

IN RE BALD POINT TIMBER SALE

IBLA 83-186

Decided May 4, 1984

Appeal from decision of District Manager, Medford District, Oregon, Bureau of Land Management, denying protest to proposed timber sale. OR 110-TS3-7.

Affirmed.

1. Oregon and California Railroad and Reconveyed Coos Bay Grant Lands: Timber Sales--Timber Sales and Disposals

A decision by BLM denying a protest to a proposed timber sale will be affirmed where the appellant does not present sufficient evidence that the sale area was misclassified as high intensity land.

2. National Environmental Policy Act of 1969: Generally-- Oregon and California Railroad and Reconveyed Coos Bay Grant Lands: Timber Sales--Timber Sales and Disposals

BLM may deviate from provisions contained in an environmental impact statement with respect to regeneration cutting in a planned timber sale where the deviation is not so significant as to require preparation of a supplemental environmental impact statement.

3. National Environmental Policy Act of 1969: Generally-- Oregon and California Railroad and Reconveyed Coos Bay Grant Lands: Timber Sales--Timber Sales and Disposals

BLM may properly proceed with a proposed timber sale where the environmental assessment of the sale considered all relevant factors, including the impact of road construction on soil erosion, wildlife and recreational resources.

APPEARANCES: Genevieve Windsor, vice president, Threatened and Endangered: Little Applegate Valley, for appellant; District Manager, Medford District, Oregon, Bureau of Land Management, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Threatened and Endangered: Little Applegate Valley (TELAV) has appealed from a decision of the District Manager, Medford District, Oregon,

Bureau of Land Management (BLM), dated October 21, 1982, denying its protest of the proposed Bald Point timber sale, OR 110-TS3-7.

The proposed Bald Point timber sale involves 13 units, totaling 407 acres, which are to be partially cut, 3 units, totaling 75 acres, which are to be clearcut, and a right-of-way, totaling 18 acres, which is to be clearcut, situated in Jackson County, Oregon. ^{1/} The sale area is within Oregon and California railroad revested grant lands, known as O & C lands, and therefore, subject to forest management under the Act of August 28, 1937 (O & C Act), 43 U.S.C. §§ 1181a-1181f (1976). The projected volume of timber to be derived from the sale area is estimated to be 7,795 Mbf (thousand board feet). The duration of the proposed timber sale contract would be 36 months.

Notice of the proposed timber sale was given on September 30, 1982. ^{2/} On September 29, 1982, appellant had filed a protest to the sale, contending that the land, based on the success of regeneration in the "surrounding" area, was not properly classified as "High Intensity" commercial forest land because it could not become "[s]tocked and [e]stablished" within 5 years, and therefore, should not be offered for sale. The term "High Intensity" had been defined in the Jackson-Klamath Final Timber Management Environmental Statement (EIS). Appellant argued that to log the land was a "violation" of the EIS.

The timber sale took place and Capital Veneer, Inc., of Roseburg, Oregon, was the winning bidder. Prior to the sale, prospective bidders had been notified of appellant's protest and acknowledged that no contract could be awarded until the protest had been adjudicated. See 43 CFR 4.21(a).

In his October 1982 decision, the District Manager, BLM, denied appellant's protest, concluding that the sale area was properly classified as high intensity commercial forest land, using certain TPCC (Timber Production Capability Classification) criteria, because it was "capable of adequate reforestation within five years."

Because the sale area is within O & C land, it is subject to section 1 of the O & C Act, 43 U.S.C. § 1181a (1976), which provides in relevant part that such land "shall be managed * * * for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the [principle] of sustained yield." As defined by the Board, "sustained yield"

^{1/} The sale area, constituting tract #82-5, is described in the 90-day timber sale notice as follows:

"SW 1/4 NE 1/4, E 1/2 NW 1/4, SW 1/4 NW 1/4, SW 1/4, NW 1/4 SE 1/4, S 1/2 SE 1/4 of Section 17; E 1/2 NE 1/4, NE 1/4 SE 1/4 of Section 20; N 1/2, N 1/2 SW 1/4, N 1/2 SE 1/4, SE 1/4 SE 1/4 of Section 21; Lots 1, 2, 3, 4, 5, 6, 7, and 8, Section 22; Lot 1, NE 1/4 NW 1/4, S 1/2 NW 1/4 of Section 27; E 1/2 NE 1/4 of Section 28; Lots 4 and 5, Section 14; and Lots 2, 7, 11, and 13, Section 23, T. 39 S., R. 1 W., Willamette Meridian." The sale area includes sustained yield units 1 through 17.

^{2/} The timber was originally reoffered for sale on May 26, 1982, but, in the absence of any bids, it was reoffered as a 90-day timber sale pursuant to 43 CFR 5443.1.

means that "the level of harvesting established should be such that, considering present levels of silviculture techniques, a constant amount of timber will be annually available on an indefinite basis." In re Lick Gulch Timber Sale, 72 IBLA 261, 267, 90 I.D. 189, 193 (1983).

In conformance with the mandate of the O & C Act of "sustained yield," BLM partitioned all public land in western Oregon into various categories, using the TPCC system, "based upon the land's physical and biological capacity to produce timber" (EIS at 1-5 and 1-8). Accordingly, BLM divided the land into forest and nonforest land, and further subdivided forest land into commercial and noncommercial forest land. Commercial forest land is that forest land "capable of yielding at least 20 cubic feet of wood per acre per year of commercial coniferous tree species" (BLM Manual 5250.05C2). Because of wide variations in the productive capacity of commercial forest land, such land was further subdivided into high intensity, low intensity, and limited forest management lands. Only high intensity lands are included in the permanent forest base for purposes of determining the allowable cut for maintenance of sustained yield. Such lands were described in the EIS at page 1-8 as follows:

These commercial forest lands are suitable for continuous timber production with reasonable assurance of successful results from the application of intensive timber management practices. Approximately 16 percent of the high intensity lands possess soil, topographic and climatic conditions suitable for clearcut harvest techniques. Regeneration can be accomplished within 5 years of harvest with standard artificial reforestation methods.

The remaining high intensity lands exhibit characteristics which would make regeneration within 5 years unlikely if they were clearcut. Two-stage shelterwood harvest technique is proposed for the majority of these areas. Establishment of a new stand could be accomplished within 5 years of the regeneration cut under this prescription, using artificial reforestation methods.

In its statement of reasons for appeal, appellant contends that the proposed timber sale violates the EIS because timber harvesting would be done on land not properly classified as "high intensity." Appellant notes that the sale area is representative of land within the southern portion of the Jacksonville Resource Area, which, according to BLM's reforestation records, has a 1.4 percent success rate "in meeting high intensity standards," *i.e.*, regeneration within 5 years of harvest. Appellant also notes that seven units, totaling 166 acres, within the sale area, clear-cut between 1960 and 1966, failed to regenerate within 5 years despite repeated site preparations and/or plantings. ^{3/}

^{3/} Appendix H, attached to appellant's statement of reasons, indicates that of the seven units within the sale area, at least two (39-1-17-003 and 39-1-17-008) are only partially within the sale area. Two units (39-1-17-005 and 39-1-21-004) partially cover areas designated for cutting under the proposed timber sale. The remaining three units are 39-1-17-009, 39-1-21-005, and 39-1-22-005. Appendix G includes the reforestation record cards for the seven units.

Appellant argues, in addition, that portions of certain units have already been determined to be either low intensity (units 9, 14, and 16) or nonforest (units 7, 8, and 11) land. ^{4/}

Appellant also argues that BLM proposes to engage in regeneration cuts in units 1, 2, and 14 under a two-stage shelterwood harvest, which would result in a reduction of the original stand basal area greater than that permitted by the EIS and the Jackson-Klamath Management Framework Plan (MFP). Appellant refers to page 1-28 of the EIS which provides in relevant part: "The regeneration cut of a shelterwood harvest would remove from 30 to 60 percent of the original stand basal area. Maximum removal on south or west slopes would be 50 percent." In addition, appellant notes the MFP limits the maximum cut to 60 percent in visual resource management (VRM) class III land. The sale area is VRM class III land (Appendix C at 10). However, appellant notes, the proposed regeneration cut would remove from 94.1 to 65.8 percent in unit 1, 91.7 to 80 percent in unit 2, and from 90.7 to 75 percent in unit 14 (Appendix E).

Finally, appellant contends that the supplemental environmental assessment report (EAR) for the proposed timber sale, dated June 1981, does not satisfy the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4331 (1976), because it did not adequately address the site specific environmental consequences from the proposed construction of 3.6 miles of new road and reconstruction of 8.1 miles of existing road, due to the "severe" potential for soil erosion, and because no reasonable alternatives were identified. Furthermore, appellant argues that the EAR failed to adequately address the impact of road construction and logging on the Bald Mountain Trail, a "cultural and recreational resource" dating from the 1920's which follows the Front Range, and an alternative eliminating construction of road 39-1-21.3, thereby protecting wildlife.

Appellant requests the Board to order withdrawal of the proposed timber sale.

In a response to appellant's statement of reasons filed February 14, 1983, BLM contends that the sale area was properly classified as "high intensity" land. BLM argues that the reforestation records cited by appellant are not reflective of the success of regeneration under present criteria, *i.e.*, whether a new stand of trees can be established within 5 years of harvest, because the records are based on pre-1976 cards which do not indicate when and if units became established. In addition, BLM argues that since 1976 its timber management practices have improved with a corresponding greater success in regeneration, on the magnitude of 75 to 95 percent for units harvested since 1979. These improved practices include intensive site preparation, control of competing vegetation, matching of seedlings with planting site, and better quality control on planting stock. In judging the success of regeneration, BLM states that it determines whether a unit has been adequately restocked within 5 years of harvest based on the minimum level stocking standard of 100 well-spaced trees per acre rather than the target level standard

^{4/} Appendix F includes various BLM maps indicating nonforest, low intensity, and limited land, overlain with transparencies depicting the sale area.

of 200 trees per acre. In July 1982, BLM notes, it reviewed the TPCC classification of the sale area and concluded that it had been "properly classified."

BLM states that, with one exception, no nonforest or low intensity commercial forest land is included in units 7, 8, 9, 11, 14, and 16. BLM attributes appellant's belief to the contrary to differences between the Bald Point Timber Sale maps and the timber production capability classification maps. BLM notes that unit 14 includes approximately 2 acres of low intensity land under BLM policy directives which permit inclusion of such land in order to "facilitate logging."

With respect to regeneration cutting in units 1, 2, and 14, BLM does not dispute the removal percentages cited by appellant, but, rather, argues that the cuts are consistent with the EIS where BLM leaves enough trees "to provide the environment needed to establish new seedlings" prior to the second stage of the shelterwood harvest, *i.e.*, overstory removal. Eight to ten trees per acre is sufficient for this purpose on most sites in BLM's experience. BLM also notes that the approved MFP, unlike the unapproved preliminary summary of MFP recommendations cited by appellant, does not provide for a percentage constraint on removal under a regeneration cut, for VRM class III lands. The approved standard is that all management actions on these lands "remain visually subordinate to the strength and character of the landscape."

Finally, BLM contends that the EAR adequately addressed the concerns raised by appellant. BLM states that the EAR considered the environmental impact of proposed road construction and alternatives and mitigating measures, including eliminating construction of road 39-1-21.3. BLM states that it concluded that 3 miles of road construction "would not be a significant erosion contributor because of the diffusion of sales in the planning area, both spacially and over time." BLM also argues that it never proposed to reconstruct 8 miles of roads, only to improve them through ditching, shaping, and resurfacing, which would "reduce erosion and sediment yield in the long term." With respect to the Bald Mountain Trail, BLM states that it is not considered an important cultural and recreational resource, that it has not been maintained in three decades, and that 1 mile of the 3-mile trail is on private property. BLM also notes that there are approximately 23 miles of other existing trails in the general vicinity that will be maintained as public hiking trails.

In a rebuttal to BLM's response filed March 30, 1983, appellant reiterates its conclusion that the sale area is not properly classified as "high intensity" land. Appellant argues that "high intensity" land is that land where a new stand of trees can become established and not merely stocked within 5 years of harvest. Thus, appellant asserts that BLM's high percentage rates of success for regeneration are based on an erroneous definition of success. Further, appellant states that BLM's own figures indicate in some cases a 25 percent failure even to be adequately stocked within 5 years of harvest in certain units harvested since 1979. Appellant also doubts the efficacy of BLM's new silvicultural practices and notes that based on new calculations with respect to 29 units, totaling 271 acres, cut between 1970 and 1978 in the southern portion of the Jacksonville Resource Area, there was a 77 percent failure to have an established new stand of trees within 5 years of harvest. In arriving at this figure, appellant states that it deleted

from its review those units in BLM's reforestation records which did not have a column for "established" when survey entries were logged.

With respect to the inclusion of nonforest or low intensity commercial forest land in the sale area, appellant asserts that BLM has made similar mistakes with other timber sales and that the public should be able to rely on BLM maps, such that, as here, it can overlay two maps of the same area, drawn to the same scale, with some degree of accuracy. ^{5/}

Appellant also argues that removal of more than 60 percent of the original stand basal area in certain units violates the specific proscriptions of the EIS.

Finally, appellant reiterates its conclusion that the EAR violates NEPA, supra. Appellant asserts that the EAR did not address the site specific environmental impacts from road construction and that the EAR did not consider elimination of road 39-1-21.3 as an alternative rather than a mitigating measure. Appellant also contends that the EAR did not include a cost/benefit analysis of the latter road, especially where the "net timber volume foregone by not building this road * * * is unnecessary to meet this sale's portion of the * * * Five-Year Timber Sale Plan" (Statement of Reasons at 10). Appellant further argues that the EAR did not adequately address the impact of the road on a "unique" ecosystem. Appellant notes that the sale area singularly supports a year-round wildlife population, with a "wide variation of ecosystems in a close proximity (conifer forest, hardwood forest, brush, and meadows)." Appellant states that it fears off-road vehicle misuse of the road, resulting in further deprecations. With respect to the Bald Mountain Trail, appellant again asserts that it is an important resource, one of the old lookout trails left in the area and the "only such trail left in the area which is low enough for year around use and which still offers a pristine hiking experience."

[1] Appellant contends that the sale area is not properly classified as "high intensity" land, and, therefore, is not properly included in the permanent forest base for the purposes of determining the allowable cut consistent with the principle of sustained yield management. The arguments raised as well as the general regeneration data cited by both parties were recently considered by the Board in a companion case, In re Chapman-Keeler Timber Sale, 80 IBLA 237 (1984). In that case we confirmed that the definition of "established," which forms the basis for the classification of forest land as "high intensity," means that high intensity forest land must, within 5 years of harvest, support a new stand of suitable, growing trees which have

^{5/} It appears that appellant has dropped its contention that BLM improperly included specific nonforest or low intensity commercial forest land in this sale area. The maps attached to appellant's statement of reasons (Appendix F) indicate a minimal inclusion of such land in sale units. Appellant concludes its statement on this point: "We suggest that in the future the maps in the EAR and the sale prospectus be based upon and drawn on the TPCC maps to avoid confusion and misapprehension on the part of the public." We think the suggestion is well-taken.

survived at least one growing season and which are past the time when considerable juvenile mortality occurs. In that case we could not find any evidence of the comparability of either the physical characteristics or the silvicultural methods on the proposed sale units and those on which appellant's data about regeneration data in the Jacksonville Resources Area was based.

In this case appellant has in addition provided data about seven units within the proposed sale area where reforestation efforts in excess of 5 years indicated, in its view, "the poor prospect the proposed sale units face in terms of meeting high intensity requirements" (Statement of Reasons at II; Appendices G and H). Appendix H consists of reduced copies of the timber sale contract maps on which outlines of the seven units have been drawn. Two of these units overlap small portions of two proposed sale units, three are contiguous, and two are nearby. Although the seven units are not some miles distant from the proposed sale units, as they were in Chapman-Keeler, except where they overlap we cannot assume comparability of physical characteristics, and the record contains inadequate information to determine it. Although the reforestation record cards in Appendix G bear information about some important physical characteristics, e.g., soil series, elevation, slope gradients, and aspects, the information has not been decoded and there is none about these characteristics on the proposed sale units. The maps in Appendix H do not indicate either aspect or gradient of the slopes in the proposed sale units, and information about other important characteristics, e.g., precipitation and temperatures, is altogether absent from the record. Nor can we determine the comparability of silvicultural methods. BLM asserts that practices in the proposed sale units will differ significantly from those employed when the seven units were clear-cut in the 1960's but there is no information about what those former practices were. Without evidence about the physical comparability of the lands or the silvicultural methods employed on them we cannot determine whether BLM has properly classified them as high intensity. In re Chapman-Keeler Timber Sale, supra at 243. BLM asserts that all but one of the seven units were properly classified because the records show stocking figures of more than the minimum level of 100 trees per acre. Since we have held that high intensity lands must have established stands within 5 years, however, that is, suitable growing trees which have survived at least one growing season and are past the time when considerable juvenile mortality occurs, the relevant standard is how many such trees there are per acre.

Since it is up to appellant to show error, In re Chapman-Keeler Timber Sale, supra at 243, and cases cited, without evidence supporting comparability we cannot sustain this basis for its appeal.

[2] Appellant complains that BLM is violating its "ten year contract with the public," i.e., the Final Environmental Statement, by cutting more than 60 percent of the stand basal area in proposed sale units 1, 2, and 14. 6/ We must observe that appellant misconstrues the nature of the

6/ Statement of Reasons at 2. Stand basal area is defined in the EIS, at page G-2, as "[t]he area of the cross section at breast height of a single tree or of all the trees in a stand, usually expressed in square feet." At page 1-28, the Final Environment Statement states: "The regeneration cut of a shelterwood harvest would remove from 30 to 60 percent of the original stand basal area."

document. It is designed to assess the consequences of a 10-year program of timber management in the Jackson-Klamath region. It is not a contract whose every provision may only be amended by mutual consent. If further information is acquired that changes the premises of its analysis, it must of course be revised. Likewise, if the actions analyzed will be deviated from significantly, the consequences of the new actions must be assessed. 40 CFR 1502.9(c); Warm Springs Task Force v. Gribble, 621 F.2d 1017, 1023-24 (9th Cir. 1980). But leaving less than 30 percent of stand basal area on a few units of this particular proposed sale does not occasion a new analysis. We cannot determine from this record that leaving 8 to 10 mature trees per acre after an initial regeneration cut will not be adequate for the regeneration of the new plantation on these sites, and appellant has not demonstrated otherwise. (Nor does the management framework plan, as approved, limit cutting of shelterwoods to 60 percent.) If BLM wishes to change the stand basal area leave percentages for most sales for the remainder of the term of the Final Environmental Statement, it should explain why and evaluate the impacts in a revision of the statement or in the environmental assessment reports accompanying each proposed sale.

[3] Appellant argues BLM has not complied with the National Environmental Policy Act for the proposed sale because (1) there is no site-specific analysis in the environmental assessment report of the impact of building new road segment 39-1-21.3 on soil erosion; (2) there are no measures analyzed which would mitigate the impact of the new road segment on the Bald Mountain Trail, "an important cultural and recreational resource"; and (3) not building the segment is discussed only as a means of mitigating its impact on wildlife, not as an alternative.

The impacts of road construction on soil erosion are discussed in the Final Environmental Statement on pages 3-5 and 5-1 to 5-2. The statement concluded that impact on regional water quality would not be significant, but could be in localized areas. The EAR states at page 14 that soils will be subject to erosion as a result of road construction and that stream sedimentation would ensue. The introduction of the discussion of environmental consequences states that the adverse impacts are considered to be unavoidable and unmitigable (page 11) and Table 2 (pages 19-20) labels the residual impacts as adverse and significant, even with the application of the mitigating project design features set forth in Appendix D of the EAR. Thus, although the EAR does not set forth projected levels of erosion in terms of tons per acre from the units affected by road construction for the proposed sale, the acreage figures for such losses stated in the environmental statement are in effect acknowledged by the EAR. We conclude that the environmental statement and the EAR adequately analyze the impact of the road construction on soil erosion.

Appellant asserts that Bald Mountain Trail is the last existing segment of the Front Range Trail built in the 1920's to provide access to forest fire lookout towers and the last opportunity along the Front Range for a primitive hiking experience and is thus an important cultural and recreational resource. To BLM's general denial of its uniqueness appellant responds, "Because BLM considers this trail unimportant does not make it so. This trail is important to the hikers, hunters, and equestrians who use it." We are not unsympathetic to appellant's point of view, but we must point out that the record does not

offer any support for the specialness of this trail and appellant has provided only arguments that it is. No documents, affidavits, or other evidence about its use or special attributes are available which would lead us to question BLM's judgment. We have said before that this judgment will not be upset simply because an appellant disagrees with it. Robert C. Salisbury, 79 IBLA 370, 379 (1984).

Appellant is also disappointed that new road construction will occur even though the wildlife report recommended against it. The suggestions of either not building the ridgetop segment (39-1-21.3) or of building it to minimum standards and barricading it after logging are set forth in the EAR (page 18) and rejected (page 19). Appellant does not agree with the reasons for rejection (cost, steepness and safe access) and argues that the value of the timber to be gained from building the new road is not worth the expense of building it. We have previously cautioned about the relevance of such "microeconomic analysis." In re Lick Gulch Timber Sale, supra at 304-05, 90 I.D. at 213-14. But, more to the point, the EAR does analyze the possibility of not building the road. It is not the function of NEPA to prohibit actions with adverse impacts, only to make sure decisionmakers are aware of what they may be. Id. at 309-10, 90 I.D. at 216. This function has been fulfilled in this case.

Thus we conclude that the analysis of the proposed timber sale complies with requirements of the National Environmental Policy Act. 7/

For the foregoing reasons, 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.

Will A. Irwin
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Franklin D. Arness
Administrative Judge

7/ Appellant has also argued that the finding of no significant impact (FONSI) with respect to the EAR, i.e., the determination of whether an EIS was required under NEPA, supra, was in error. However, appellant has identified no significant adverse impact in connection with the proposed timber sale not addressed in the EIS which would require preparation of a supplemental EIS.

