



GERALD H. SCHEID

173 IBLA 387

Decided February 29, 2008



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

GERALD H. SCHEID

IBLA 2007-86

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Appeal from a decision of the Field Manager, Dillon, Montana, Field Office, Bureau of Land Management, denying a protest of a timber sale. TS MT-050-07-02.

Affirmed.

1. Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements--Timber Sales and Disposals: Generally

A party challenging BLM's decision to approve a timber sale based on an environmental assessment 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.

APPEARANCES: Gerald H. Scheid, Idaho Falls, Idaho, *pro se*; John C. Chaffin, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Billings, Montana, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GREENBERG

Gerald H. Scheid has appealed the November 20, 2006, decision of the Field Manager, Dillon, Montana, Field Office, Bureau of Land Management (BLM), denying Scheid's protest of the Bean Creek Salvage/Aspen Treatment timber sale (TS MT-050-07-02) (Bean Creek Treatment or Treatment). The Field Manager based the denial on his conclusion that the issues raised in the protest had been adequately analyzed in the October 5, 2006, Bean Creek Riparian Habitat Restoration environmental assessment (EA) (EA MT 050-06-12) (Bean Creek EA) and the September 21, 2005, Centennial Watershed EA (MT-050-05-02) (Centennial EA), to

which the Bean Creek EA was tiered. Scheid has not shown that the Field Manager's decision was premised on a clear error of law or demonstrable error of fact or that the decision failed to consider a substantial question of material significance to the proposed action, and we therefore affirm BLM's decision.

BACKGROUND

The Bean Creek Treatment is an extension of the timber harvest described in the Centennial EA and expands the unit boundary for commercial harvest and prescribed burning treatment approved in the September 21, 2005, record of decision (ROD) for the Centennial EA (Centennial ROD) to include approximately 10 acres of riparian habitat along Bean Creek in the SW $\frac{1}{4}$ sec. 31, T. 14 S., R. 3 W., Montana Principal Meridian, Beaverhead County, Montana.¹ The purpose of the Bean Creek Treatment is to "restore the riparian habitat type and promote regeneration of riparian species by harvesting approximately 60% of conifers along approximately 1500' of Bean Creek and jackpot burning the slash post-harvest." Bean Creek EA at 1.

In addition to adopting the design features included in the Centennial EA and the mitigation measures set out for the original project, the Bean Creek EA listed the design features specific to the Bean Creek Treatment:

- Harvest will be completed by hand-falling and helicopter yarding of whole trees.
- Trees will be felled away from the stream where possible.
- Use of wheeled vehicles is prohibited in the Streamside Management Zone (SMZ).
- Placement of green slash within the stream channel is prohibited.
- Where viable aspen clones (as defined in the Centennial Watershed EA) are present, all conifers within 1 aspen tree height will be harvested to promote aspen regeneration.
- Trees rooted within the streambank will not be harvested.

Id. The Bean Creek EA concluded that the Centennial EA had adequately addressed the impacts of the Bean Creek Treatment, noting that the harvest of conifers in and around aspen stands, the promotion of aspen regeneration, the reduction of conifer expansion into aspen habitat, and the use of prescribed burns had been analyzed and discussed on pages 72-77 of the Centennial EA. Bean Creek EA at 3.

In light of the analysis in the Bean Creek EA, as tiered to the Centennial EA, the Field Manager contemporaneously issued a proposed decision (which included a

¹ The Centennial ROD had approved approximately 190 acres of commercial harvest/prescribed fire treatment and approximately 1,350 acres of prescribed fire treatment in the Bean Creek area. See Bean Creek EA at 1.

finding of no significant impact (FONSI), rationale, and mitigation measures as well as a proposed decision), and a decision record for the Bean Creek Treatment.² In deciding to implement the Treatment, with the identified mitigation measures, he explained that

[t]he additional treatment in the riparian area was proposed to achieve the following goals:

- Increased regeneration and growth of riparian species (i.e., [.] aspen)[;]
- Conversion from a coniferous habitat type to a riparian habitat type[;]
- Protection and enhancement of Westslope cutthroat trout [(WCT)] habitat[; and]
- Reduced severity/intensity of potential wildfire[.]

Anticipated effects of the proposed action are increased water infiltration which is expected to increase hydrologic functions to the benefit of fisheries and aquatic health. Increased water flow could increase available habitat for [WCT] and other aquatic species. Reducing the potential for high severity wildfire will result in a reduced potential for creation of bare ground and subsequent erosion and sedimentation into stream channels.

Bean Creek EA at 3.

The imposed mitigation measures mirrored the measures identified in the Centennial EA:

- 1) Harvest activity and associated operations would be permitted between December 2 and October 15.
- 2) If market conditions permit, biomass material may be removed from within mechanical treatment units. Sufficient residual biomass material would be left on site to maintain nutrient recycling and desirable microsite conditions.
- 3) Log landings would be reseeded with native grasses/forbs.

² The Bean Creek EA, proposed decision, and decision record are parts of one document. For simplicity, we will cite all parts of that document as the Bean Creek EA.

4) One season of rest from livestock grazing is usually needed prior to burning to allow sufficient fine fuels (grasses) to ensure a successful burn. BLM policy requires a minimum of 2 growing seasons of rest from livestock grazing following burns to allow re-growth and re-establishment of vegetation in the treated area.

5) Treatment by prescribed fire would only be completed where the ground fuels and conifer trees are in a condition that would meet the prescription objectives. Prescribed burning will require an approved burn plan prior to implementation. In areas where vegetation conditions would not allow prescribed fire to achieve the objectives alone, a combination of mechanical treatments followed by prescribed burning may be utilized.

6) In Harvest/Burn units, burning would take place within three years following harvest to allow sufficient curing of fuels and to ensure consumption of residual slash.

7) All applicable State and Federal Permits would be obtained and all permit conditions would be followed. State of Montana [best management practices (BMPs)] and the [SMZ] laws would be followed for all forest health treatments or road activities near riparian areas.^[3]

Id. at 4.

PROTEST AND PROTEST DECISION

Scheid filed a protest of the proposed Bean Creek Treatment on November 14, 2006.⁴ Scheid raised nine grounds for the protest. First, he complained that the environmental documents contained no site-specific details explicitly describing the proposed project, no analysis of anticipated impacts, and no mitigation measures for those impacts. Second, he questioned the rationale for the Bean Creek treatment

³ In compliance with Montana's SMZ Law, BLM applied for State approval for an alternative practice (Application for SMZ Alternative Practice) in order to harvest approximately 60 percent of the conifers along 1,500 feet of Bean Creek. The State approved the request on Sept. 8, 2006. See APID # AP-CLO-02-06.

⁴ After receiving the protest, BLM decided to proceed with the Bean Creek Treatment timber sale scheduled for Nov. 17, 2006, but refrained from awarding the contract to the high bidder, Sun Mountain Lumber, until after it had reviewed Scheid's protest. BLM issued the contract for the sale (MT-050-07-01) to Sun Mountain Lumber on Dec. 14, 2006, after ruling on the protest.

units established in the Centennial ROD. Third, given the existence of at least 1.5 miles of riparian habitat along Bean Creek, he faulted the lack of specificity as to the exact location of the 1,500 feet of riparian habitat subject to the Bean Creek Treatment, as well as the dearth of any explanation as to how the Treatment would restore proper functioning condition (PFC), stabilize the streambank, and reduce sediment.⁵ Fourth, he asked how the riparian logging would be coordinated with livestock grazing management and how the streambanks and riparian vegetation, specifically aspen regeneration, would be protected from overgrazing prior to stabilization. Fifth, he challenged the omission of any discussion of existing fishery habitat conditions in Bean Creek, the way the Bean Creek Treatment would enhance WCT habitat, and the measures to be monitored to determine whether the Treatment had successfully enhanced that habitat. Sixth, he asserted that the environmental documents contained incomplete biological evaluations. Seventh, citing communications from BLM indicating an intent to surface Bean Creek Road in support of forest projects, he contended that such a proposal had not been described or analyzed in any of the environmental documents nor had the objectives of the proposal, the extent of the surfacing, or any design features been identified and assessed. Eighth, he objected to the environmental documents' failure to discuss the cumulative impacts that could occur on the private lands in the Bean Creek watershed as a result of timber harvesting, burning, and road surfacing. And, finally, he challenged the lack of any discussion of recreational uses in the Bean Creek area and how the surfacing of Bean Creek road and consequent improvement in access would influence those uses. Protest at 1-2.

⁵ According to the Centennial EA:

A riparian-wetland area is considered to be in proper functioning condition when adequate vegetation, landform, or large woody debris is present to:

- Dissipate stream energy associated with high waterflow, thereby reducing erosion and improving water quality;
- Filter sediment, capture bedload, and aid floodplain development;
- Improve flood-water retention and ground-water discharge;
- Develop diverse ponding and channel characteristics to provide the habitat and the water depth, duration, and temperature necessary for fish production, waterfowl breeding, and other uses; [and]
- support greater biodiversity.

Centennial EA at 105-106.

In his decision denying the protest, the Field Manager responded to each of the issues raised. He countered Scheid's claim that the environmental documents contained no site-specific details by first noting that the Bean Creek Treatment implemented treatments within three of the Forestry/Fuels units identified in the Centennial EA. He then cited the specific portions of that EA relevant to the Treatment, including the purpose and need statements specific to woodland health (pages 3 and 4); the objectives for forest health and riparian habitat (pages 7 and 8); the description of Alternative B, the selected alternative (pages 25-28); the specific design features to reduce or mitigate impacts for all alternatives (pages 16-19) and for Alternatives B and C (pages 22-24); the description of the existing condition of the forest and woodlands, the declining forest health, and the loss of aspen across the landscape (pages 47-49); and the predicted impacts common to all alternatives (pages 64-66), common to Alternatives B and C (pages 71-72), and unique to Alternative B (pages 72-74 (forest and woodland health) and pages 76-77 (riparian habitat and species)). Protest Decision at 1-2. He added that the Centennial ROD had restated the proposed action, mitigation measures, and anticipated impacts on pages 3-8, 21, and 23, and that the site-specific details, the imposed mitigation measures, and the anticipated impacts of the Bean Creek Treatment had been described in the Bean Creek EA. Protest Decision at unpaginated p. 2.

As far as the Bean Creek burn units were concerned, the Field Manager noted that those units were delineated in the Centennial ROD and that the time for protesting that ROD had expired on October 6, 2006.

In response to Scheid's concerns about the location and efficacy of the riparian restoration treatment, the Field Manager observed that the riparian treatment, mitigation measures, and predicted effects were discussed in the Bean Creek EA. Specifically, he noted that the portions of Bean Creek identified for restoration were those areas that still had viable aspen or willows, with "viable" being defined as at least one live aspen or willow within 50 feet of the stream bank, and that the Treatment had been laid out this way to avoid a visual clear cut along the stream and to prevent streambank erosion. He pointed out that none of the trees within the SMZ selected and marked for removal were located directly on or adjacent to the streambank or considered necessary for streambank stability and that most of the selected trees were small Douglas fir or lodgepole pine, conifer species invading the riparian habitat and out-competing desirable riparian vegetation. He added that some Englemann spruce trees had also been marked for removal if they were dying or impacting aspen/willow regeneration. Protest Decision at unpaginated p. 2.

As to the efficacy of the Treatment, the Field Manager explained that

[b]y converting or partially converting the existing conifer habitat type to a deciduous woody riparian habitat type and opening up the canopy

to allow more sunlight to reach the ground, the productivity of the stream is expected to increase. Riparian vegetation along the treated portions of the stream is expected to increase, resulting in greater bank stability and reduced sediment into the stream. This is consistent with the objectives to “restore deciduous woody habitat types (aspen, willow) in riparian areas that have been invaded by conifer trees” and “maintain or enhance habitat for Westslope cutthroat trout (WCT) in occupied streams” stated on page 8 of the [Centennial EA].

Protest Decision at unpaginated p. 2.

According to the Field Manager, Scheid’s questions about riparian treatment coordination with grazing management were misplaced since overgrazing was not an identified issue along Bean Creek. He noted that the current livestock grazing treatment in the pasture encompassing Bean Creek consisted of one 3-month season of use followed by 2 years of complete rest and thus that sufficient rest was built into the system to allow for the regrowth of riparian vegetation. He added that the silvicultural prescription described on page 26 of the Centennial EA included cutting and leaving in place non-merchantable conifers to impede ungulate access to the streambank and reduce browse on aspen/willow regeneration within the treatment area and thus would protect the regeneration of aspen, willow, and other desirable riparian vegetation along this portion of Bean Creek from livestock impacts. Protest Decision at unpaginated p. 3.

As to WCT habitat and effects monitoring, the Field Manager observed that riparian habitat along Bean Creek had been determined to be in PFC and that current impacts to fish habitat derived primarily from road sediment and fish passage problems created by two culverts. He explained that the Bean Creek Treatment would improve habitat conditions for a population of genetically pure WCT because partially converting the existing conifer habitat to a deciduous woody habitat and opening up the canopy to allow more sunlight to reach the ground would increase the productivity of the stream. He further explained that more deep-rooted deciduous riparian vegetation along the treated portions of the creek would improve bank stability and reduce sediment input into the stream. He added that placing gravel, constructing armored drain drips, and installing sections of filter fence where Bean Creek road is likely to contribute sediment would reduce overall sediment input into Bean Creek and improve water quality and fisheries habitat. The Field Manager also pointed out that existing monitoring studies would be used to monitor any changes to the riparian area, the channel morphology, and the fisheries habitat; that permanent aspen monitoring plots had been installed both in and out of the treatment area in the summer and fall of 2006 and would be repeated after the Treatment to monitor aspen regeneration; and that the State of Montana Fish, Wildlife and Parks (MFWP) and BLM Fisheries biologists were conducting fisheries

habitat and WCT population monitoring in Bean Creek. Protest Decision at unpaginated p. 3.

The Field Manager countered Scheid's claim that appropriate biological evaluations had not been completed by citing the biological evaluation for special status plants included in Appendix D of the Centennial EA and the January 18, 2005, written concurrence of the U.S. Fish and Wildlife Service with the findings of the biological evaluation for threatened and endangered species prepared by the Dillon Field Office. The evaluation and concurrence included a no effect determination for all listed species under all alternatives except for a not likely to adversely affect determination for the Canada lynx and grizzly bears. Protest Decision at unpaginated p. 3.

In response to Scheid's questions about the surfacing of Bean Creek road,⁶ the Field Manager stated that road surfacing would only affect the first 1.5 miles of road and would be limited to the minimum extent possible. He noted that the surfacing would fill in the existing ruts with gravel and be followed by blading, as needed, with the goal of providing a safe haul surface for log truck traffic and reducing sediment input into Bean Creek. He stated that the surfacing would conform with common practice to reduce erosion and related sediment and accord with the SMZ laws and BMPs for water quality referred to on pages 23 and 24 of the Centennial EA. He pointed out that the limited surfacing of Bean Creek road had been the subject of a February 23, 2006, meeting with representatives of various State agencies, environmental organizations, timber companies, and BLM, all of which had agreed that gravel surfacing would be the best solution to reduce sediment and protect the WCT fishery in Bean Creek. He further indicated that armored drain dips using gravel material would be constructed in designated locations to improve drainage and reduce sediment inputs into Bean Creek; that 20' segments of filter fence would be constructed in 6 designated locations where the road had the highest potential to contribute sediment to the creek; and that no additional drainage work aside from standard road maintenance practices or culvert installations were planned. Protest Decision at unpaginated p. 4.

As to Scheid's complaint that the environmental documents had failed to discuss cumulative impacts, the Field Manager pointed out that the Centennial EA had addressed past, present, and reasonably foreseeable actions on pages 95-100. He summarized the anticipated impacts from those activities on both BLM and adjacent non-BLM administered lands, including

⁶ We note that specific road improvements were not mentioned in the Bean Creek EA; however, road related projects were contemplated in the Centennial EA. See, e.g., Centennial EA at 5, 28, 76, 99.

decreased potential for wildlife spread across ownerships; increased protection of private property from wildland fire; increased short-term opportunities for motorized vehicle access (returning to approximate current levels post-harvest activities); increased habitat diversity on the landscape level; potential to limit habitation by grizzly bears, lynx, and other large carnivores and reduce security cover for large ungulates; and potential to impact wildlife migration and dispersal between Montana and Idaho depending on the size, timing, and design features incorporated into timber harvests on non-BLM administered lands.

Protest Decision at unpaginated p. 4.

Finally, the Field Manager noted that, contrary to Scheid's assertion, recreational uses in Bean Creek had been discussed on pages 83-84 of the Centennial EA. He explained that in its current condition Bean Creek road was hazardous at times and, when wet, was occasionally impassible by most vehicles, and that the placement of gravel on the road was the minimum action needed to ensure safe log truck operations and to reduce the potential for sediment input during the 26-month duration of the timber sale. He recognized that the gravel surface could result in some increased accessing of the area during the wet fall and spring periods when the road is open to the public, but added that the December 2 to May 15 seasonal closure of the road would remain in place. He noted that, although the Nature Conservancy had expressed an interest in pursuing shared projects with BLM to gravel the entire Bean Creek road and replace the existing culvert, that any such project would be a separate action that was not included in the Bean Creek Treatment. Protest Decision at unpaginated ps. 4-5.

The Field Manager denied Scheid's protest, finding that the issues raised had been adequately analyzed in the Bean Creek and Centennial EAs, and decided to proceed with the implementation of the Bean Creek Treatment in accordance with 43 C.F.R. § 5003.3(f). Protest Decision at unpaginated p. 5. Scheid has appealed his decision, asserting that the environmental documents underlying the Bean Creek Treatment lack specific and descriptive information regarding the proposed action and its environmental impacts. We disagree.

ANALYSIS

Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2000), requires Federal agencies to prepare an environmental impact statement (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. *Bark*, 167 IBLA 48, 76 (2005); *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. *Bark*, 167 IBLA at 76, and cases cited. 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. *In re North Trail Timber Sale*, 169 IBLA 258, 261 (2006); *Bark*, 167 IBLA at 76, and cases cited; *In Re Stratton Hog Timber Sale*, 160 IBLA 329, 332-33 (2004). Mere differences of opinion provide no basis for reversal. *In re North Trail Timber Sale*, 169 IBLA at 261; *Bark*, 167 IBLA at 76; *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.” *Bark*, 167 IBLA at 76, quoting *In re Stratton Hog Timber Sale*, 160 IBLA at 332; 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 North Trail Timber Sale*, 169 IBLA at 262; *Bark*, 167 IBLA at 76-77; *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 360, 362 (1991) (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. *Bark*, 167 IBLA at 77; *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 C.F.R. § 1508.28. An EA tiered to an EIS or other NEPA document need not repeat the cumulative impacts analysis, a no action alternative, or other impact analysis adequately considered in the document to which the EA is tiered. *In re Stratton Hog Timber Sale*, 160 IBLA at 331, citing *Kern v. BLM*, No. 99-35254 (9th Cir. Mar. 22, 2002); *see also Colorado Environmental Coalition*, 169 IBLA 137, 141 (2006); *Bark*, 167 IBLA at 77, and cases cited.

With these principles in mind, we turn to the specific issues raised in Scheid’s appeal. Scheid first claims that none of the NEPA documents accurately describes or maps the exact location of the 10-acre/1,500-foot proposed treatment area within the mile of riparian habitat existing in sec. 31. Statement of Reasons (SOR) at 1. In response, BLM points out that, not only does BLM’s Application for SMZ Alternative Practice, referenced in the Bean Creek EA as mitigation measure #7 and included in the case file, place the treatment area in the SW¼ of sec. 31, but Scheid also attended a meeting on January 5, 2007, during which the attendees discussed the exact situs of the riparian treatment, *i.e.*, the 1,500-foot segment below where Bean Creek road crosses Bean Creek, and he did not question either the location or the description of the proposed treatment.⁷ BLM avers that the written information in the Centennial and Bean Creek EAs, as corroborated at the meeting, provided sufficient detail for Scheid to understand where the action was to occur and how to examine the record for any additional necessary information. Answer at 4-5. Thus, we reject his argument and find that the situs of the Treatment was adequately identified in the NEPA documents, in the case file, and at the January 5, 2007, meeting, and that Scheid had actual knowledge of that location.

Scheid next asserts that BLM’s claim that the riparian area on Bean Creek has been invaded by conifer trees is not substantiated in the EA and is incorrect because the dominant riparian vegetation on the majority of Bean Creek is typical of mature and stable spruce communities on streams in PFC. SOR at 1. BLM counters with citations to the Centennial EA specifically documenting the conifer invasion in riparian areas in the Centennial watershed and with references to the January 5, 2007, meeting at which the area subject to the Treatment was described as a willow/aspen type area with encroaching conifers. Answer at 5, citing Centennial EA at 4, 8, 54. BLM notes that, as stated in the Protest Decision, most of the trees selected for removal in the Treatment are small Douglas Fir or lodge pole pine, and contends that the removal of conifers to restore deciduous woody habitat and

⁷ Representatives from MFWP, American Wildlands, the Greater Yellowstone Coalition, and the Centennial Valley Association, as well as BLM officials and private parties, including Scheid, attended this meeting. Answer at 4; *see* Bean Creek Meeting Notes 1/5/07.

increase deep rooted riparian vegetation meets the objectives outlined in the Centennial and Bean Creek EAs. Answer at 5-6. We find that the EAs amply support BLM's claim of conifer encroachment and prescribe the removal of conifers to encourage aspen/willow regeneration. *See, e.g.*, Centennial EA at 4, 8, 25, 26 Table 5, 47, 54, 72-77; Bean Creek EA at 3. Scheid has failed to show error in BLM's determination.

Scheid also challenges BLM's assessment that Bean Creek is in PFC. He argues that, although PFC implies that the proper vegetation is present and streambanks are well vegetated and stable, the objective of the Treatment suggests that different conditions actually exist in the treatment area. He maintains that conifer invasion into the riparian area and out-competition of desirable vegetation and the need to increase riparian vegetation for greater streambank stability and sediment reduction contradict the finding that the area is in PFC. SOR at 1. In response, BLM explains that the PFC assessment was completed in 2004 by an interdisciplinary team using the methodology contained in "A User Guide to Assessing Proper Functioning Condition (PFC) and Supporting Science for Lotic Areas" (Technical Reference 1735-15 USDI, BLM 1998) (Guide).⁸ Answer at 6. BLM quotes various sections of the Guide, which explain that PFC does not mean potential or optimal conditions have been achieved and also that an area may be rated as PFC but still be a long way from the desired condition for many uses and values. Answer at 6, citing Guide at 15, 16, 18, and 19-20. BLM notes that, although Bean Creek was assessed as PFC, site-specific concerns warranting additional treatment were also identified. Answer at 6-7, citing Centennial EA at 2. BLM avers that, rather than negating the PFC assessment, the Treatment addresses those site-specific concerns and desired future conditions. *Id.* at 7.

To the extent Scheid is challenging the propriety of the assessment of the Treatment area as in PFC, we note that this assessment was not made in the Protest Decision, nor was this determination part of the Bean Creek EA or the decision to approve the Treatment. Thus, the validity of that assessment is not properly before us. *See Petroleum, Inc.*, 161 IBLA 194, 223 (2004), *aff'd. sub. nom. Rex Monahan v. U.S. Department of the Interior*, Civ. No. 04-CV-205 (D. Wyo. May 17, 2005), *appeal filed*, No. 05-8068 (10th Cir. July 22, 2005). If Scheid is contending that the PFC assessment undermines the need for the Treatment, that assessment does not mean that no site-specific resource concerns exist or that present conditions are optimal and cannot be improved. Scheid has not shown error in BLM's determination that site-specific concerns and desired future conditions warrant implementing the Treatment.

⁸ The Guide is not included in the case file, but, according to BLM, is available and used online. Answer at 6 n .1.

Scheid further disputes the Field Manager's statement that the productivity of Bean Creek will increase as a result of the Treatment. He asserts that the Bean Creek EA fails to describe any currently impaired water quality, aquatic habitat, riparian vegetation canopy, or streambank conditions that need improvement and expresses doubts that harvesting 60 percent of the conifers along 1,500 feet of Bean Creek would be sufficient to improve stream quality in a headwater stream system over 4 miles in length. SOR at 1-2.

In response, BLM explains that the need to treat a portion of the riparian habitat within Bean Creek to increase stream productivity for WCT was identified in a February 23, 2006, coordination meeting to discuss proposed Bean Creek treatments and that BLM and MFWP fisheries biologists identified the treatment areas during a June 2006 meeting at the site. Answer at 7, citing Bear Creek Working Group Meeting Notes, Feb. 23, 2006. BLM points out that the treatment area is not within the headwater area of the stream but is in the lower stretch, which is the situs of riparian habitat alternation and has the highest potential for WCT and the greatest possibility for increased productivity. *Id.* As support for the expectation that the Treatment will improve stream productivity, BLM cites both the Bean Creek EA's explanation of the rationale for the decision, quoted earlier, and the Application for SMZ Alternative Practice's description of the justification for the proposed alternative practice.⁹ BLM also notes that, at the January 7, 2007, meeting, the MFWP representative identified and discussed with Scheid the expected benefits to WCT from the Treatment, including reduced shading, beneficial increase in water temperatures, reduced negative effects of acidic conifer deposition from small twigs and needles, beneficial effects of a higher pH of the water from the deposition of hardwood leaf litter, and increased macroinvertebrate diversity on which WCT are dependent. Answer at 8-9; *see* Bean Creek Meeting Notes 1/5/07.

Scheid has presented no objective proof supporting his claims that no impaired riparian conditions warranting improvement exist and that the Treatment will not improve stream productivity. Nor has he shown error in BLM's (and MFWP's) expectation that such improvement will occur. Although he disagrees with BLM's conclusions, his mere difference of opinion does not justify overturning BLM's

⁹ According to the application, the removal of approximately 60 percent of the conifers was justified because it would open up the forest canopy around the stream, allow some sunlight to reach the stream and stream banks, and promote growth of a riparian plant community of forbs, shrubs, and grasses, especially aspen, which would improve water quality, help promote stream bank stability, and resprout and regenerate much more quickly in the event of an intense wildfire than would the conifer species, thus helping to reduce sedimentation. Application for SMZ Alternative Practice at 1.

decision. *See In re North Trail Timber Sale*, 169 IBLA at 261; *Bark*, 167 IBLA at 76. We therefore reject his challenge to the Treatment's efficacy.

Finally, Scheid maintains that, although the Treatment appears to be dependent on the upgrading of Bean Creek Road, no NEPA analysis has been performed for the road upgrading, and, therefore, that no support exists for the Field Manager's statement that the upgrade would reduce sediment and protect the WCT fishery. He further contends that BLM has failed to assess the cumulative impacts from increased recreational traffic on the road and from future use as a haul road for adjacent private and state lands, and has neglected to address the potential spread of noxious weeds from increased road use and road upgrading materials. SOR at 2.

In response, BLM points out that, consistent with the directive of the Centennial EA, the limited proposed road reconstruction was designed to comply with SMZ laws, implement Montana BMPs, and mitigate resource concerns associated with water quality and WCT habitat and is the minimum necessary to provide a safe haul surface for log truck traffic and reduce sediment input into Bean Creek.¹⁰ Answer at 9. BLM submits that the Water Quality BMPs for Montana Forests, which endorse the utility of gravel surfacing, armored drain construction, and filter fence construction, confirm its assertion that the road upgrading will reduce sediment input into Bean Creek and thus protect WCT. Answer at 10, quoting Water Quality BMPs for Montana Forests (MSU Extension Service, 2001) at 17, 21, 23, 24, 26, 28, and 37. As to recreational use of the road, BLM points out that Bean Creek Road was designated as an open route in the Centennial Travel Management Plan completed in 2001 and that road reconstruction does not change that designation. While gravel surfacing might result in increased use during the wet spring and fall periods when the road is open to the public, BLM stresses that the December 2 to May 15 seasonal road closure remains in place. Answer at 11. As far as the cumulative impacts from use of the road is concerned, BLM notes that no one, including Scheid, raised this issue during the scoping process for the Bean Creek EA, and asserts that, in any event, the Field Manager's citation to the Centennial EA's discussion of cumulative impacts adequately responded to these concerns. *Id.* Finally, BLM avers that Scheid's concerns about noxious weeds is misplaced because of the actions taken to mitigate the potential for noxious weeds, specifically that the surface material has been surveyed for them, design features to prevent their spread have been incorporated into the timber sale contract as special provisions (*see* Timber Sale Contract TS 2007-02, Contract Special Provisions at 10), and the Bean Creek area is surveyed and treated for them a minimum of three times a year. Answer at 12.

¹⁰ BLM notes that additional road work, including culvert replacements, are not part of the Treatment and will be pursued as a separate action. *See* Answer at 10.

Scheid is correct that road resurfacing is not explicitly detailed or analyzed in the Bean Creek EA; however, road related projects were clearly contemplated in the Centennial EA. *See, e.g.*, Centennial EA at 5, 28, 76, 99. We find that the Field Manager's delineation of the authorized road resurfacing activities, coupled with the Bean Creek EA's explicit adoption of the State of Montana BMP's and SMZ laws as a mitigation measure (EA at 4), ensures that this minimal road work will not have a significant impact on the environment and satisfies NEPA requirements. The Centennial EA also addresses recreational use and the impacts on that use, referencing the 2001 Travel Management Plan (*see, e.g.*, Centennial EA at 11, 61, 83), discusses potential noxious weed invasions and methods to inventory and treat for the weeds (*see* Centennial EA at 74), and summarizes cumulative impacts (*see* Centennial EA at 94-100). Scheid has not shown that the impacts from the Treatment differ from or exceed those set forth in the Centennial EA. The Centennial EA's impact analysis, as supplemented by BLM's identification and expansion of additional project-related specifications and mitigation measures designed to minimize impacts from road resurfacing, including road resurfacing parameters, road closures, and noxious weed mitigation measures, adequately fulfills BLM's NEPA responsibilities.

Scheid has not shown that BLM's analysis failed to consider a substantial environmental question of material significance to the proposed action. *In re North Trail Timber Sale*, 169 IBLA at 261; *Bark*, 167 IBLA at 76. Rather, he has merely speculated and requested more information and attempted to "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." *Bark*, 167 IBLA at 76, quoting *In re Stratton Hog Timber Sale*, 160 IBLA at 332. We find that Scheid has failed to show error in the Field Manager's Protest Decision and affirm that decision. *See In re North Trail Timber Sale*, 169 IBLA at 262.

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

/s/
Sara B. Greenberg
Administrative Judge

I concur:

_____/s/
R. Bryan McDaniel
Administrative Judge