

CALIFORNIANS FOR ALTERNATIVES TO TOXICS

IBLA 2003-36

Decided March 24, 2005

Appeal from a decision issued by the Manager, Ukiah (California) Field Office, Bureau of Land Management, approving eradication of tamarisk in the Bear Creek drainage. CA 160-03-01.

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 a plan for controlling tamarisk on the public lands will be affirmed when the record adequately supports the decision and demonstrates that, in an environmental assessment tiered to a programmatic environmental impact statement, BLM took a hard look at the potential environmental impacts of its decision and properly concluded that no significant impact not previously considered would likely result, thus complying with section 102(2) of the National Environmental Policy Act, 42 U.S.C. § 4332(2) (2000).

APPEARANCES: Patricia M. Clary, Eureka, California, for appellant; Nancy S. Zahedi, Esq., Assistant Regional Solicitor, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Californians for Alternatives to Toxics (CATs) has appealed a Decision Record (DR) issued by the Manager, Ukiah (California) Field Office, Bureau of Land Management (BLM), on August 26, 2002, approving eradication of tamarisk in the Bear Creek drainage, Colusa County, California. The DR, and the accompanying finding of no significant impact on the human environment (FONSI), were based on

an analysis set out in environmental assessment CA-340-02-023 (EA). In turn, the EA was tiered to two final environmental impact statements: the California Vegetation Management Final Environmental Impact Statement (August, 1988) (California EIS)^{1/} and Vegetative Treatment on BLM Lands in Thirteen States Final Environmental Impact Statement (May, 1991) (13-States EIS). CATs had submitted comments on the proposed action, and BLM responded in a letter dated September 6, 2002.

Tamarisk, or saltcedar, is a non-native exotic shrub that often occurs in dense, mono-specific stands beside streams and springs in western states. (EA, 7.) Deemed a noxious weed, it is highly invasive and drops huge amounts of salt-covered leaf litter which enables it to out-compete native riparian vegetation. It also transpires large amounts of water, reducing the amount of water available to other species. Id. The project to eradicate tamarisk involves treatment of tamarisk plants on Bear Creek and its tributaries with the herbicides Stalker (active ingredient-imazapyr) and Roundup Pro (active ingredient-glyphosate), which would be applied to the plants by individuals using a backpack sprayer. No spray treatment would be used within 10 feet of water.

Noting that tamarisk will not be spray treated within 10 feet of water, CATs expresses concern that the untreated tamarisk will reinfest treated areas. It asserts that “to avoid piece-mealing the project,” the EA should discuss the treatment of this area. (Undated letter from CATs to BLM at 2.) BLM responded to this concern in its September 6 letter, stating that it is attempting to eradicate tamarisk in segments because eradication “all at one time would be impossible both physically and monetarily.” (Sept. 6, 2002, letter at 1.) Recognizing that “using pesticides in water is a very sensitive issue,” BLM states that it is “still assessing an approach on how to remove tamarisk from the aquatic zone” and that task would be examined in a separate environmental assessment. Id.

^{1/} The Record of Decision (ROD) for the California EIS imparts the following perspective that is important when addressing use of pesticides:

“As registered by EPA [Environmental Protection Agency] under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), herbicides differ from many other toxic substances. To be registered for commercial sale and public use, herbicides must provide specific economic and social benefits. This is not to say that herbicide use is free from environmental hazard or risk. Indeed, in registering a herbicide for commercial sale and public use, EPA must apply another standard under FIFRA--whether it poses an unreasonable risk to human health or the environment. Each herbicide already enjoys a regulatory finding by EPA that it poses no unreasonable risk to human health or the environment in light of the benefits of its use.” (ROD, 4.)

CATs asserts that BLM's future actions are part of a "single course of action and should be analyzed as such," contending that BLM has failed to assess the cumulative effects of such actions. (Notice of Appeal/Petition for Stay at 3.) Nonetheless, CATs has provided no valid reason to postpone the eradication of the tamarisk under the proposed action while BLM considers alternatives for the removal of tamarisk within the aquatic buffer zone, which will probably involve different herbicides and treatment methods.

In its Answer, BLM points out that the cumulative effects of herbicide use had been evaluated in the California EIS and that the 13-States EIS analyzed the effects of imazapyr which had not been included in the California EIS. (Answer at 6-7.) BLM states that glyphosate and imazapyr, which have very low toxicity, are being applied by spraying with a backpack sprayer to minimize wind drift. *Id.* at 7. BLM asserts that the herbicide would not be applied more frequently than once a year, and therefore there would be no cumulative effects of concern. *Id.*

CATs is concerned that the 10-foot stream buffer zone is insufficient to protect streams from contamination, citing a study recommending a 20-meter wide buffer zone to avoid drift contamination. In this study the herbicide was applied with "a tractor-mounted team sprayer with a 6 m boom." R.H. Marrs, *et al.*, "Determination of buffer zones to protect seedlings of non-target plants from the effects of glyphosate spray drift," *Agriculture, Ecosystems and Environment* 45 (1993), 285. However, this study is not applicable to an assessment of the effects of application using small hand held sprayers. CATs has not established that a buffer zone larger than 10 feet is needed when the herbicide is applied by hand using a backpack sprayer.

After acknowledging that BLM has prepared programmatic environmental impact statements concerning the use of herbicides for vegetation management to which the EA is tiered, CATs asserts that an environmental statement should have been prepared to assess the impacts of controlling weeds in the Bear Creek drainage. Section 102(2)(C) of NEPA requires consideration of potential environmental impacts of a proposed action in an environmental impact statement if that action is a "major Federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C) (2000). CATs has presented no evidence that, when the analysis set out in the EA is tiered to the above mentioned EISs, the impacts of the proposed action would rise to a level of magnitude sufficient to cross the threshold of significance to require an environmental impact statement.

Although CATs refers to various studies concerning the toxicity of the herbicides and adjuvants, CATs has not explained how these studies are relevant to BLM's proposed manner and rates of application. As BLM points out, the applications are timed to occur when rainfall is unlikely, hand wands will be used to assure that

there will be little or no spray drift, buffer strips are provided, and the herbicides have low persistence and mobility. (Answer, 10.)

CATs contends that the EA does not adequately discuss the issue of worker health or human exposure. These subjects are addressed in the programmatic EISs. Noting that the herbicides will not be applied on weekends to avoid conflicts with recreationists and that the treated areas will not be closed or designated as having been treated, CATs accuses BLM of “leav[ing] the public in the dark” by “[a]voiding pesticide application at times when the public may observe it.” (Notice of Appeal/Petition for Stay at 5.) BLM explains that this limitation is imposed “to avoid times of increased recreational activity by the public,” and refers to the programmatic EISs, which address the issue of recreational use of public lands following pesticide application. (Answer, 11.)

CATs expresses concern that the EA does not provide adequate information on the severity of the tamarisk infestation, topography, climate, soil management issues, or the impacts of revegetating the area with native plant species. However, the EA addresses these issues, and CATs has not explained how additional information would have any bearing on BLM’s decision. Noting that the EA states that water temperature could be raised with the removal of tamarisk because the tamarisk provides some shade, CATs asserts that there is no analysis of the effect of raised water temperature on the organisms in the creek, and expresses concern regarding potential fire hazard as a result of the dead tamarisk plants. (Notice of Appeal/Petition for Stay at 6.) However, it submits no plausible explanation regarding how these issues are of sufficient impact to warrant deferral of the action.

Finally, CATs asserts that the EA fails to consider possible alternatives. Id. at 6-7. BLM points out that it considered a range of alternatives, but in the absence of results from studies involving alternatives, “BLM appropriately identified herbicide treatment as the only viable and proven method for a Tamarisk eradication program.” (Answer, 13.) CATs has not identified a reasonable alternative that would accomplish the purpose of the proposed action.

[1] In Headwaters, Inc., 157 IBLA 139 (2002), we affirmed a BLM decision to adopt an integrated management plan for controlling the spread of noxious weeds on the public lands. As in the instant appeal, the record adequately supported the decision and demonstrated that, in an environmental assessment tiered to a programmatic environmental impact statement, BLM 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.

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

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.

R.W. Mullen
Administrative Judge

I concur:

T. Britt Price
Administrative Judge