

DOLORES M. LISMAN

IBLA 81-619

Decided September 10, 1982

Appeal from decision of Medford District Office, Oregon, Bureau of Land Management, denying protest to adoption of the 1981 vegetative management program. OR 110-81-83.

Affirmed.

1. Environmental Quality: Environmental Statements -- National Environmental Policy Act of 1969: Environmental Statements

A decision to implement a vegetative management program will be affirmed where it is based on an environmental assessment which reflects an evaluation of the environmental impacts of the program sufficient to support an informed judgment.

APPEARANCES: Dolores M. Lisman, pro se; Eugene A. Briggs, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Dolores M. Lisman has appealed from a decision of the Medford District Office, Oregon, Bureau of Land Management (BLM), dated April 3, 1981, denying her protest to adoption of the 1981 Medford District vegetative management program.

Based on a Supplemental Environmental Assessment (SEA) and public comments, the BLM district manager, in a decision dated March 3, 1981, adopted the proposed 1981 vegetative management program, with certain changes. The decision called for the treatment of 10,179 acres of BLM-administered public land by a combination of methods including manual treatment, burning, and the use of herbicides.

By letter dated March 23, 1981, appellant protested the BLM district manager's actions, contending that neither the SEA nor the March 3 decision provided a "site specific" analysis of the various "feasible" alternative methods of vegetation management and that, hence, "it is not possible to

determine why a particular alternative (except for gross yarding) fell out of consideration for a specific site." Appellant stated that: "This may have been done on various area worksheets, but there's no reference to specifically what documents contain this information." Appellant concluded that the failure to provide a site specific rationale for rejecting various alternatives indicates that the district manager's decision was not made on an informed basis and, furthermore, "did not facilitate site specific public comment."

In the April 3 decision denying the protest, the BLM district manager responded that chapters IV and V of the SEA address the "environmental impacts" of the various alternatives for vegetation management and that chapter VI of the SEA "describes the criteria for selecting feasible alternatives and summarizes the reasons that are used in eliminating feasible alternatives in order to arrive at the proposed treatment." He further states:

Table 27 shows the feasible actions that we considered for each unit and the recommended treatment to be applied. As indicated in the decision document, a site specific analysis was made for each individual unit to determine which treatment or treatments would best accomplish the vegetative management objective. 1/ A detailed on the ground analysis of each unit was made by a silviculturist and the documented information is kept by the applicable area. As you have indicated, all information is not found in the EA or the Decision Document. It is available for a particular unit upon request. I have enclosed a sample of this information from each area as you have requested. I believe that the analysis process used and the information gathered form a good base for contributing toward making an informed decision.

In her statement of reasons for appeal, appellant argues that the SEA did not comply with Instruction Memorandum No. OR-80-57, dated August 25, 1980, issued by the BLM State Director, Oregon, which instructed district managers as to the content of a document entitled "Environmental Assessment/FONSI" (Finding of No Significant Impact), 2/ in part stating, at 2: "Summarize rationale from the E.A. or attach copy of E.A." Appellant contends that the SEA did not comply with either the instruction memorandum or the regulation at 40 CFR 1508.9 because it failed to provide a "site specific" analysis of the impact of the action and the rationale for rejecting various alternatives for vegetation management.

By letter dated June 4, 1981, the Office of the Regional Solicitor moved for dismissal of the appeal on the basis that the appeal was not within

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1/ The Mar. 3 decision specifically stated, at 2: "A site specific analysis was made for each individual unit to determine which treatment or treatments would best accomplish the objective of site preparation, release, or precommercial thinning. All technically feasible alternatives were considered for each unit."

2/ The Mar. 3 decision, in the present case, consists of the "Environmental Assessment/FONSI," as well as the decision adopting the 1981 vegetative management program. The former decision document is attached to the SEA.

the jurisdiction of the Board. The Solicitor's Office relied on an Order, dated April 17, 1981, wherein the Board dismissed appeals filed by various citizen groups and individuals from the denial of protests challenging the adequacy of the SEA. In that Order, we found that the SEA assessed, on a site specific basis, the proposal for and alternatives to using herbicides for vegetation management, within the analysis and framework of a final Environmental Impact Statement (EIS) entitled Vegetation Management with Herbicides: Western Oregon, 1978 through 1987. Moreover, we held that the SEA and the decision to use herbicides as part of the 1981 vegetative management program for the Medford District were actions taken to implement the use of herbicides, other than Silvex, an option set forth in the EIS and approved by the Secretary of the Interior on March 15, 1979. Specifically on the question of jurisdiction, we stated, as quoted by the Solicitor's Office:

None of the issues that any of the appellants have raised takes any of the appeals outside the scope of the environmental analysis of the herbicide program contained in the EIS. For each site, BLM examined the need for vegetation control and the alternatives for carrying out its management program. A BLM conclusion that the use of herbicides is the most appropriate means of control at a particular site based on an adequate examination of competing considerations, rather than use of a non-herbicide method, is consistent with the option approved by the Secretary of the Interior. The Board of Land Appeals has no jurisdiction to entertain an appeal from a decision of an officer of BLM to use certain herbicides in the context of a final environmental impact statement where the decision to use such herbicides as described in the impact statement has been approved by the Secretary. 43 CFR 4.410. See Texas Oil & Gas Corp., 46 IBLA 50 (1980).

The Solicitor's Office argues that appellant has made no attempt to point out in what way the March 3 decision by the BLM district manager, adopting the 1981 vegetative management program, was "outside the scope of the Secretary's decision."

We cannot agree with the Solicitor that this appeal must be dismissed for lack of jurisdiction. Clearly the Board has no jurisdiction to review actions implementing the Secretarial decision to use herbicides (other than Silvex) in the vegetation management program in Western Oregon within the context of the EIS. 43 CFR 4.410; Texas Oil and Gas Corp., 46 IBLA 50 (1980). However, implementation of the decision to use herbicides may give rise to issues entirely outside the scope of the Secretary's decision, which was confined, we believe, to the appropriateness of using herbicides in the management of forest vegetation within the broad context of factors considered in the EIS. See A.C.O.T.S., 60 IBLA 1 (1981). One such issue is whether a BLM district office has adequately considered alternatives for vegetation management, other than the use of herbicides, at a particular site. Reversal on appeal in such a context would not be contrary to the Secretary's decision regarding use of herbicides, but, rather, would constitute a finding that BLM has not adequately considered other alternatives to the use of herbicides.

Moreover, we believe that this approach is consistent with our duty to ensure that, in preparing an environmental assessment, BLM has developed a reviewable record reflecting consideration of "all relevant factors," in view of the fact that such an assessment is precedent to a threshold determination whether a full environmental impact statement should be prepared. Lane County Audubon Society, 55 IBLA 171 (1981); see Hanly v. Mitchell, 460 F.2d 640, 648 (2d Cir.), cert. denied, 409 U.S. 990 (1972); Elaine Mikels, 44 IBLA 51 (1979).

[1] Appellant's contentions on appeal must be rejected. The SEA contains a discussion of the nature of the alternative actions considered for vegetation management, an analysis of the environmental consequences of the various alternatives, and a summary of the reasons for rejecting various alternatives. See SEA, at 39-45. In addition, the SEA relies on information developed not only in the EIS, but also, in two other environmental impact statements, the Josephine Sustained Yield Unit Ten-Year Timber Management Plan and the Jackson-Klamath Sustained Yield Units Ten-Year Timber Management Plan. Although the SEA does not detail all of the specific impacts for each unit in the project, it is clear that impacts were analyzed in each unit and alternatives were chosen on an individual unit basis. We can discern no requirement in either the regulation at 40 CFR 1508.9 or the Instruction Memorandum cited by appellant that the SEA contain a unit by unit narrative of the environmental impacts. The purpose of the SEA for the 1981 vegetation management program, upon which the finding of no significant impact other than those evaluated in the programmatic EIS was based, is an examination of the specific impacts of this particular vegetation management program in the Medford District. This does not require that the SEA itself contain a unit by unit inventory of the specific environmental impacts. A decision to implement a vegetation management program will be affirmed where the SEA contains a summary of the environmental impacts based on an analysis of each unit which allows BLM to make an informed decision based on an understanding of the impacts of the vegetation management program. See Lane County Audubon Society, *supra* at 179.

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.

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C. Randall Grant, Jr.  
Administrative Judge

We concur:

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Gail M. Frazier  
Administrative Judge

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Bruce R. Harris  
Administrative Judge

