

## HEADWATERS

IBLA 76-721

Decided December 16, 1977

Appeal from a decision of the Medford, Oregon, District Manager, Bureau of Land Management, to offer the Wilderville Ridge timber sale tract No. 76-48 for sale.

Affirmed.

1. Bureau of Land Management -- Rules of Practice: Appeals: Standing to Appeal

An organization appealing a Bureau of Land Management decision will be considered a "party to a case" within the meaning of 43 CFR 4.410 where the organization uses the lands in question, is recognized as a bona fide representative of the community, receives notice of Bureau actions concerning the lands, actively and extensively participates in the formulation of land use plans for the lands in question, and takes a position in a dispute concerning the use of the land contrary to another group or individual.

2. National Environmental Policy Act of 1969: Environmental Statements -- Oregon and California Railroad and Reconveyed Coos Bay Grant Lands: Sustained Yield Units

Where one objects to the Bureau of Land Management's decision to offer a certain tract of timber for sale on the grounds that an environmental impact statement for the single planned timber sale has not been prepared and that such a sale would violate the sustained yield provisions of the O&C Act of August 28, 1937,

43 U.S.C. § 1181a (1970), the Bureau decision will be upheld when the objecting party fails to provide any evidence to support its contentions and a program environmental impact statement for the sustained yield unit which includes the parcel in question is in the process of being prepared.

APPEARANCES: Paula Ajay and Randal Lee O'Toole for appellant; Donald P. Lawton, Esq., Office of the Solicitor, Department of the Interior, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Headwaters has appealed from a decision of the Medford, Oregon, District Manager, Bureau of Land Management (BLM), to offer the Wilderville Ridge timber tract No. 76-48 for sale. Headwaters' appeal was filed with BLM on July 27, 1976.

By letter dated July 28, 1976, BLM informed Headwaters that it was rejecting the appeal. BLM explained that:

The proposed Wilderville Ridge Sale was a specific subject of the law suit filed by Headwaters and others in the United States District Court for the District of Oregon on December 9, 1975, (Downing et al v Frizzel [sic], Civil No. 75-1128, USDC, ORE). In that suit Headwaters voiced the same issues as to the need for an Environmental Impact Statement for the Wilderville Ridge Tract and the alleged violation of provisions of the O&C Act of 1937. In a decision issued by the Court on February 25, 1976, Headwaters' request for a preliminary injunction of the Wilderville Ridge and other tracts in the fiscal year 1976 Timber Sale Program was denied. A further hearing on the merits of that case is still pending before the Federal District Court.

Subsequently, BLM, through the Solicitor's Office, requested that the Board issue an order confirming rejection of the appeal.

By order dated August 16, 1976, the Board stated:

This Board is the sole judge of its jurisdiction and, subject to regulation, of which appeals it will entertain or summarily dismiss; this Board is not bound by determinations of BLM officers as to what matters are or are not subject to appeal. L. O. Power, 22 IBLA 15, 17 (1975); BLM Manual 1841.15A. In any event, our review of the record has convinced

us that inasmuch as the Federal District Court has pendant jurisdiction over the matters involved herein and has declined to issue a preliminary injunction, the public interest would not be served by delaying the sale involved herein. Pursuant to the authority delegated to this Board, specifically 43 CFR 4.21(a), the decision of the District Manager to offer Tract No. 76-48 shall be in full force and effect pending resolution of the appeal. Furthermore, this Board will suspend all action on the appeal until such time as the District Court has acted on the matters presented in Downing v. Frizzell, supra.

The Federal Court suit was resolved by a Stipulation for Dismissal and an order dated December 30, 1976. The parties stipulated to dismissal of the action on the basis of a letter signed by the Oregon State Director, BLM, dated November 23, 1976, in which BLM agreed to withhold certain proposed sales until completion of the Environmental Impact Statement for the Josephine Master Unit in which the tracts are located. 1/ The Wilderville Ridge tract, No. 76-48, was not specifically mentioned in the stipulation.

By order dated March 9, 1977, the Board indicated that in light of the disposition of the federal suit, it was ready to consider the appeal and that the parties should advise the Board of their views. BLM and appellant have submitted their arguments.

[1] Initially, BLM has requested that the appeal be dismissed on procedural grounds. BLM claims that Headwaters was not a "party to a case" pursuant to 43 CFR 4.410 and, therefore, not able to appeal the decision to this Board. BLM states that Headwaters must first protest the BLM's action and then await the decision of the BLM authorized officer before appealing to the Board.

While BLM contends that appellant was not a "party to a case," the record discloses otherwise. Appellant contends that a

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1/ The following tracts were listed in the State Director's letter:

East Fork Williams Creek, 76-42  
 Robinson Gulch, 76-51  
 Board Tree Creek, 76-54

Chapman Creek, 76-46

In addition, BLM agreed not to initiate any timber sale activity or road acquisitions in the Round Top Mountain-Clear Creek area until completion of the program EIS.

Headwaters member, one Andrew Binstock, sent a protest of the Wilderville Ridge Sale to BLM in June 1976. In addition, appellant was a participant in the federal court suit filed on December 9, 1975, to enjoin the 1976 fiscal year timber sale program of BLM (Downing v. Frizzell, Civil No. 75-1128, USDC Oregon). 2/

It has been held that an organization is a "party to a case" within the meaning of 43 CFR 4.410 where the organization uses the lands in question, is recognized as a bona fide representative of the community, receives notice of BLM actions concerning the lands, actively and extensively participates in formulating land use plans for the land in question, and takes a position in a dispute concerning the use of the land contrary to another group or individual. Citizens' Committee to Save Our Public Lands v. Kleppe, C 76-32SC, oral order of Judge Samuel Conti, January 23, 1976, United States District Court, Northern District of California.

We find that Headwaters has evidenced sufficient involvement in the early stages of the 1976 timber sale program of the BLM Medford District so as to be considered a "party to a case" within the meaning of 43 CFR 4.410. Therefore, Headwaters' appeal of the BLM decision to offer the Wilderville Ridge timber tract No. 76-48 for sale is properly before this Board and we will consider the merits of the appeal.

[2] Appellant contends that an Environmental Impact Statement (EIS) should be prepared for the Wilderville Ridge sale. As pointed out by counsel for BLM, such a contention was also made in the Downing case; however, that case was dismissed based on BLM's promise to withhold certain sales until completion of the EIS for the Josephine Master Unit. BLM was apparently not willing to include the Wilderville Ridge tract in the settlement because the contract for that sale had been awarded on October 27, 1976, to Mountain Fir Lumber Company, Inc. In addition, appellant admits

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2/ In 1975 Headwaters had requested that the 1976 fiscal year Timber Sale Plan or any specific sales which made up that plan be withdrawn. Such request was denied and on July 11, 1975, Headwaters appealed that denial. By letter dated July 22, 1975, BLM requested that this Board invoke 43 CFR 4.21(a) and declare the BLM decision to be in full force and effect. On July 25, 1975, the Board issued an order granting BLM's request.

In an effort to resolve the dispute with Headwaters BLM agreed to review the Environmental Analysis Records of several of the proposed sales and on October 15, 1975, BLM requested that the Board remand the case to BLM so that BLM could reconsider its decision on the timber plan. The case was remanded by the Board on October 21, 1975.

in its statement of reasons that "[w]e agree that the Josephine Master Unit EIS may indeed resolve the issues we hope to raise regarding Wilderville Ridge."

Appellant has failed to provide any evidence to support its claim that an individual EIS is needed for the Wilderville Ridge tract. For that reason, we find that no individual EIS is needed for the Wilderville tract at this time.

In a recent decision, Harold P. Canady, 29 IBLA 69 (1977), this Board considered the question of whether an individual EIS was necessary for the Roundtop Land Management Plan. Such plan was one of a number of sales included in the Josephine sustained yield unit. The Wilderville Ridge tract was also one of the sales. The Board stated in Canady at 71, that a program statement is more valuable or functional than individual impact statements in avoiding duplication of effort, in developing the cumulative effects of a series of actions, and in providing for more exhaustive consideration of a program. The Board continued, by stating at 71 that:

It is our opinion that all of these considerations are best served in this case at this time by a program statement detailing the BLM's timber sale plans for the Josephine sustained yield unit including the Roundtop Mountain tract. Duplication of effort is a consideration which weighs especially heavily in favor of the adequacy of a single overall statement in this situation. To require an EIS as a precondition to every 240-acre BLM timber sale would create an intolerable administrative burden given the fact that, in the Medford District alone, there are 900,000 acres of managed land.

Appellant also charges that the Wilderville Ridge Sale violates the sustained yield provisions of the O&C Act of August 28, 1937, 43 U.S.C. § 1181a (1970). Appellant claims that once the first partial cut is executed, the Ridge will become open to infiltration of brush from the acres of brush fields surrounding the tract and that the brush fields are incapable of producing a sustained yield of timber. Appellant has provided no evidence to support its claim.

As we stated in Canady at 72, in reference to the same issue:

We believe that a decision on this issue would be premature. We expect that this issue will be more fully developed by the preparation of the Josephine Unit EIS which, according to the settlement in Kleppe, supra, will contain an analysis of the "annual volume of timber harvest proposed to be offered \* \* \* including an explanation of

why this volume is consistent with the principle of sustained yield, and a description of alternative levels of timber harvest that were considered."

We are unable to find, based on the record before us, that the Wilderville Ridge sale will violate the principle of sustained yield.

While BLM agreed to withhold certain proposed sales until completion of the EIS for the Josephine Master Unit in stipulating for dismissal of Downing v. Frizzell, *supra*, appellant now complains that the Wilderville Ridge sale should also have been withheld. If appellant was willing to stipulate to dismissal of its court suit without the inclusion of the Wilderville Ridge tract, it is difficult to understand how it can pursue such a complaint in the present forum. The record is devoid of any evidence that would support a finding that action on the sale should be withheld pending the preparation of the program EIS.

Appellant also asserts that there was a "procedural violation" by BLM when the contract was awarded to Mountain Fir Company. Appellant interprets our August 16, 1976, order as allowing BLM to announce the sale, but not to award the contract.

The August 16, 1976, order specifically stated that "the decision of the District Manager to offer Tract No. 76-48 shall be in full force and effect pending resolution of the appeal." Action on the appeal was suspended until the District Court acted on Downing v. Frizzell, *supra*. While the order did not mention the awarding of a contract, it cannot be construed as prohibiting such action. The logical progression following the offering is the acceptance of bids and the awarding of a contract. It should also be noted that appellant sought a preliminary injunction from the District Court to halt the 1976 fiscal year timber sale program and the court declined to issue such an injunction.

Appellant has failed to provide support for its contentions relating to the Wilderville Ridge sale, and for that reason, we conclude that the BLM decision to offer such tract for sale was proper and that an individual EIS for such sale is not necessary at this time.

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

Frederick Fishman  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

