

Editor's note: Reconsideration denied by Order dated Dec. 22, 1986

IN RE HUMPY MOUNTAIN TIMBER SALE

IBLA 84-351

Decided June 28, 1985

Appeal from a decision of the Medford, Oregon, District Manager, Bureau of Land Management, denying the protest by the Thompson Creek Residents for Ecological Education against the Humpy Mountain Timber Sale, OR 110-TS4-16.

Set aside and remanded.

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

A decision to implement a timber sale proposal based on a finding of no significant impact may be remanded where the environmental assessment for the sale, which supplements and is tiered to the programmatic environmental impact statement for the 10-year timber management program in the district, fails to adequately consider the site-specific impacts of the sale including any aspects of the timber sale which vary significantly from the parameters considered in the programmatic environmental impact statement.

APPEARANCES: Russell D. Park, Chairperson, Thompson Creek Residents for Ecological Education; Hugh R. Shera, District Manager, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This appeal is brought by Thompson Creek Residents for Ecological Education from the February 8, 1984, decision of the Medford, Oregon, District Manager, Bureau of Land Management (BLM), denying its protest of the proposed Humpy Mountain Timber Sale, OR 110-TS4-16. Although the timber sale was conducted since the time of appellant's protest, BLM has stayed the award of the contract to the high bidder pending disposition of the present appeal. In the draft environmental assessment (EA) prepared in connection with the sale, the sale was described as including 27 acres of right-of-way to be clearcut, 144 acres of land classified for high intensity timber management to be clearcut, 26 acres of land classified for limited intensity timber management to be clearcut, and 49 acres of land classified for limited intensity timber management to be shelter wood harvested. The projected volume of timber to be harvested is 3,383 million board feet (MMBF).

In its initial and supplemental statement of reasons for appeal filed with the Board, appellant asserts that the environmental analysis conducted prior to the sale is inadequate under the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4361 (1982). Specifically, appellant alleges that preparation of EA's for individual timber sales improperly ignores the cumulative impacts of timber sales within the Medford District. Further, appellant challenges the adequacy of the analysis in the EA of the site-specific environmental impacts of the proposed timber sale.

Appellant contends that BLM is exceeding the extent of clearcutting called for in the programmatic environmental impact statement (EIS) for timber management in the Medford District. Appellant also challenges the adequacy of the cultural resources inventory conducted prior to the sale, noting the lack of any apparent inquiry of the state historic preservation officer. Further, appellant alleges BLM failed to conduct a consultation with United States Fish and Wildlife Service officials as required by section 7 of the Endangered Species Act, as amended, 16 U.S.C. § 1536 (1982). In addition, appellant challenges the discrepancy between the EA and the timber sale prospectus regarding the stream-side buffer zone. Finally, appellant's statement of reasons takes issue with the failure of the EA to address the economic costs of the timber sale.

[1] The EA upon which the area manager's finding of no significant impact is based is alleged by appellant to be deficient in that the scope of the inquiry in the EA is improperly limited to the effects of the Humpy Mountain timber sale and ignores the cumulative effect of timber sales in the Medford District of BLM. However, it is clear from the record in this case that the EA is supplemental to the programmatic EIS for the Jackson and Klamath Sustained Yield Units of the Medford District, BLM, of which the Humpy Mountain sale tract is a part. ^{1/} The EIS is specifically cross-referenced in the Humpy Mountain EA. The cumulative impacts of timber harvesting are discussed in the EIS. Thus, we cannot fault the Humpy Mountain EA on this basis. The courts have upheld projects based on a site-specific EA which supplemented a broader EIS which covered several related projects in a geographic area where there has been no change in circumstances or departure from the policy of the programmatic EIS. Ventling v. Bergland, 479 F. Supp. 174, 180 (D.S.D.), aff'd mem., 615 F.2d 1365 (8th Cir. 1979); see Minnesota Public Interest Research Group v. Butz, 498 F.2d 1314, 1323 n.29 (8th Cir. 1974). This is an example of the process of "tiering" of environmental analyses authorized by regulation. 40 CFR 1502.20, 1508.28. ^{2/}

^{1/} Bureau of Land Management, United States Department of the Interior, Final Environmental Statement, Jackson and Klamath Sustained Yield Units 10-year Timber Management Plan (1979) (hereinafter cited as EIS).

^{2/} "Tiering" is defined in 40 CFR 1508.28 as:

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the

Appellant, however, also alleges that the EA fails to adequately discuss the site-specific impacts of the Humpy Mountain Timber Sale. In particular, appellant asserts that BLM is exceeding the magnitude of clearcutting evaluated in the EIS in the context of this timber sale in proposing to clearcut 100 percent of the high intensity management lands and to clearcut some of the low intensity forest management lands.

The draft EA must be conceded to be incomplete with respect to its analysis of site-specific impact on threatened and endangered species in that it is acknowledged at page 8 of the EA that with respect to threatened or endangered plants, "a survey will be conducted in the Spring of 1983 and added to document file." On appeal, BLM contends that:

The threatened and endangered (T&E) plant survey conducted on June 6 and 7, 1983, did not identify any federally listed or proposed T&E species. The EA addendum should have stated that sensitive species were discovered rather than threatened and endangered species. Therefore, no formal consultation with U.S. Fish and Wildlife is required.

(BLM Answer at page 7). Although the decision of the area manager, dated July 29, 1983, to proceed with the proposed action, in which he determined to accept the draft EA as the final EA and found that the project involved no-significant environmental impact beyond that already analyzed in the programmatic EIS, postdated the plant survey, no reference to the survey was made therein. Further, it appears from the record (Attachment 18 to Appellant's Statement of Reasons), that an internal memorandum regarding proposed mitigating measures for plant species on the Humpy Mountain Timber Sale tract was dated September 21, 1983, substantially after both the EA and the finding of no-significant impact.

With respect to impacts differing from those covered in the programmatic EIS, we note the EIS provided that "clearcutting would be employed only on high intensity lands and then only on areas determined by the Operations Inventory to be suitable" (EIS at 1-28). Although the Humpy Mountain Timber Sale calls for clearcutting one of the tracts classified as "low intensity

fn. 2 (continued)

issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

"(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

"(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe."

timber management lands (unit 10 consisting of 26 acres), the EA fails to discuss this variation from the proposal evaluated in the programmatic EIS. Further, with respect to the extent of clearcutting on lands classified for high intensity timber management, we note that the programmatic EIS provides as follows:

The high intensity category may also be referred to as the timber production base. These commercial production 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 shelter wood harvest technique is proposed for the majority of these areas. The establishment of a new stand could be accomplished within 5 years of the regeneration cut under this prescription, using artificial reforestation methods.

(EIS at 1-8). This is in sharp contrast with the timber sale under appeal which involves the clearcutting of 100 percent of the high intensity management lands as well as certain limited intensity management lands. In response to appellant's brief on this issue, BLM states that it is preparing a draft supplement to the programmatic EIS due to perceived differences between existing timber harvest practices and those evaluated in the programmatic EIS. We must conclude, as BLM apparently has, that this change in the timber sale proposals from that discussed in the programmatic EIS requires consideration in a supplemental EA or EIS. See In re Upper Flores Timber Sale, 86 IBLA 296 (1985). In the circumstances, we cannot conclude that the site-specific EA for the Humpy Mountain Timber Sale took a hard look at the site-specific environmental impacts of the proposed action, particularly in view of the changed circumstances and policy regarding application of clearcut harvesting techniques from the proposal studied in the programmatic EIS. See Ventling v. Bergland, *supra* at 180.

Regarding the sufficiency of the cultural resources inventory conducted by BLM, the answer to the statement of reasons for appeal points out that a class III cultural resources inventory is no longer required. The answer notes that approximately 25 acres of the 237 acres involved in the sale were surveyed. Further, BLM indicates that the state historic preservation officer has been notified of the BLM practice utilized in this case of surveying only open areas such as roads, trails, and stream banks, prior to the timber sale. BLM asserts that "procedures described in 36 CFR 800, will be followed in all cases where sites are found." (Attachment 3 to BLM's Answer). This Board has previously recognized that BLM has changed its guidelines regarding the nature of the cultural resources inventory required prior to the conduct of a

timber sale. See Curtin Mitchell, 82 IBLA 275 (1984). The new procedures reflect increased reliance upon the consultation process embodied in the regulations at 36 CFR Part 800. It appears from attachments 3 and 4 to the answer that the BLM in Oregon and the state historic preservation officer have agreed to a particular approach for conduct of cultural resources inventories for the heavily vegetated terrain which characterizes the lands managed by BLM in western Oregon for timber production. Due to the infeasibility of detecting sites on densely vegetated ground, survey prior to the project activity will focus on open areas where the surveyor can see the ground. Further consultation pursuant to 36 CFR Part 800 will be implemented where sites are found. Follow up surveys will be conducted after vegetative clearing. We are not persuaded by appellant that this procedure is violative of BLM's obligation to protect cultural resources.

With respect to appellant's contention that BLM improperly failed to conduct a consultation with U.S. Fish and Wildlife officials pursuant to section 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1536 (1982), BLM responds that the survey it conducted did not identify any federally listed or proposed threatened or endangered species. Accordingly, BLM contends that no formal section 7 consultation was required. From the record before us, we cannot find that BLM has violated section 7.

Appellant's statement of reasons for appeal also raises concerns about an apparent discrepancy between the EA and the timber sale prospectus regarding stream-side buffer zones. The BLM answer responds that:

The riparian buffer zones of 100-200 feet refers to the east boundaries of units 10 and 11 (see Exhibit A Map, Attachment 8). This protective buffer was established during sale layout by placing the boundary of the timber out of the drainage as shown on exhibit A. This small drainage within unit 10 was reexamined prior to the timber sale by the area Wildlife biologist and reclassified as a class 5 stream not requiring a protective buffer. This information was inadvertently not covered in the supplemental EA.

Accordingly, we must find that appellant has shown no error on the record in this regard.

Appellant's brief also challenges the failure of BLM to consider the cost to the Government of implementing this timber sale. We must find in this case, as we did in the case of In re Thompson Creek Timber Sale, 81 IBLA 242 (1984), that appellant lacks standing to challenge the cost to the Government of implementing this timber sale.

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 set aside and the case is remanded for further action consistent with this opinion.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

