

A.C.O.T.S.

IBLA 81-1035

Decided November 12, 1981

Appeal from a decision of the Medford, Oregon, District Office of the Bureau of Land Management, denying a protest to an amendment to a supplemental environmental assessment, OR 110-81-83.

Affirmed.

1. Administrative Authority: Generally -- Appeals -- Environmental Quality: Generally -- Public Lands: Administration -- Rules of Practice: Appeals: Generally -- Secretary of the Interior

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

2. Appeals -- Bureau of Land Management -- Federal Land Policy and Management Act of 1976: Generally -- Public Lands: Administration -- Rules of Practice: Appeals: Burden of Proof

The Federal Land Policy and Management Act of 1976 requires the Secretary of the Interior to manage public lands under principles of "multiple use" and "sustained yield," and the statutory definition of these concepts recognizes the need for latitude and discretion in their implementation. As the Secretary's delegate, BLM has the responsibility of administering such policies and programs, and BLM must be accorded correlative

powers of reasoned discretion in discharging these duties. Therefore, so long as the BLM policy or implementing action is based on a consideration of all relevant factors and is supported by the record, the Board will not disturb it absent a clear showing that it is contrary to statute or regulation or otherwise erroneous.

APPEARANCES: Christopher Bratt, Chairman, for Applegate Citizens Opposed to Toxic Sprays; Eugene A. Briggs, Esq., Office of the Regional Solicitor, Portland, Oregon, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The Applegate Citizens Opposed to Toxic Sprays (A.C.O.T.S.) appeals a decision of the Medford District Manager of the Bureau of Land Management (BLM) that denied a protest against Amendment No. 1 to the District's Supplemental Environmental Assessment (SEA) for the 1981 vegetative management program. The protest was filed April 27, 1981, and was denied by decision dated June 2, 1981.

The SEA considered treating approximately 10,200 acres of public land with burning, manual clearing, mechanical clearing, and herbicides. Under Amendment No. 1, an additional 1,193 acres will receive this treatment, of which 326 acres are to be treated with herbicides. Most of the points made in the A.C.O.T.S. protest addressed themselves to various issues arising out of the amendment's provision for BLM herbicide use.

[1] In the amendment the District Manager states:

I find that the proposed 1981 Vegetative Program for the Medford District does not involve significant impacts beyond those already analyzed in the previous prepared Environmental Impact Statements entitled: Vegetative Management With Herbicides: Western Oregon, 1978 through 1987; Josephine Sustained Yielded Unit Ten-Year Timber Management Plan; and Jackson and Klamath Sustained Yield Units Ten-Year Timber Management Plan.

The final environmental impact statement (EIS) on vegetative management with herbicides was approved and put into force by the Secretary of the Interior on March 15, 1979. It provided for herbicidal spraying, with some exceptions not relevant here. This Board must defer to such Secretarial action, and we have no jurisdictional authority to entertain an appeal concerning matters covered by the Secretary's decision except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith. Since nothing in A.C.O.T.S.'s protest or its submissions to the Board clearly shows Amendment No. 1 to be contrary to the Secretary's decision, A.C.O.T.S. has failed its

threshold burden, and we cannot consider the merits of those portions of the appeal dealing with herbicide use. 43 CFR 4.410; Texas Oil and Gas Corp., 46 IBLA 50 (1980). <sup>1/</sup>

A.C.O.T.S. gave two additional reasons for its protest besides those relating directly to herbicidal or chemical spraying. First, BLM assertedly did not allow adequate public participation and comment on the proposed amendment as required by law. In response to this generalized assertion, BLM referred to section VI of the amended SEA, wherein the opportunities given for public input are identified. It shows that a news release announcing the availability of the amendment's draft was distributed April 10, 1981, to several television and radio stations, newspapers, local government leaders, area post offices, and several private groups whose names suggest they might have had interest in such a BLM proposal. Also, the news release and a copy of the draft were sent to several local public libraries, county government leaders, several state government agencies and leaders, Federal agencies and leaders, various local stores and other public facilities, and several special interest groups, including A.C.O.T.S. Copies of the draft were also available at four BLM offices in the area. These announcements gave notice that the deadline for the 2-week public review and comment period was April 27, 1981.

Since A.C.O.T.S. has not attempted to show specifically how opportunity for public participation was inadequate, or how A.C.O.T.S. was thereby harmed, and since neither is obvious to us, we see no reason to invalidate the amendment on the basis of this argument.

A.C.O.T.S.'s next and "primary" reason for its protest was that "[t]he amended EA proposal to manage vegetation in accordance with multiple-use and sustained-yield goals cannot be accomplished." After stating that its policy is to manage public lands on the basis of multiple use and sustained yield goals, BLM's response consisted simply of an unelaborated quotation from section 103 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1702 (1976):

(c) The term "multiple use" means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use

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<sup>1/</sup> "[T]his Board is without jurisdiction to entertain appeals which are solely directed to the validity and legality of an order issued by the Secretary in the exercise of his official powers and duties. We have repeatedly held that in cases where the basis of an action by an agency of this Department is a Secretarial order, this Board will only review the case for the purpose of deciding whether the order was properly applied and implemented." Texas Oil and Gas Corp., *supra* at 52.

to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources, including, but not limited to recreation, range, timber, minerals, watershed, wildlife and fish, and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

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(h) The term "sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands and consistent with multiple use.

A.C.O.T.S. asserts that the quoted definitions serve to support its contention that BLM's plans are adverse to FLPMA and will permanently impair the productivity of the land and the quality of the environment. A.C.O.T.S. states, "Certainly no reasonable person would pretend to be able to reconcile Medford's policy of rampant clear-cutting (albeit after an intermediate, "shelterwood" stage) and repeated spraying of herbicides with the Act's definition of "multiple use." We disagree that such policies are necessarily unreasonable.

[2] While FLPMA requires the Secretary to employ the principles of multiple use and sustained yield in his efforts to manage the public lands, 2/ the above-quoted definitions of these concepts, on their face,

2/ Section 302(a) of FLPMA, 43 U.S.C. § 1732(a) (1976), provides that the "Secretary shall manage the public lands under principles of multiple use and sustained yield \* \* \*." Section 301 of FLPMA, 43 U.S.C. § 1731 (1976), states that BLM is the proper Secretarial delegate of such administrative responsibility.

An uncodified portion of FLPMA, section 701(b) of P.L. 94-579, 90 Stat. 2786, 43 U.S.C. § 1701 (1976) note, states:

"Notwithstanding any provision of this Act, in the event of conflict with or inconsistency between [FLPMA] and the Acts of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a-1181j), and May 24, 1939 (53 Stat. 753), insofar as they relate to management of timber resources, and disposition of revenues from lands and resources, the latter Acts shall prevail."

To the extent the Act of Aug. 28, 1937, relating to "Oregon and California Railroad and Coos Bay Wagon Road Grant Lands," applies to this case, it does not affect our conclusion. The section of that Act concerned with timber management, 43 U.S.C. § 1181a (1976), is wholly consistent with the relevant sections of FLPMA.

recognize the need for latitude and discretion in their implementation. As the Secretary's delegate, BLM has the responsibility of administering policies and programs of public land management, including those complained of by A.C.O.T.S., and BLM must be accorded correlative powers of reasoned discretion if it is to be effective in discharging its statutory duties. Therefore, so long as the BLM policy or implementing action is based on a consideration of all relevant factors and is supported by the record, we will not disturb it absent a clear showing that it is contrary to statute or regulation or otherwise erroneous. Ernest J. Goertzen, 51 IBLA 196, 197 (1980); Preserve Our Scenic Environment, 47 IBLA 276 (1980).

According to the District Manager's decision, it was made only after consideration of the appellant's protest. No other relevant factors appear to have remained unconsidered and the record clearly supports a reasonable possibility of reaching multiple use and sustained yield goals under the amendment. Thus, we uphold BLM's decision to add Amendment No. 1 to the Supplemental Environment Assessment, not because appellant's protest is unworthy of BLM's consideration, but rather because BLM's action was not clearly erroneous.

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.

Douglas E. Henriques  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

