

Editor's Note: appeal filed sub nom. Idaho Conservation League and Friends of the Clearwater v. K. Lynn Bennett, BLM, Civ. No. 04-447-S-MHW (D. ID), remanded to BLM (April 29, 2005)

FRIENDS OF THE CLEARWATER, ET AL.

IBLA 2004-228, 2004-258

Decided August 31, 2004

Appeals from decisions of Field Manager, Cottonwood Field Office, Idaho, Bureau of Land Management, denying protests of a Decision Notice and Finding of No Significant Impact, approving an integrated resource management project, including timber harvesting and road building. EA ID-087-03-002.

Appeal dismissed in part; decisions 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--Timber Sales and Disposals: Generally

BLM properly decides to approve an integrated resource management project, including timber harvesting and road building, without preparing an EIS, where, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4332(2)(C) (2000), it has taken a hard look at the environmental consequences of doing so and reasonable alternatives thereto, considering all relevant matters of environmental concern, including the anticipated individual and cumulative impacts to soils, water quality, and threatened and endangered species, and determined that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. BLM's decision not to prepare an EIS will be affirmed where the appellant does not demonstrate, with objective proof, that BLM failed to consider a significant impact resulting from the proposed action, or otherwise failed to abide by the statute.

APPEARANCES: Gary Macfarlane, Friends of the Clearwater, Moscow, Idaho, for Friends of the Clearwater, Alliance for the Wild Rockies, The Ecology Center, Inc., The Lands Council, and Idaho Sporting Congress; Jonathan Oppenheimer, Idaho Conservation League, Moscow, Idaho, for Idaho Conservation League; Richard K.

Eichstaedt, Esq., Office of Legal Counsel, Nez Perce Tribal Executive Committee, Lapwai, Idaho, for the Nez Perce Tribe; K. Lynn Bennett, State Director, Idaho, Bureau of Land Management, U.S. Department of the Interior, Boise, Idaho, for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Friends of the Clearwater, Alliance for the Wild Rockies, and Idaho Conservation League, on behalf of themselves and others (collectively, Friends), and the Nez Perce Tribe (Tribe) have filed appeals from three separate April 14, 2004, decisions of the Field Manager, Cottonwood Field Office, Idaho, Bureau of Land Management (BLM), denying their March 23, and 24, 2004, protests of the Field Manager's March 9, 2004, Decision Notice and Finding of No Significant Impact (DN/FONSI), approving the "Whiskey South Integrated Resource Proposal" (Project), based on a Final Environmental Assessment (EA) (No. ID-087-03-002).^{1/}

The Project area encompasses a total area of 908 acres of Federal land, containing mature mixed conifer and lodgepole pine in 14 timber stands (Nos. 0 through 13), ranging in size from 8 to 119 acres, situated in secs. 4 through 6, T. 28 N., R. 8 E., secs. 28 through 33, T. 29 N., R. 8 E., and secs. 25 and 36, T. 29 N., R. 7 E., Boise Meridian, Idaho County, Idaho. BLM describes the area as generally containing "mature, dead and dying trees, often with an understory that acts as a fuels ladder," thus "increas[ing] * * * the likelihood of a stand replacing wildfire." (Answer (Friends) at 5.) The Project area is situated approximately three miles from Elk City, Idaho, within the wildland-urban interface (WUI), and along the South Fork of the Clearwater River and two tributaries of the South Fork (Red River and Crooked

^{1/} The appeal docketed as IBLA 2004-228 was filed by Friends of the Clearwater (FOC), Alliance for the Wild Rockies (AWR), and Idaho Conservation League (ICL), on behalf of themselves and The Ecology Center, Inc. (TEC), The Lands Council (TLC), and Idaho Sporting Congress (ISC). The appeal was from two Apr. 14, 2004, decisions by the Field Manager, directed separately to FOC and ICL, which rejected their Mar. 23, 2004, protest of the DN/FONSI. BLM had also issued four other decisions dated Apr. 15, 2004, denying that same protest, to the extent that it had been brought on behalf of AWR, TEC, TLC, and ISC, on the basis that FOC and ICL had failed to show that they were qualified, under 43 CFR 1.3, to represent these other parties. The appeal docketed as IBLA 2004-258 was filed by the Tribe. Because they arise from the same facts and raise similar legal and factual issues, the two appeals are consolidated for final disposition by the Board.

River), all of which are upstream of the Nez Perce Indian Reservation.^{2/} The Federal lands within the Project area are administered by BLM, to the extent they are located outside the Nez Perce National Forest, and by the U.S. Forest Service (FS), to the extent they are within the National Forest.

The proposed Project is an integrated approach to the management of the Federal forest and associated resources, which is designed to promote public safety, forest health, and big game wildlife use, thus serving to:

- 1) reduce the risk of high intensity wildland fire to life, property and natural resources in the Elk City area; 2) reduce existing and potential fuel for a stand replacing fire; 3) restore the health and vigor of forest stands which are currently experiencing escalating mortality due to various pathogens; and 4) improve the quantity and quality of elk winter range by reducing conifer encroachment.

(DN/FONSI at 2.)

The proposed Project provides for harvesting close to 8,932 thousand board feet (MBF) of timber, by means of various silvicultural methods and subject to specific silvicultural prescriptions, from 879 acres of Federal land.^{3/} Most of the timber harvested (7,882 MBF) would come from the 809 acres of land administered by BLM. Some of the stands would be broken down into more than one timber harvesting unit. Most of the stands would be subject to pre-commercial thinning, in order to thin the understory, and removal of the timber, following harvesting, using

^{2/} BLM describes the relevant watersheds as follows:

“The analysis area drains into Crooked River to the west, Campbell Creek to the south, and the South Fork Clearwater River (South Fork) to the north and east. Draining into Crooked River are two perennial non-fish bearing streams with contributing drainage areas of approximately 90-360 acres, and numerous smaller face drainages. Crooked River has a drainage area of about 71 square miles. * * *

Campbell Creek is a second-order, perennial, fish-bearing stream with a 1.8-square mile watershed; it is tributary to Red River. * * *

The South Fork is formed by the confluence of American and Red Rivers. The contributing drainage area is about 253 square miles. * * *

(EA at 22.)

^{3/} The silvicultural methods used would be commercial thinning (alone or together with salvage) (312 acres), shelterwood harvesting (172 acres), salvage and release (172 acres), and fuel break (223 acres).

cable, tractor, or helicopter yarding. In addition, the entire 908-acre Project area would be subjected to prescribed burns following harvesting, in order to further reduce fuel loading.

In order to facilitate access to the areas proposed for timber harvesting and prescribed burning, the proposed Project provides for constructing about 3.4 miles of new roads and using about 10.6 miles of existing roads, most of which would be located on Federal lands administered by BLM. ^{4/} Following harvesting and burning, about 2.1 miles of the new roads (2.0 miles (BLM) and 0.1 miles (FS)) would be closed and decommissioned, including ripping, blocking, and seeding where the road surface has not naturally stabilized. In addition, a total of 6.8 miles of existing roads (4.6 miles (BLM) and 2.2 miles (FS)) would be stabilized or decommissioned.

In order to assess the potential environmental impacts of the proposed Project, and reasonable alternatives thereto (including no action), BLM prepared the Final EA, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4332(2)(C) (2000), and its implementing regulations (40 CFR Chapter V). ^{5/} The Final EA was tiered to the environmental impact statements which had been prepared by BLM and FS in conjunction with their promulgation of the applicable land-use plans (BLM's November 1981 Chief Joseph Management Framework Plan (MFP) and FS's October 1987 Nez Perce National Forest Land and Resource Management Plan).

BLM also assessed the likely impacts of the proposed Project on threatened and endangered (T&E) species of fish and wildlife, and otherwise sought to comply with section 7 of the Endangered Species Act of 1973 (ESA), as amended, 16 U.S.C. § 1536 (2000), and its implementing regulations (50 CFR Part 402). BLM prepared a September 4, 2003, Biological Assessment (BA), which addressed the potential impacts to T&E species of fish and wildlife known to inhabit the Project and surrounding areas, including rivers which run along, and continue downstream from, the Project area. Because it concluded, based on the BA, that the Project may affect,

^{4/} About 3.3 miles of new roads and 8.2 miles of existing roads would be located on land administered by BLM. The remainder would be on land administered by FS.

^{5/} BLM considered two action alternatives, in addition to the no action alternative (Alternative 1) which provided for none of the proposed timber harvesting, roadbuilding, or other activity in the Project area. Alternative 2 provided for harvesting 5,504 MBF of timber from 712 acres of land, along with constructing 0.4 miles of new roads, and Alternative 3 provided for harvesting 5,866 MBF of timber from 765 acres of land, along with constructing 0.6 miles of new roads.

and was likely to adversely affect (LAA), a particular T&E species of fish, BLM initiated formal consultation with the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) concerning anadromous fish (Snake River steelhead trout (*Oncorhynchus mykiss*)). In addition, because it concluded that the Project may affect, but was not likely to adversely affect (NLAA) certain T&E species of fish and wildlife, BLM informally consulted with the U.S. Fish and Wildlife Service (FWS) concerning wildlife (bald eagle (*Haliaeetus leucocephalus*), gray wolf (*Canis lupus*), and Canada lynx (*Lynx canadensis*)) and non-anadromous fish (Columbia River bull trout (*Salvelinus confluentus*)).

FWS and NOAA Fisheries issued their Biological Opinions (BOs) on November 10, 2003, and February 10, 2004, concluding that the Project was not likely to jeopardize the continued existence of Canada lynx or Snake River steelhead trout, or destroy or adversely modify their critical habitat. In its November 2003, BO, FWS also concurred in BLM's NLAA determination with respect to bald eagle, gray wolf, and Columbia River bull trout.

In his March 2004 DN/FONSI, the BLM Field Manager approved the Project, thus authorizing timber harvesting, road building, and other activities on Federal lands administered by BLM in the Project area.^{6/} He concluded, after considering all of the significance criteria of 40 CFR 1508.27, that going forward with the Project would not significantly impact the environment. See DN/FONSI at 17-20.

Friends and the Tribe filed protests of the DN/FONSI, contending that approval of the Project violates section 102(2)(C) of NEPA, section 7 of the ESA, and the Clean Water Act, as amended, 33 U.S.C. §§ 1251-1387 (2000). Friends and the Tribe are primarily concerned with BLM's failure to consider potential impacts of the Project on the quality and quantity of surface water in the South Fork of the Clearwater River, and on T&E species of fish and other downstream resources.

The BLM Field Manager responded by addressing all of the arguments advanced by Friends and the Tribe, and then denied their protests in his April 2004

^{6/} The DN/FONSI also was signed by the District Ranger, Red River Ranger District, Nez Perce National Forest, on behalf of FS. The Board has jurisdiction only over appeals from BLM decisions, which concern activities approved for Federal lands outside the Nez Perce National Forest. We therefore do not address any aspect of the FS decision with respect to National Forest lands.

decisions. Friends and the Tribe timely appealed. ^{7/} Because we here dispose of the two appeals, the motions by Friends and the Tribe for expedited consideration are denied as moot. ^{8/}

We turn first to contentions by Friends and the Tribe that BLM's decision to go forward with the Project violates section 102(2)(C) of NEPA, because BLM failed to adequately consider the potential environmental impacts of the proposed timber harvesting, road building, and other activities. Friends and the Tribe assert that an EIS is required since the Project provides for timber harvesting in areas adjacent to the South Fork of the Clearwater River, known as Riparian Habitat Conservation Areas (RHCA), which are "normally off-limits to logging," and in "landslide-prone areas," and thus is likely to significantly impact the environment. (Friends Notice of Appeal/Petition for Stay/Statement of Reasons for Appeal (SOR) at 2; see Tribe SOR at 9-12.) They argue that BLM failed to properly take into account the potential for erosion as a consequence of timber harvesting and, thus degrading water quality by introducing sediment into the South Fork in quantities detrimental to T&E fish species. Friends and the Tribe assert that cumulative increased sedimentation is likely to occur as a result of undertaking the proposed Project together with FS's American/Crooked River Project and Red Pines Project, on nearby Federal lands in the Nez Perce National Forest, and BLM's Eastside Township Project, on nearby Federal lands in the Cottonwood Resource Area.

[1] A BLM decision to proceed with a proposed action without preparing an EIS will be upheld as being in accordance with section 102(2)(C) of NEPA where the record demonstrates that BLM has taken a "hard look" at potential environmental impacts, and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. Cabinet Mountains Wilderness v. Peterson, 685 F.2d 678, 681-82 (D.C. Cir. 1982); Nez Perce Tribal Executive Committee, 120 IBLA 34, 37-38 (1991). An appellant seeking to overturn such a decision must demonstrate, with objective proof, that BLM failed to consider a substantial

^{7/} The May 14, 2004, notice of appeal by Friends was signed only by representatives of FOC, AWR, and ICL. We note that the same person signed for FOC and AWR, based on his purported affiliation with both entities, which we do not question. However, since we find no evidence that either of the signatories to the notice of appeal has any authority, under 43 CFR 1.3, to represent any of the other named parties, we hereby dismiss the appeal by Friends as to TEC, TLC, and ISC.

^{8/} By order dated June 16, 2004, we denied Friends' petition to stay the effect of the BLM Field Manager's April 2004 decisions. The Tribe filed no stay petition.

environmental question of material significance to the proposed action, or otherwise failed to abide by section 102(2)(C) of NEPA. In Re North Murphy Timber Sale, 146 IBLA 305, 310 (1998), rev'd on other grounds, Oregon Natural Resources Council v. U.S. Forest Service, No. C98-942WD (W.D. Wash. Aug. 2, 1999); Southern Utah Wilderness Alliance, 127 IBLA 331, 350, 100 I.D. 370, 380 (1993).

Friends and the Tribe argue that the Project provides for timber harvesting within 300 feet of fish-bearing streams, within RHCAs, where harvesting is prohibited by the PACFISH Standards and Guidelines, and in landslide-prone areas.^{2/} They further assert that increased sedimentation from timber harvesting and road building is likely to significantly impact the quality of water in the South Fork of the Clearwater River, which is already listed by the State of Idaho as a water body with degraded water quality due to elevated sediment loads, and T&E fish species, specifically Snake River steelhead trout and Columbia River bull trout, which have critical spawning and rearing habitat in the river.

BLM fully considered such impacts in its EA. It addressed the likelihood that the Project would cause sediment to be transported downslope and into the South Fork of the Clearwater River and the other rivers, concluding that, in the short-term, sediment would increase above existing levels in the rivers, thus slightly degrading water quality. (EA at 21, 23, 44-45; DN/FONSI at 12.) BLM was aware, as a result of a field survey and mapping, that only about 37 acres within the areas proposed for timber harvesting have a moderate or high risk for slope instability or landslides, and took the presence of such landslide-prone areas into account by restricting tree removal in such areas, and otherwise minimizing the likelihood of adverse impacts. (EA at 5, 7, 8, 28, Figure 3 (“Landslide Prone Areas”); Field Review, Landslide Risk Evaluation, dated May 6, 2003; Second Field Review, Landslide Risk Evaluation, dated June 5, 2003; Decision (Tribe) at 4.) BLM also expected that sediment loads in the rivers would return to current levels within three to five years following harvesting. (EA at 44-45; DN/FONSI at 8, 12.)

^{2/} PACFISH refers to a Decision Notice/Decision Record (DN/DR) of the Acting Director, BLM, and the Chief, FS, dated Feb. 24, 1995, which, in response to steep declines in anadromous fish populations and widespread degradation of fish habitat, adopted “Interim Strategies for Managing Anadromous Fish-Producing Watersheds on Federal Lands in Eastern Oregon and Washington, Idaho, and Portions of California.” Friends of the River, 146 IBLA 157, 159 (1998); 60 FR 11655 (Mar. 2, 1995). The interim strategies were designed, through the implementation of protective measures for new and ongoing activities on BLM-administered lands, to halt degradation and begin the restoration of fish habitat. 146 IBLA at 159-60; 60 FR at 11655.

BLM further concluded that, even given the amount of sediment likely to be introduced into the rivers, it did not expect any significant adverse impacts to T&E fish species or their habitat. (EA at 24-27, 47-49; BA at 21-30, 37-38, 39-42, Appendix B (“Documentation of Environmental Baseline and Effects of Action(s) on Relevant Indicators”); DN/FONSI at 19; Decision (Friends) at 5 (“[Under the MFP] the habitat objective can be met if sediment over base is maintained at or below 60%. [The EA] * * * displays the maximum sediment over base to be 53%[.]”).) FWS concurred in BLM’s NLAA determination with respect to bull trout, concluding that the Project will not result in a significant increase in sediment yields, or otherwise degrade the proper functioning of the affected watersheds over time. (FWS BO at 2.) NOAA Fisheries rendered a no-jeopardy determination with respect to the steelhead trout, concluding that:

Given the small magnitude of change in steelhead survival in the action area and the 7-year duration of the increased sediment inputs, the proposed action would not appreciably influence survival or recovery of the steelhead population in the South Fork Clearwater River subbasin or in the Snake River Steelhead ESU [Evolutionarily Significant Unit].

(NOAA Fisheries BO at 21.)

BLM also took into account the fact that timber harvesting will occur within 300 feet of fish-bearing streams, within RHCAs, specifically on the opposite side of the road which runs along Crooked River, and in a small area along the South Fork of the Clearwater River.^{10/} (EA at 28, 51-52.) BLM provided for no harvesting or prescribed burning within 50 feet of the South Fork and the road running along the Crooked River, restrictions on tree removal within 300 feet of the river and the road,

—

^{10/} PACFISH provides that RHCAs encompass land on either side of a fish-bearing stream from the edge of the active stream channel to the greater of a 300-foot slope distance, or to the top of the inner gorge, the outer edges of the 100-year floodplain, the outer edges of riparian vegetation, or a distance equal to the height of two site-potential trees. (Appendix C, DN/DR, at C-8.) This buffer is considered sufficient to “protect streams from non-channelized sediment inputs,” and also promote “other riparian functions, including delivery of organic matter and woody debris, stream shading, and bank stability.” *Id.* at C-7.

and otherwise minimizing the likelihood of adverse impacts. ^{11/} (EA at 5, 7, 8, 51-52.)

Timber harvesting is not prohibited by PACFISH in RHCAs, so long as BLM determines that doing so, by means of salvage or fuelwood cutting in areas with degraded riparian conditions, will permit present and future woody debris needs to be met, will not prevent or retard the attainment of riparian management objectives (RMO), and will avoid adverse effects on T&E anadromous fish species, and BLM completes watershed analysis. ^{12/} (Appendix C, DN/DR, at C-10; see id. at C-4 to C-6.) BLM has undertaken watershed analysis, and concluded that RMOs will not be negatively affected, which was confirmed by FWS and NOAA Fisheries in their BOs. (EA at 2 (“All aspects of the Proposed Action and any alternatives would comply with * * * PACFISH”), 51-52; BA at 41; see Crooked River Site Specific Watershed Analysis, dated September 2003; South Fork Clearwater Subbasin Landscape Assessment, dated October 1997; FWS BO at 2; NOAA Fisheries BO at 20.)

The Tribe argues that the watershed analysis is “highly suspect and unsupported by valid and current [and site-specific] data,” and BLM has failed to demonstrate how RMOs will be achieved. (SOR at 23.) We have no reason, however, to question BLM’s analysis, and are not persuaded that PACFISH will be violated.

Further, BLM has taken into account the fact that the South Fork of the Clearwater River has been listed by the State as a Water Quality Limited Segment (WQLS) under section 303(d) of the Clean Water Act, as amended, 33 U.S.C. § 1313(d) (2000). ^{13/} (EA at 22). Following consultation with the State of Idaho,

^{11/} It does not appear that the RHCA for Crooked River extends along the whole length of the river where it borders the Project area, since the road running along the river, which forms the boundary of the Project area, is situated some distance from the river. See EA at Figure 2 (“Proposed Action”). Thus, it appears that the 50-foot buffer zone, tied to the road, will likely place harvesting entirely outside the RHCA.

^{12/} RMOs are indicators of “ecosystem health” for watersheds containing anadromous fish, which reflect the extent of the presence or absence of six quantifiable “environmental features” of stream channels. Pool frequency is the key feature and water temperature, large woody debris, bank stability, lower bank angle, and width/depth ratio are supporting features. (Appendix C, DN/DR, at C-5 and C-6.)

^{13/} Listing a segment of a navigable water as a WQLS triggers an obligation by the
(continued...)

BLM concluded that the temporary increase in sediment would not violate the Clean Water Act, notwithstanding that listing. (EA at 22, 44; Decision (Friends) at 4.)

Friends and the Tribe offer no specific evidence to contradict BLM's analysis of the likely impacts of the Project on the quality of water in the South Fork of the Clearwater River, associated fish habitat, or any fish species, other than a June 10, 2004, declaration (attached to Tribe SOR) by F. Al Espinosa, Jr., a Certified Fisheries Scientist with substantial experience in the field of fisheries and aquatic ecology, and familiarity with the Project area and the South Fork of the Clearwater River. Espinosa criticizes BLM's conclusions as to the effects of the Project, but offers no opposing data or modeling to support his conclusory statements. "Where * * * differences of [expert] opinion exist and the appellant has not shown that his interpretation of the data is more likely to be correct than that of the BLM, the Board will sustain the BLM finding." B.K. Killion, 90 IBLA 378, 386 (1986). BLM is entitled to rely on the professional opinion of its technical experts, concerning matters within the realm of their expertise, where it is reasonable and supported by record evidence. West Cow Creek Permittees v. BLM, 142 IBLA 224, 238 (1998); see Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 378 (1989). Accordingly, we find Mr. Espinosa's declaration fails to demonstrate error on the part of BLM.

Friends and the Tribe challenge the accuracy of BLM's computerized modeling of expected sediment yields resulting from Project activities, especially during intense storm events. Appellants have failed to establish that the modeling used by BLM here cannot reasonably be relied upon. See DN/FONSI at 18 ("The models employed are considered reliable and sufficient for effects analysis by the [BLM] specialists completing the analysis"). Computerized modeling will not be absolutely accurate since, by its nature, such modeling constitutes a scientific estimation. See Decision (Tribe) at 4 ("[T]he limitations of the sediment model are well known"). Further, appellants offer no evidence of more accurate sediment yields.

^{13/} (...continued)

State to develop a Total Maximum Daily Load (TMDL) for relevant pollutants for that segment. A TMDL is the maximum amount of a pollutant that a segment can receive from all sources and still meet water quality standards, considering naturally-occurring pollutants, seasonal variations, and a margin of safety. 33 U.S.C. § 1313(d)(C). Once approved by the Environmental Protection Agency (EPA), TMDLs are then incorporated by the State into its continuous water quality planning process, id. § 1313(d)(D)(2), during which they are a factor in setting specific effluent limitations for permitted point sources and determining and implementing Best Management Practices (BMP) for nonpoint sources, such as agricultural and logging activities.

Friends and the Tribe both suggest that the proposed action will violate the State of Idaho's TMDLs for the South Fork of the Clearwater River, thus violating the Clean Water Act. (Friends SOR at 9-13; Tribe SOR at 29-32.) The State is primarily responsible for establishing the TMDLs and enforcing them by incorporation into its water quality planning process and requiring the use of BMP for nonpoint source activities. See 33 U.S.C. § 1313(e) (2000); 40 CFR 130.7 & 130.12 (2000). That process in Idaho is ongoing and not yet completed.^{14/} BLM consulted with the State regarding appropriate implementation of the Project, and BLM concluded that the Project would be in conformance with State guidance. (EA at 22, 44.) Friends and the Tribe provide no data or modeling contradicting BLM's analysis, and provide no evidence that the State considers the Project to be violative of the State's water quality standards or planning process. Accordingly, Friends and the Tribe have failed to demonstrate error in BLM's conclusion. Further, BLM properly considered the potential cumulative impacts of the Project, together with other past, present, and reasonably foreseeable future actions, to water quality in the South Fork of the Clearwater River, and associated fish habitat and T&E and other fish species. (EA at 44-45, 47-49, 71-73, Appendix 3 ("List of Reasonably Foreseeable Future Actions").) This included all of the projects identified by Friends and the Tribe (FS's American/Crooked River Project and Red Pines Project, and BLM's Eastside Township Project).

Friends also contends that BLM failed to adequately consider the likely impacts of the Project on T&E and other wildlife species, or adopt appropriate measures for protecting or enhancing habitat for the Northern goshawk (*Accipiter gentilis*), a BLM-designated sensitive species, gray wolf, and Canada lynx. (SOR at 14-15.) It is clear from the record that BLM addressed potential impacts to T&E and other wildlife species, including impacts associated with disturbance, loss of habitat, and reductions in the value of the ridgetop wildlife travel corridors. See EA at 28-35, 52-63; DN/FONSI at 5-6, 9; Decision (Friends) at 3; FWS BO at 2-3, 17; see generally BA.

Both Friends and the Tribe contend that BLM failed to consider a reasonable range of alternatives to the proposed Project, since it did not address a no timber harvesting alternative, which would focus on restoring the watershed. (Friends SOR at 4; see Tribe SOR at 15-18.)

^{14/} Idaho's TMDLs for the South Fork of the Clearwater River were just recently approved by EPA. See Letter from Director, Office of Water & Watersheds, EPA Region 10, to Chairman, Nez Perce Tribe, and Director, Idaho Department of Environmental Quality, dated July 22, 2004.

Section 102(2)(E) of NEPA requires BLM to consider, in an EA, “appropriate alternatives” to the proposed action, as well as their environmental consequences. 42 U.S.C. § 4332(2)(E) (2000); *see* 40 CFR 1501.2(c) and 1508.9(b); City of Aurora v. Hunt, 749 F.2d 1457, 1466 (10th Cir. 1984); Bales Ranch, Inc., 151 IBLA 353, 363 (2000). Such alternatives should include reasonable alternatives to the proposed action, which will accomplish its intended purpose, are technically and economically feasible, and yet have a lesser or no impact. 40 CFR 1500.2(e); Bales Ranch, Inc., 151 IBLA at 363, and cases cited therein. Consideration of alternatives ensures that the decision maker “has before him and takes into proper account all possible approaches to a particular project.” Calvert Cliffs’ Coordinating Committee, Inc. v. U.S. Atomic Energy Commission, 449 F.2d 1109, 1114 (D.C. Cir. 1971).

BLM is required by NEPA only to consider specific alternatives to that proposed action, given the particular purposes sought to be achieved by that action. It need not seek to broaden the purposes of the proposed action, in order to achieve other purposes. It is clear that any number of other alternatives, whereby less acreage is subject to timber harvesting and fewer miles of new road are built, could satisfy the general purposes of the proposed action, which are to reduce the risk of wildfire, minimize the spread of any wildfire, promote the health of the forest, and improve big game wildlife habitat in the specific Project area. BLM plainly considered two such alternatives (Alternatives 2 and 3), as well as the no action alternative of engaging in no timber harvesting (or other activities) in the Project area.

BLM noted, in its EA, that it had considered the no timber harvesting alternative, but concluded that the alternative was not appropriate for detailed consideration. (EA at 19.) BLM stated that the alternative was not consistent with its land use plan, which provided for intensive forest management of the Project area, including commercial timber harvesting, or the “socio-economic intent” of the National Fire Plan and the President’s August 22, 2002, Healthy Forests Initiative. Id.; see id. at 2. BLM further stated that, absent timber harvesting, it would essentially be left with prescribed burns, which could not be undertaken in a manner adequate to achieve the principal objectives of the proposed action to reduce the risk of wildfires and minimize their spread: “The current stand structure[] (generally two storied) does not lend itself to low severity prescribed fire. The result would be either prescribed fire intensities so low that they would result in no fuel reduction * * *, or so high that they would result in a stand replacing event.” Id. at 19; see DN/FONSI at 5 (“One of the primary purposes of the analysis was to provide a [fire] suppression opportunity and to provide for firefighter and public safety”); Decision (Tribe) at 2 (“[T]reatment without commercial [logging] * * * was dropped from further

consideration * * * for reasons ranging from inconsistency with the project goals and objectives to potential resource damage”).

Friends and the Tribe provide no evidence contradicting BLM’s analysis of a no timber harvesting alternative. Further, we can find nothing in NEPA or its implementing regulations which requires BLM to consider an alternative to a proposed action so stripped of its basic components that it ceases to achieve the primary objectives of that action. Thus, we find no NEPA violation stemming from BLM’s decision not to give detailed consideration to a no timber harvesting alternative. Committee for Idaho’s High Desert, 158 IBLA 322, 327, 333-34 (2003).

The Tribe contends that BLM’s decision approving the Project violates its substantive obligation under section 7(a)(2) of the ESA, as amended, 16 U.S.C. § 1536(a)(2) (2000), since Project activities are “likely to jeopardize the continued existence” of a T&E species, the Snake River steelhead trout in the South Fork of the Clearwater River. (SOR at 21 (quoting from 16 U.S.C. § 1536(a)(2) (2000)).) It recognizes that NOAA Fisheries reached a contrary conclusion, but argues that the agency “failed to analyze the Whiskey[-]South Project against the standards and objectives prescribed under PACFISH,” or to consider the cumulative impacts of the Project and other actions in the Subbasin of the South Fork of the Clearwater River on resident steelhead trout. Id. We have no jurisdiction to adjudicate the validity of the BO rendered by NOAA Fisheries. Blake v. BLM, 145 IBLA 154, 161-62 (1998). In any event, the Tribe presents no evidence to contradict NOAA Fisheries’ conclusion that the steelhead trout is not likely to be jeopardized by the Project. ^{15/}

To the extent that they have not been addressed explicitly in this decision, all other alleged errors of fact or law raised by Friends or the Tribe have been considered and rejected.

Having failed to demonstrate that BLM violated section 102(2)(C) of NEPA, section 7 of the ESA, the Clean Water Act, or otherwise committed any error of law or fact, we conclude that the BLM Field Manager, in his April 2004 decisions, properly denied the protests by Friends and the Tribe.

^{15/} The Tribe also asserts that BLM’s decision to approve the Project violates its substantive obligation under section 7(a)(1) of the ESA, as amended, 16 U.S.C. § 1536(a)(1) (2000), to “conserve listed species.” (SOR at 21.) BLM concluded that the Project complies with this obligation, and we find no evidence to the contrary.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed as to The Ecology Center, Inc., The Lands Council, and Idaho Sporting Congress, and the decisions appealed from are affirmed.

H. Barry Holt
Chief Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge