HEADWATERS
KLAMATH SISKIYOU WILDLANDS CENTER

IBLA 99-291 & 99-292 Decided August 14, 2002

Appeals from decisions of the District Manager, Medford District Office, Oregon, Bureau of Land Management, denying protests against the adoption of an integrated weed management plan. EA OR-110-98-14.

Affirmed.

1. Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact

A BLM decision to adopt an integrated management plan for controlling the spread of noxious weeds on the public lands in a BLM district will be affirmed where the record adequately supports the decision and demonstrates that BLM (in an environmental assessment tiered to a programmatic environmental impact statement) took a hard look at the potential environmental impacts of its decision and properly concluded that no significant impact not previously considered will likely result, thus complying with section 102(2) of NEPA.

APPEARANCES: Tom Dimitre, Headwaters, Ashland, Oregon, for Headwaters; Alexander C. Penley, Jr., and Erich Thalmayer, Klamath Siskiyou Wildlands Center, Williams, Oregon, for the Klamath Siskiyou Wildlands Center.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Headwaters and the Klamath Siskiyou Wildlands Center (KSWC) (appellants) have separately appealed from two November 4, 1998, decisions of the Medford (Oregon) District Office, Bureau of Land Management (BLM), denying their protests against the Acting District Manager's June 5, 1998, Decision Record (DR), which adopted an Integrated Weed Management Plan (IWMP) for the Medford District. 1/

1/ The appeals were separately docketed as IBLA 99-291 (Headwaters) and IBLA 99-292 (KSWC). They were consolidated by order dated June 14, 1999.

This case was initiated with BLM's proposal to implement an IWMP for the Medford District, which encompasses approximately 859,100 acres of BLM-administered public land in portions of Jackson, Josephine, Douglas, Curry, and Coos Counties, Oregon. The proposed IWMP would authorize the spraying of herbicides registered by the U.S. Environmental Protection Agency (EPA) (including dicamba, glyphosate (Rodeo and Accord only), picloram (Tordon), and 2,4-D, by State-licensed and certified personnel) with strict adherence to EPA-approved product label requirements. The IWMP would also authorize other manual, mechanical, and biological means to control the spread of noxious weeds within the district.

BLM proposed such action because noxious weeds "have become established and are rapidly spreading on both public and private rangeland, woodlands, and farm land," thus threatening to continue to cause economic and ecological losses which "[are] considerable and run[] into the millions of dollars annually." (EA at 1.) It also noted that they deplete populations of native plants, thus threatening wildlife forage species and rare and endangered species. Id. BLM thus sought, in the long term, to "reduce populations of alien plant species by any or all of the [proposed] means * * * to a level which will allow for the restoration of native plant species, and provide for overall ecosystem health." Id. at 2.

Attached to the EA are various maps of the district depicting, as of 1998, the general location of 10 varieties of noxious weeds, along with tables listing the public-land survey locations and acreage of the specific sites to be treated with herbicides in fiscal year 1998, as well as the total acreage involved for each species, as follows: Yellow starthistle (1.861 acres), Spanish broom (0.304 acres), Scotch broom (4.169 acres), Canada thistle, Tansy ragwort, Spotted knapweed (0.555 acres), Diffuse knapweed (0.164 acres), Meadow knapweed, Purple loosestrife, and Skeletonweed (0.799 acres), for a total of 7.852 acres to be treated. Of this acreage, BLM notes that there are "263 different locations, with the average size being approximately a 31 by 31[-]foot parcel." (BLM Answer to Headwaters Appeal at 2.) Herbicide spraying would be similarly limited in later years: "The proposed application of herbicides would involve relatively small, widely dispersed areas whose sizes would rarely exceed one (1) acre." (EA at 8; see Headwaters Decision at 4.) The EA also stated that all of the other sites depicted on the attached maps not specifically identified for potential herbicide treatment in fiscal year 1998 may be treated using other methods.

In addition, the EA noted that 20-foot-wide right-of-way corridors along 30 miles of roadway in the district (or a total of 72 acres) would also be treated.

The EA declared that the first priority under the IWMP would be educating public land users and BLM and other Federal, State, and local agency personnel to promote the early identification of potential new invasions of noxious weeds in the Medford District, so that they could be prevented or minimized. (EA at 4.) The next priority would be the early detection and eradication and control of any new invaders by all treatment methods, including manual,

mechanical, biological, and chemical methods, depending on the weed species and its location. Id. at 5. BLM provided that this would be followed by efforts to control existing infestations, both in outlying populations and in the remainder of the district. Id. It noted that manual, mechanical, and chemical methods would be the primary methods in the case of outlying populations, with biological methods preferred in the remaining area. Id. BLM also provided that weeds that were newly discovered in the district or not previously classified as noxious would be the final target of treatment efforts.

BLM's efforts would be closely coordinated with those of other Federal, State, and local agencies. BLM also provided that, when it decided to use herbicides alone or in combination with other methods, they would only be applied in accordance with specific project design features set forth in Appendix II of the EA and the April 4, 1986, Record of Decision for the December 1985 Northwest Area EIS. Herbicide applications would be precluded or limited depending on specific environmental factors, including the presence of riparian/wetland areas and special status plants and animals. (EA at 4.) BLM would not permit the aerial spraying of herbicides and specified the maximum per-acre application rates for the four approved herbicides. Id. at 6, 14 (citing Northwest Area EIS at 9 ("Table 1-3")). BLM also provided for monitoring the effects of its treatment efforts. (EA at 6, 14.)

In order to assess the environmental impacts of adopting the proposed plan, and alternatives thereto, BLM prepared EA OR-110-98-14 in April 1998. The EA was tiered to the December 1985 Northwest Area EIS (which covered Oregon, Washington, Idaho, Montana, and Wyoming); BLM's March 1987 Supplement to the Northwest Area Noxious Weed Control Program Final EIS (Supplemental EIS); and the February 1989 Western Oregon Program-Management of Competing Vegetation Final EIS. The EA was intended to fulfill BLM's obligation under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4332(2)(C) (1994). Based on the EA, the Acting District Manager issued a finding of no significant impact (FONSI) on April 21, 1998, thus concluding that adoption of the proposed IWMP would not result in any significant environmental impact not previously addressed in the three EIS's to which it was tiered. He thus held that no new EIS was required.

Thereafter, relying on the EA and FONSI, the Acting District Manager issued his decision on June 5, 1998, adopting the proposed IWMP. He noted therein that the Plan was consistent with the June 1995 Medford District Resource Management Plan and was expected to be "useful and viable for the next 5 years."

On June 22, and 23, 1998, appellants filed protests against the Acting District Manager's June 1998 decision. In his November 1998 decisions, the

District Manager denied those protests. Appellants appealed timely from the District Manager's November 1998 decisions. 2/

Appellants both contend that BLM violated section 102(2)(C) of NEPA by not adequately considering in its EA (as tiered to the Northwest Area EIS and Supplemental EIS) the likely environmental impacts of adopting the IWMP, including failing to identify potential significant impacts which require preparation of an EIS. 3/ Appellants are opposed to the IWMP to the extent that it emphasizes the spraying of herbicides, rather than reliance on the use of other methods to control the spread of noxious weeds they deem safe and acceptable (such as hand-pulling, competitive planting, and burning), since they believe that the widespread use of such toxic chemicals may have disastrous consequences for the ecosystem and humans that have yet to be fully explored. They conclude that BLM erred in issuing its FONSI and that BLM should now be required to prepare an EIS specifically addressing herbicide spraying in the district before adopting the IWMP in its present form.

[1] BLM is required by section 102(2)(C) of NEPA to consider the potential environmental impacts of a proposed action in an EIS, when it intends to engage in a major Federal action that may significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C) (1994); see Sierra Club v. Marsh, 769 F.2d 868, 870 (1st Cir. 1985); Blue Mountains Biodiversity Project, 139 IBLA 258, 262 (1997). However, when, based on an EA that is tiered to an earlier programmatic EIS, BLM decides to proceed with a proposed action without preparing another EIS, that decision will be held to comply with section 102(2)(C) of NEPA where the record demonstrates that BLM has, considering all relevant matters of environmental concern, taken a "hard look" at potential environmental impacts, and made a convincing case that either no significant impact not previously analyzed in the EIS will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. Headwaters, 146 IBLA 230, 231 (1998); Rebecca S. Andersen, 145 IBLA 206, 218 (1998); Blue Mountains Biodiversity Project, 139 IBLA at 265-66. An appellant seeking to overcome a BLM decision not to prepare an EIS must carry the burden of demonstrating with objective proof that BLM failed to adequately consider a substantial environmental

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2/ By order dated June 14, 1999, we denied appellants' petition to stay the effect of the District Manager's November 1998 decisions, thus permitting BLM to go forward with implementation of the IWMP, pending our resolution of the merits of the appeals.

3/ Citing 43 CFR 3809.0-5(k), Headwaters also asserts that BLM's noncompliance with section 102(2)(C) of NEPA will "constitute unnecessary or undue degradation [of the public lands]," thus violating BLM's duty under section 302(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1732(b) (1994), to take any action necessary to prevent such degradation. (Headwaters SOR at 3-4; see KSWC SOR at 9-10.) Regulation 43 CFR 3809.0-5(k) applies to operations authorized under the mining laws. 43 CFR 3809.0-1.

question of material significance to the proposed action, or otherwise failed to abide by section 102(2)(C) of NEPA. Headwaters, 146 IBLA at 232; Rebecca S. Andersen, 145 IBLA at 218; Blue Mountains Biodiversity Project, 139 IBLA at 266. We conclude that appellants failed to do so here.

Appellants contend generally that the EA failed to adequately consider anticipated environmental impacts of adopting the IWMP and proceeding with the spraying of herbicides on the public lands. Headwaters generally argues that BLM failed to undertake a site-specific analysis of the likely impacts of herbicide spraying on soils, water (including domestic water supplies), riparian areas, plants, fish, wildlife, and humans. (Headwaters SOR at 3-5, 9.) It argues that the herbicides will evaporate and dissolve in water and drift or migrate through the soil beyond the immediate areas where they are sprayed, thus potentially entering surface and underground waters. They state that they are "known to be harmful to humans, fish, wildlife and non[-]target plant species." Id. at 9. These concerns are echoed by KSWC. 4/ (KSWC SOR at 3-6, 8-9.)

We find ample support in the EA, as well as the Northwest Area EIS and Supplemental EIS to which it is tiered, for the conclusion that BLM thoroughly considered the specific potential impacts (direct, indirect, and cumulative)
of herbicide spraying on various aspects of the environment, especially soils, water (including domestic water supplies), riparian areas, plants, fish,

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4/ KSWC also argues that BLM failed to adequately consider the likely impacts to threatened, endangered, and other special status animal species within the district from herbicide spraying. (KSWC SOR at 2-3.) BLM concluded that it expected no adverse impacts to any special status species, given compliance with applicable project design features. (EA at 7-8, 11; Northwest Area EIS at 7, 46-47.) KSWC offers only its contrary opinion that herbicides are "highly likely" to harm such species. (KSWC SOR at 3.) It presents no evidence that there is likely to be any impact to such species, not adequately addressed by BLM, and thus has failed to establish a NEPA violation.

KSWC has also not convinced us either that BLM was required by sec. 7(a)(2) of the Endangered Species Act of 1973 (ESA), as amended, 16 U.S.C. § 1536(a)(2) (1994), to initiate formal consultation with the U.S. Fish and Wildlife Service (FWS) because herbicide spraying might adversely affect a threatened or endangered species, or that BLM generally failed in its duty to protect and conserve such a species. (KSWC SOR at 2-3.) BLM provided that, prior to any specific treatment, it would survey the treatment area for any special status, including threatened and endangered, species. (EA at 11; Northwest Area EIS at 7; see EA at 7-8; Northwest Area EIS at 46-47.) It also generally concluded that there would be no impact since, if any species was encountered, the treatment would be modified or abandoned so as to have no effect, or, if that could not be achieved, it would then consult with FWS before taking action. (EA at 4, 7-8; Northwest Area EIS at 7, 46-47.)

wildlife, and humans. See EA at 7-9; Northwest Area EIS at 36-47, 50-55; 5/ Supplemental EIS at 2-24; Headwaters Decision at 2, 4; Supplemental Record of Decision, dated May 5, 1987, at 8-16. BLM concluded that, given the normal application of herbicides under the IWMP, they would impact only the area actually sprayed, affecting only the targeted and non-targeted plant species susceptible to the chemicals in that particular area. (EA at 7.) This would be especially true in riparian/wetland areas, where herbicide use would be restricted:

> Only treatment methods that target individuals of noxious weed species will be performed in riparian and wetland areas. Generally, picloram will not be used within these treatment areas. Herbicides approved for aquatic use will be used where appropriate. Mechanical, biological, and manual treatments will be the preferred methods in these areas and their buffers where noxious weeds are present and control is required.

Id. at 4.

Also, BLM specifically precluded the spraying of liquid herbicides by vehicle mounted boom sprayers and hand spraying (backpack) equipment (whether single nozzle, low pressure, or volume) within 20 and 10 feet of surface waters, and barred any spraying in riparian areas or near water when wind speeds exceed 5 miles per hour. (EA at 13.) It thus minimizes the extent to which herbicides will drift beyond the specific treatment areas into surface water. BLM also noted that adverse impacts to surface water quality are

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5/ Headwaters, supported by KSWC, argues that the Northwest Area EIS, which was prepared in 1985 and supplemented in 1987, is "outdated" because it does not take into account new information that has recently been disclosed regarding the possible negative effects of herbicides. (Headwaters SOR at 8; see KSWC SOR at 7.) However, the EA at issue here was prepared in 1998 and took into account then-current information regarding the four herbicides approved for use, all of which are still considered by EPA to be "safe and effective when used according to the label." (Attachment to BLM Answer to Headwaters Appeal at 3.) Headwaters and KSWC have not persuaded us that any deficiency which might exist in the EIS has not been corrected by the newer EA. Nor have they shown that BLM should have, prior to adopting the IWMP, conducted its own studies to update information regarding likely herbicide impacts on the environment, either generally or because the land at issue here will be uniquely affected.

Headwaters also argues that the EA was improperly tiered to the Northwest Area EIS, because the proposed action at issue here is "substantially changed" from that earlier considered in the EIS. (Headwaters SOR at 8-9.) We disagree. The only change noted is BLM's current decision not to engage in aerial spraying. Id. at 8. Thus, the current EA effectively proposes a "No Aerial Herbicide Application" alternative, which was specifically considered in the Northwest Area EIS. (Northwest Area EIS at 6.)

unlikely to occur, since herbicides would be unlikely to migrate into surface water or, if they migrated, would be sufficiently diluted. Id. at 8. It further stated that, even where herbicide use in riparian/wetland areas has not been limited, the result has been herbicides entering surface water "in the parts-per-billion range, and not in the parts-per-million range that appears to be the level for most adverse effects." Id. BLM also noted that, "[s]ince most treatments would be applied not more than one time per year, little potential exists for herbicides to accumulate in harmful amounts," and that "streams and wetlands are normally high in microorganisms, the main agents for [the] biodegradation of herbicides." Id. It has also stated that only dicamba, picloram, and 2,4-D may migrate down through soil, but that little or no herbicides are likely to reach ground water, due to dilution and biodegradation caused by high precipitation and the action of microorganisms. (Northwest Area EIS at 40; Supplemental EIS at 6-8; Supplemental Record of Decision, dated May 5, 1987, at 9.)

We are persuaded that, in assessing the impacts of spraying, BLM was well aware of the potential that the approved herbicides would drift and migrate through the soil into non-targeted areas and generally persist in the environment. Nonetheless, it regarded the risk posed as negligible. Appellants have provided no evidence to the contrary. They have failed to demonstrate that the herbicides will be applied in such a manner that they will persist in the environment in such concentrations and for such periods of time, as might result in a level of exposure that would adversely affect animal, plant, and human populations. Appellants generally refer to controlled laboratory studies and poisoning incidents in support of their claim of negative effects. See "Attachment One" to Headwaters SOR at 1-3; KSWC SOR at 4-6. However, they offer nothing to suggest that this is likely to be experienced in the field as a consequence of normal application in accordance with established standards.

BLM did not address the specific impacts that would occur at particular areas within the 859,100-acre Medford District. We are not persuaded that it was required to do so. Rather, it was sufficient that BLM was aware of and disclosed the specific impacts herbicide spraying was likely to generally have on specific aspects of the environment, which impacts could then be taken into account in any area of the district where those aspects were already known to exist.

Headwaters has failed to demonstrate that this process did not afford BLM an adequate assessment, for purposes of informed decisionmaking and public review, of the likely impacts of herbicide spraying throughout the district, or at any particular spot within the district. Nor has Headwaters identified any potential site-specific impact that BLM failed to adequately consider. 6/

6/ Since we conclude that BLM adequately addressed the site-specific impacts of the proposed action, we likewise hold that it adequately considered the site-specific impacts of not taking that action, i.e., adopting the no action alternative. Such impacts are essentially the absence of all the impacts directly generated by the proposed action. Thus, we are not persuaded by Headwaters that BLM failed to adequately consider the no action alternative. (Headwaters SOR at 6.)

KSWC has also not substantiated its claim that the authorized spraying is likely, in either the short or long term, to introduce such a quantity of herbicide into surface and underground waters so as to violate State water quality standards, and thus section 313(a) of the Clean Water Act of 1977, as amended, 33 U.S.C. § 1323(a) (1994), or any other Federal requirements. (KSWC SOR at 8-9.) Thus, it has failed to rebut BLM's conclusion that the spraying will not "introduce pollutants to the watershed." (KSWC Decision at 4.)

We further conclude that KSWC has not demonstrated that BLM will violate the general policy aims of section 6602(b) of the Pollution Prevention Act of 1990, 42 U.S.C. § 13101(b) (1994). This statute concerns Congressionally-mandated activities by the EPA, together with the various states, to promote and facilitate efforts by industry to reduce pollution at its source, or, failing that, recycling, treating, or, as a last resort, disposing or otherwise releasing pollution in an environmentally safe manner. See 42 U.S.C. §§ 13101(a), 13103(b), and 13106 (1994). It has no application to a decision by BLM to authorize the use of herbicides on public lands, in order to control the spread of noxious weeds. In any event, we are not persuaded that herbicides will not be sprayed in an environmentally safe manner under BLM's plan.

Appellants contend that BLM violated section 102(2)(C) of NEPA by not preparing an EIS, arguing that it was required to do so because adopting the IWMP and proceeding with herbicide spraying is likely to have significant adverse impacts on the quality of the human environment. (Headwaters SOR at 3; KSWC SOR at 6-7.) However, neither present any evidence in support of their contention that there are likely to be significant adverse impacts, or that an EIS is otherwise required by section 102(2)(C) of NEPA, or 40 CFR 1508.27(b).

Headwaters next argues that BLM failed to adequately consider alternatives to the proposed action. 7/ (Headwaters SOR at 6.) BLM is required by section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (1994), to consider "appropriate alternatives" to a proposed action, as well as their

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7/ Headwaters and KSWC also argue that BLM failed to adequately consider the alternative of preventing the spread of noxious weeds, thus reducing the need to spray herbicides, which they term a "short term solution to a problem [BLM] created itself with ineffectual management practices." (KSWC SOR at 2; see Headwaters SOR at 5-6, KSWC SOR at 1-2, 9-10.) They argue that BLM has thus failed to consider reducing the number and length of roads, which serve as vectors for the introduction of noxious weeds, and reducing the amount of logging, grazing, off-road vehicle, and other activity that disturbs the natural plant community and thus permits the establishment of noxious weeds. KSWC suggests that these are types of "innovative" approaches to weed management required by BLM's resource management planning. (KSWC SOR at 10.)

environmental consequences. See 40 CFR 1501.2(c) and 1508.9(b); City of Aurora v. Hunt, 749 F.2d 1457, 1466 (10th Cir. 1984); Howard B. Keck, Jr., 124 IBLA at 53. Such alternatives should be all reasonable alternatives to the proposed action that will accomplish its intended purpose, are technically and economically feasible, and yet may have a lesser or no impact. 40 CFR 1500.2(e); 46 FR 18026, 18027 (Mar. 23, 1981); Headwaters, Inc. v. BLM, 914 F.2d 1174, 1180-81 (9th Cir. 1990); City of Aurora v. Hunt, 749 F.2d at 1466-67; Howard B. Keck, Jr., 124 IBLA at 53-54.

We are not persuaded that BLM failed to adequately consider alternatives to the proposed action. The only "alternatives" that Headwaters identifies as not having been considered by BLM are those employing newly-developed "methods of preventing the spread of noxious weeds such as infra red[] heat, steam and other types of treatment." (Headwaters SOR at 6.) We agree that BLM did not specifically consider these alternatives. See EA at 2, 10-12; Northwest EIS at 6-7, 11. However, Headwaters admits that these are simply different "methods" of mechanically eradicating such weeds. It has not demonstrated that, even if they are technically and economically feasible, such methods would be any more effective in controlling the spread of noxious weeds than the mechanical methods of burning, mowing, and tilling already considered by BLM, either in conjunction with the proposed use of herbicides or alone. See EA at 2, 10-12; Northwest EIS at 6-7, 11. Nor has it shown that such methods would result in impacts lesser than those stemming from the other mechanical methods already considered. Thus, Headwaters has failed to justify a separate and distinct alternative specifically using different mechanical methods of controlling noxious weeds.

Appellants both contend that BLM, in deciding to go forward with herbicide spraying and other activity under the adopted IWMP, violated other requirements of the law. Headwaters argues that BLM violated the Northwest Forest Plan (NFP), by not considering whether herbicide spraying will cause it to fail to meet or exceed the "Aquatic Conservation Strategy" (ACS) objectives of that Plan, and documenting the basis for its conclusion. 8/ (Headwaters

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fn. 7 (continued)

While prevention is certainly a laudable goal and likely to contribute to a long-term solution, we think that it does not address the immediate problem posed by such weeds, including the likelihood that they will spread considerably in the reasonably foreseeable future. Thus, since it is not likely to achieve the primary short-term aims of the IWMP, it was not necessary that BLM further address prevention in its EA. Howard B. Keck, Jr., 124 IBLA 44, 53-54 (1992), aff'd, Keck v. Hastey, No. S92-1670-WBS-PAN (E.D. Cal. Oct. 4, 1993).

8/ The NFP is the generally-accepted title given to the "Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl," which had been adopted by the Secretaries of Interior and Agriculture, in an Apr. 13, 1994, Record of Decision (ROD). The NFP generally provides for the comprehensive management of timber and other natural resources on all Federal

SOR at 6-7.) It makes specific reference to the fact that BLM is required by the NFP to apply herbicides "only in a manner that avoids impacts that retard or prevent attainment of Aquatic Conservation Strategy objectives." Id. at 7 (quoting from ROD, Attachment A, at C-37). KSWC goes further, arguing that, by "introducing additional pollutants into the watershed," BLM "will retard attainment of" ACS objectives. (KSWC SOR at 10.)

We find no violation of the NFP. Appellants have only identified BLM's affirmative duty under the NFP in applying herbicides to avoid impacts that retard or prevent attainment of ACS objectives. Thus, BLM must determine whether the approved application of herbicides will retard or prevent attainment of ACS objectives. BLM notes that these objectives are intended to "restore and maintain the ecological health of watershed[s] and aquatic ecosystems [contained within them on public lands]." (Attachment to BLM Answer to Headwaters Appeal at 2; see ROD, Attachment A, at B-9.) It indicates that, absent any adverse impacts to water quality and related resources in the watersheds of the district, which was disclosed by BLM's EA and Northwest Area EIS and Supplemental EIS, the approved application of herbicides at issue here will not impede the restoration and maintenance of the ecological health of watersheds and associated aquatic ecosystems on public lands, and thus will not retard or prevent attainment of ACS objectives. 9/ (BLM Answer to Headwaters Appeal at 2 ("BLM has found [that] the subject [IWMP] * * * complies with * * * the ROD for the Northwest Forest Plan"); Attachment to BLM Answer to Headwaters Appeal at 2.) Appellants have provided no evidence to the contrary. They do not identify which ACS objectives will not be met or exceeded, or present any evidence to support any allegation to that effect.

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fn. 8 (continued)
lands in California, Oregon, and Washington, within the geographic range of the Northern spotted owl, which has been designated a threatened species under the ESA, as amended, 16 U.S.C. §§ 1531-1543 (1994).

9/ Headwaters also argues that BLM failed to perform the watershed analyses required by the NFP as a prerequisite to determining whether ACS objectives will be met or exceeded as a result of herbicide spraying in designated "[R]iparian [R]eserves" within the Medford District. (Headwaters SOR at 7-8.) It is evident that BLM has, in fact, performed these analyses, and thus complied with the NFP. (EA at 6; Headwaters Decision at 4; Attachment to BLM Answer to Headwaters Appeal at 2.) What BLM is waiting to do is to consider specifically how it will undertake herbicide spraying in "Riparian Reserves," given the information disclosed by these analyses. (Headwaters Decision at 4; Attachment to BLM Answer to Headwaters Appeal at 2.) We find no violation of the NFP in that approach.

We do not address whether BLM violated the NFP by failing to monitor and analyze the effects of herbicide spraying "in the past," since this is outside the scope of the instant appeal, which challenges only BLM's adoption of the IWMP. (Headwaters SOR at 8.)

Headwaters argues that BLM failed to substantiate its claim of the rapid spread of noxious weeds in the Medford District: "Because of this, it appears that the BLM does not have data that shows that weeds are spreading rapidly." (Headwaters Statement of Reasons for Appeal (SOR) at 5.) It thus questions the need for taking any action at the present time, especially when there is no evidence regarding the success of past efforts.

We agree that BLM has not provided, in its April 1998 Environmental Assessment (EA) or elsewhere in the record, detailed information concerning the proliferation of noxious weeds in the district. However, it has depicted on maps attached to its EA the presence of such weeds within the district as of 1998. Many of these weeds are those which were found in that area back when BLM prepared the Northwest Area Noxious Weed Control Program Environmental Impact Statement (Northwest Area EIS) in 1985, when their rapid spread similarly justified taking action. See Northwest Area EIS at 2, 4, Appendix D. We think that BLM's statement, unrebutted by Headwaters, is sufficient to demonstrate a need for current action in the district. See Attachment to BLM Answer to Headwaters Appeal (Memorandum to Board from District Manager, dated Apr. 26, 1999) at 1 ("Noxious weeds are spreading more rapidly than in the recent past (30 - 50 years) due primarily to the improvements in the transportation systems and vehicular travel, and to the increased impacts on our natural resources (recreation, road construction, timber harvest, grazing)"). In addition, since the sole aim of BLM's proposed plan is to control the spread of such weeds, it stands to reason that it will be implemented only where they are found and are spreading, and thus a need actually exists.

Except to the extent that they have been expressly addressed in this decision, all other errors of fact or law raised by appellants have been considered and rejected.

We conclude that BLM properly denied appellants' protests against the June 1998 DR, adopting the Integrated Weed Management Plan for the Medford District.

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.

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David L. Hughes
Administrative Judge

I concur:

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James L. Burski
Administrative Judge