

**Editor's note: Reconsideration denied by Order dated March 13, 1989**

IN RE LONG MISSOURI TIMBER SALE

IBLA 87-650

Decided December 12, 1988

Appeal from a decision of the District Manager, Medford District Office, Bureau of Land Management, denying a protest of proposed timber sale OR-110-TS7-23.

Affirmed.

1. Timber Sales and Disposals

A BLM decision denying a protest of a proposed timber sale will not be disturbed on appeal where the appellant's objections to BLM's determination to proceed with the sale are carefully considered by BLM and the appellant fails to establish that BLM did not adequately consider matters of environmental concern, such as the impact on stream quality, visual resources, and cumulative impacts of past and reasonably foreseeable future timber sales.

2. Timber Sales and Disposals

A charge that BLM failed to consider in its environmental assessment reasonable alternatives to a proposed timber sale will be rejected where the record shows that the environmental assessment, and preceding environmental documents, adequately addressed appropriate alternatives. BLM is not required to discuss every conceivable alternative which could be devised. A mere disagreement or a difference of opinion as to a proper alternative will not suffice to establish error in BLM's choice of alternatives.

APPEARANCES: Charles G. Levin, Esq., Grants Pass, Oregon, for Headwaters; David A. Jones, District Manager, Medford District Office, Bureau of Land Management, Medford, Oregon.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Headwaters has appealed from a decision of the District Manager, Medford District Office, Oregon, Bureau of Land Management (BLM), dated

June 10, 1987, denying its protest of the proposed Long Missouri timber sale (OR-110-TS7-23).

The sale area embraces 372 acres situated in secs. 14, 15, 22 through 25, and 36, T. 33 S., R. 10 W., Willamette Meridian, Curry County, Oregon. The sale area is divided into 12 units, 11 to be harvested by clearcutting (254 acres) and 1 by overstory removal (18 acres). In order to assess the environmental consequences of the proposed timber sale, the Grants Pass Resource Area Office, BLM, prepared an environmental assessment (EA), dated March 17, 1987, which specifically addressed the environmental impact of the proposed action and two alternatives. Based on the EA, the Area Manager, on March 19, 1987, adopted the proposed action, with certain mitigating measures, and concluded that no significant environmental impact greater than that analyzed in the Josephine Final Environmental Impact Statement (JFEIS), as supplemented, would result from proceeding with the proposed timber sale. Subsequently, on March 25, 1987, the Grants Pass Resource Area Office amended the EA, in part adding a third alternative to the proposed action. On March 26, 1987, the Area Manager again adopted the proposed action, with certain mitigating measures, and specifically rejected all three alternatives. In addition, he again concluded that proceeding with the proposed timber sale would result in no significant environmental impact greater than that analyzed in the JFEIS, as supplemented.

BLM conducted the sale on April 30, 1987, declaring the Medford Corporation (Medford) the high bidder. However, by notice of the same date, it informed Medford that Headwaters had protested the proposed timber sale on April 17, 1987, and that a decision to award the sale contract would be delayed until it responded to the protest. In its June 1987 decision, the District Manager denied Headwaters' protest; however, he did not exercise his authority under 43 CFR 5003.3 to proceed to award the contract.

As it has in past appeals, Headwaters has raised a number of general objections to BLM's decision to proceed with the proposed timber sale. We will not specifically address those objections. They have previously been considered and rejected. See, e.g., In re Trailhead Timber Sale, 97 IBLA 8, 15 (1987).

[1] Headwaters' principal contention before both BLM and the Board is that, in addressing the environmental consequences of the proposed timber sale in its EA, BLM failed to abide by the dictates of section 102 of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. | 4332 (1982), and its implementing regulations. In particular, Headwaters argues that BLM did not adequately disclose the basis for its conclusions regarding the environmental impacts of the proposed timber sale, but instead relied on undocumented assumptions.

Headwaters specifically takes exception to the following statement in the EA, at page 9, in the section entitled "General Assumptions," which precedes BLM's analysis of the environmental impacts of the proposed and alternative actions: "Available data were used whenever applicable and extrapolated to areas for which no data were available." On appeal Headwaters reiterates the statement in its protest that BLM "does not

disclose the areas for which no data were available, the areas for which data were available, the kinds of data at issue, and the fairness of the extrapolation," and that this itself renders the entire subsequent analysis of environmental impacts inadequate (Protest at 4-5 (emphasis in original)).

Although it is unclear exactly what "data" BLM was referring to, the EA is largely the product of the work of a number of BLM specialists, many of whom prepared reports within their areas of expertise. These reports, contained in the case file for the proposed timber sale, indicate that the conclusions contained in the EA with respect to anticipated environmental impacts are generally based on the opinion of these BLM specialists. It is clear that each of these opinions is in turn based on the specialist's knowledge of conditions in the sale area, as well as his or her level of expertise. It was not necessary for the EA to disclose the nature of that expertise. Moreover, given the nontechnical and general nature of the conclusions regarding anticipated environmental impacts, these conclusions may stand on their own. Thus, we conclude that the record discloses an adequate basis for the conclusions in the EA regarding the environmental impacts of the proposed and alternative actions.

Headwaters also contends that the EA is inadequate because, while the EA asserts that significant impacts associated with sedimentation entering streams as a result of logging and road building would be mitigated, it "does not state what the environmental effects are expected to be, either before or after the mitigation" (Statement of Reasons (SOR) at 4). In its June 1987 decision, at page 2, BLM essentially answered that the EA did not have to disclose the environmental impacts in the absence of mitigation because the chosen form of mitigation, *i.e.*, stream buffers, was incorporated into the proposed timber sale as a project design feature. Thus, it is part of the proposed action. On appeal, Headwaters agrees with this statement, but reiterates its conclusion that the EA does not disclose the environmental impact "of implementing the proposed action" (SOR at 5). Headwaters is concerned that significant impacts may remain even after mitigation.

We agree with Headwaters that the EA itself does not disclose the full extent of the impact on streams from the proposed timber sale, given the incorporation of stream buffers. The EA, at page 10, generally states that "any significant impacts from the harvesting of this timber sale would be mitigated." Elsewhere, however, at page 14, the EA states that existing streams will experience an estimated increase in the amounts of sediments yielded annually of approximately 0.5 percent over current rates. In addition, in its June 1987 decision, at page 2, BLM stated that "[a]lthough there are varied opinions as to what level of sedimentation is acceptable, the decision maker determined that this level of increase (0.5 percent) was well within those levels analyzed in the Josephine Environmental Impact Statement (JEIS), pages 3-31 to 3-37."

It is clear, therefore, that the EA, in conjunction with the JFEIS, provided adequate information on the environmental impact of sediment runoff on local streams, and that such information was sufficient to support the District Manager's conclusion that the proposed timber sale would not result

in a significant impact not already analyzed in the JFEIS. 1/ Beyond this, Headwaters has not identified any individual significant environmental impact which, after implementation of the adopted mitigating measures, would be caused by the proposed timber sale and which was not already analyzed by BLM.

Headwaters next argues that BLM failed to adequately assess the cumulative impact of past and reasonably foreseeable future timber sale activity in conjunction with the proposed timber sale, particularly with respect to the impact to wildlife, visual resources, and the watershed. In its answer, at page 8, BLM states that at the time the EA was prepared "there were no plans for implementing any timber sale within the cumulative impact area for the Long Missouri sale." Appellant has not refuted this statement. Thus, there is no evidence of reasonably foreseeable future timber sale activity which needed to be included in a cumulative impact analysis. 2/

With respect to past activity, the EA adequately considered cumulative impacts. First, the EA started with a baseline environment which recognized the impact of past timber sale activity. In particular, the EA, at page 8, noted that the volume of timber already removed from the Missouri Creek and Long Gulch drainages represented "approximately one third of all the timber that existed in this area." This was also reflected in the figures on optimal cover on page 15 of the EA, in the cumulative impacts section. See Decision at 3. Second, the EA, at pages 14-15, addressed the cumulative impact on wildlife and the watershed. 3/

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1/ In its answer to Headwaters' SOR, at page 6, BLM stated that the decisionmaker has the responsibility to determine whether significant impacts discussed in the EA are "greater or different from those identified and analyzed in the JFEIS." Headwaters objected to this statement, concluding that BLM improperly regarded the JFEIS as setting acceptable limits for environmental impacts. There is no suggestion that BLM regarded the JFEIS in this fashion. Rather, the District Manager, in deciding to proceed with the timber sale based on the EA, used the JFEIS as a basis for determining whether the JFEIS had already analyzed a significant impact disclosed in the EA or whether another EIS was required. This was proper. Two T's Timber Sale, Order, dated Sept. 29, 1987, at 4.

2/ In addition to the existence of proposed and reasonably foreseeable future activity, a cumulative impact analysis would only be necessary in this instance where the proposed and future activity were in some way related such that a cumulative impact might be expected. However, as BLM pointed out in its June 1987 decision, at page 3: "Merely because timber sales are in adjacent drainages does not necessitate that the impacts are interrelated."

3/ In its SOR, at page 9, Headwaters specifically identified past activity which BLM purportedly did not consider in assessing the cumulative impact of the proposed timber sale, including existing roads, fire trails, skid trails, burn areas, and prior clearcuts. BLM, however, responds that it did consider "virtually all of [these] factors" (Answer at 9). That BLM considered existing roads, prior clearcuts less than 8 years old, and burn areas is borne out by pages 8 and 14 of the EA. More importantly, Headwaters has not demonstrated that this prior activity, in conjunction with the proposed timber sale, would result in a cumulative impact not addressed by BLM.

BLM admits in its answer, at page 8, that it did not explicitly address the cumulative impact on visual resources and that it should have, given the "sensitivity of the Rogue River viewshed." BLM states that, in any case, it had concluded that the proposed timber sale would not be directly observable from the designated wild section of the Rogue River and would not violate its applicable visual resource management (VRM) guidelines. In order to correct its omission, BLM appended to its answer an amendment to the cumulative impacts section of the EA which simply states that there will be no cumulative impacts to the Rogue River viewshed because none of the harvest units can be seen from critical viewpoints in the designated wild section of the Rogue River. This amendment only makes explicit what was already implicit in the EA prior to the amendment. <sup>4/</sup> Headwaters has failed to demonstrate that there will be any significant cumulative impact. See In re Blackeye Again Timber Sale, 98 IBLA 108, 111 (1987).

[2] Headwaters asserts that BLM failed to consider reasonable alternatives to the proposed timber sale which would avoid or minimize adverse environmental impacts. Headwaters argues that BLM generally should have considered alternatives to clearcutting or explained why such alternatives were not considered.

An EA is only required to include a "brief" discussion of "alternatives" as required by section 102(2)(E) of NEPA, 42 U.S.C. | 4332(2)(E) (1982). 40 CFR 1508.9(b). Section 102(2)(E) of NEPA, requires a Federal agency to describe "appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." The record includes a description of "appropriate alternatives." Appellant has overlooked the fact that alternatives were discussed in the JFEIS, as supplemented by the Josephine/ Jackson-Klamath Timber Management Supplemental Environmental Impact Statement (SEIS), to which the EA is tiered. See In re Upper Floras Timber Sale, 86 IBLA 296, 311 (1985).

The principal set of alternatives which could be devised as a means to either avoid or minimize the environmental impact of the proposed timber sale are alternative harvest methods, other than the proposed clearcutting. The record, including the silviculture prescription for the proposed sale, indicates that these alternatives, the environmental impact of which was generally considered in the JFEIS, were considered in the planning process which led up to identification of the proposed action. We have held that this dual procedure constitutes an adequate consideration of reasonable alternatives to clearcutting. In re Fir Point Return Timber Sale, Order, dated October 26, 1987, at 3; see also In re Blackeye Again Timber Sale, supra at 111-12; In re Upper Floras Timber Sale, supra at 311.

In support of its argument relating to alternatives, Headwaters has provided the August 7, 1987, affidavit of Steven Marsden, a biologist,

<sup>4/</sup> We note that the Oct. 22, 1986, "Recreation/VRM Report" contained in the record, specifically stated that "cumulative impacts to \* \* \* visual resources will be within established thresholds."

wherein he sets forth his specific recommendations with respect to alternatives regarding 6 of the 12 units. These recommendations range from elimination of all or a portion of a unit from the sale to inclusion of other pre-harvest site preparation or yarding methods. In its answer, BLM reviews and responds to Marsden's proposals. In reply Headwaters filed another Marsden affidavit.

After carefully reviewing the Marsden affidavits and BLM's initial response, we conclude that they basically reflect a disagreement or a difference of opinion regarding alternatives which is not sufficient to establish error in BLM's choice of alternatives. See In re Upper Floras Timber Sale, supra at 305. Headwaters fails to present sufficient evidence to demonstrate that deletion of all or a part of a unit or adoption of the measures recommended by Marsden would necessarily better protect natural resources than proceeding with the sale as planned.

In its protest, Headwaters argued that harvesting any timber on 7 of the 12 units within the sale area would violate VRM guidelines for class I land and, in the absence of the preparation of an EIS, also violate NEPA. In identifying the subject land as class I, Headwaters relied on Appendix G, Figure G-1, of the JFEIS. In its June 1987 decision, at page 3, BLM stated that all of the units within the sale area are class IV land and that, in effect, they are being managed according to class II standards because the units were "designed so as to not be evident from the Rogue River."

On appeal, BLM notes that the EA originally stated that three units (25-5, 36-1 and 36-2) were class IV land, and the remainder were class II. BLM states, however, that it erred and that all the land is actually class IV. BLM submitted an amendment to the EA to this effect. Nevertheless, BLM does not deny that at the time of the JFEIS some of the units were designated as class I land. However, BLM explained in its June 1987 decision, at page 3, that the JFEIS did not constitute the final VRM classification, but that this was accomplished under the subsequent Management Framework Plan (MFP). As a result of this subsequent management decision, all of the sale area was designated as class IV.

Headwaters contends that, in terms of designating the appropriate VRM classification for the sale area, the MFP cannot take precedence over the JFEIS where the MFP, unlike the JFEIS, is "not a NEPA document" (SOR at 5 (emphasis in original)). Rather, Headwaters suggests that BLM must prepare a supplement to the JFEIS in order to change the classifications where the NEPA process was used to develop the classifications in the first place.

The JFEIS was not written in order to assess the environmental consequences of different VRM classifications but, rather, of different timber management plans. The VRM classifications set forth in Appendix G, Figure G-1, of the JFEIS are not specifically referenced in the discussion in the JFEIS of the environmental impact on visual resources of the proposed and alternative timber management plans.

Appendix G, Figure G-1, is only generally illustrative of the constraints on timber management in the classified areas. It reflects a

separate management determination of the appropriate classification for the affected land, which preceded or accompanied preparation of the JFEIS and was subject to amendment. Appellant's assertion that such amendment be accompanied by preparation of an EIS or EA is an attempt to elevate form over substance. At the time of the proposed timber sale, the sale area was properly regarded as class IV land due to BLM's amendment of the VRM classification.

In the alternative, Headwaters argues on appeal that even if the land is not class I, BLM was required to prepare and implement a sequential harvest plan in accordance with the Recreation Area Management Plan (RAMP) for the Rogue River Wild Section. As noted by Headwaters, a sequential harvest plan is specifically required by the RAMP for areas within the viewshed of the Rogue River canyon but outside the designated corridor of the wild section of that river.

BLM responds that the sale area is not within the river viewshed, which is that area seen or potentially seen from all or a logical part of the river. It specifically states that "[u]sing computer simulations and field verifications BLM has determined that none of the lands affected by the Long Missouri Timber Sale are seen from the Rogue River \* \* \*" (Answer at 7). Although Headwaters contends that the sale area is visually sensitive, it has not demonstrated that the sale area can be seen from the Rogue River. See SOR at 6. No sequential harvest plan was required.

Overall, Headwaters has failed to provide the necessary documentation or "objective proof" which would establish that BLM's environmental analysis or decision to proceed with the proposed timber sale was fatally flawed in any respect. See In re Upper Floras Timber Sale, supra at 305. Rather, the record establishes that BLM adequately considered all relevant matters of environmental concern prior to deciding to proceed with the proposed timber sale. Accordingly, we conclude that BLM, in its June 1987 decision, properly denied Headwaters' protest. In re Blackeye Again Timber Sale, supra.

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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Bruce R. Harris  
Administrative Judge

I concur:

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Wm. Philip Horton  
Chief Administrative Judge