or that it was not given serious consideration; it may simply reflect that the concept of no action was considered to be self-evident. Friends of Southeast's Future v. Morrison, 153 F.3d 1059, 1065 (9<sup>th</sup> Cir. 1998). Accordingly, we find that Bark has failed to establish error in BLM's selection or analysis of alternatives.

Bark's allegation that BLM failed to thoroughly analyze the sale's impact on the Northern Spotted Owl or provide a mitigation plan for owl habitat ignores the BA and the BO. That argument also minimizes the importance of FWS' May 29, 2001, concurrence that the project was not likely to adversely affect spotted owls because the sale might degrade but would not remove spotted owl dispersal habitat, that no nesting habitat existed in the project area, and that the imposed seasonal restrictions would minimize any possibility of owl disturbance. See AR Tab 12. Bark's confusion about the distinction between degrading and removing dispersal habitat and failure to show that the BA and BO did not adequately address the cumulative effects of the Rusty Saw Sale and the Hamilton Creek Thinning, located in T. 12 S., R. 1 E., which was also addressed in the FWS concurrence, undercut its contentions on this issue. Bark's assertions to the contrary notwithstanding, the record before us also amply supports the adequacy of BLM's analysis of the project's impacts on the Red Tree Vole and other BLM sensitive or special attention species.

Bark has proffered no objective proof showing that its estimate of soil compaction and loss of productivity, rather than BLM's estimation, accurately depicts the impacts of ground-based logging systems or otherwise renders insufficient BLM's analysis of the project's impacts on soils. Nor, in light of BLM's Response, has Bark demonstrated that the project's impacts to snags currently existing in the project area violate NEPA, the NFMA, or the NFP. Similarly, Bark's recitation of the large scale fires occurring in the Eagle Creek area between 1850 and 1950 does not establish error in BLM's conclusion that fire risk in the area is low, especially since Bark itself admits that the most recent fires occurred in the early 1900's (SOR at 15), before the initiation of wildfire suppression activities.

Bark's challenge to the cumulative effects analysis in the EA is equally unpersuasive. Bark continues to question BLM's failure to specifically analyze an admittedly abandoned timber sale. Nor has Bark demonstrated error in BLM's reliance on the assumptions that harvest levels over the next 10 years would be similar to the previous harvest levels from all ownerships and that logging on private land would conform to the Oregon Forest Practices Act requirements to protect water quality, the latter of which also underlies the NFP and RMP. As noted above, an EA tiered to an EIS or other environmental document need not restate the cumulative

impacts analysis considered in the document to which the EA is tiered. In re Stratton Hog Timber Sale, 160 IBLA at 331. Bark has not provided any new information discrediting the cumulative effects analysis in the EA or undermining the sufficiency of that analysis to support the FDD/DR and the Protest Decision.

Finally, Bark's objection to the timber sale as inconsistent with the NFP fails. Bark presents no evidence on this issue, resting instead on a bald assertion. This assertion represents nothing more than Bark's opinion and is clearly insufficient to show error in BLM's decision.

In short, Bark has offered only unsubstantiated broadside attacks on the Field Manager's Protest Decision and the EA and FDD/DR upon which that decision rests. The record establishes that BLM considered all relevant matters of environmental concern and that the decision to proceed was premised on neither a clear error of law nor a demonstrable error of fact. We therefore hold that the Field Manager properly denied Bark's protest.

To the extent not specifically addressed herein, the other issues raised in Bark's appeal have been considered and rejected.

Therefore, 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 and the request for stay is denied as moot.

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C. Randall Grant, Jr.  
Administrative Judge

I concur:

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Lisa Hemmer  
Administrative Judge