OREGON NATURAL DESERT ASSOCIATION
WESTERN WATERSHEDS PROJECT

173 IBLA 348 Decided February 21, 2008

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

OREGON NATURAL DESERT ASSOCIATION
WESTERN WATERSHEDS PROJECT

IBLA 2008-14 Decided February 21, 2008

Appeal from a decision of the Field Manager, Malheur Resource Area, Bureau of Land Management, which authorized the implementation of general land management actions within the North Fork Malheur Geographic Management Area. OR-030-06-007.

Decision affirmed; petition for stay denied as moot.

1. Federal Land Policy and Management Act of 1976: Wilderness--National Environmental Policy Act of 1969: Environmental Statements

When, in response to comments on an environmental assessment calling for BLM to examine the impacts of proposed land management actions on wilderness resources in the project area, BLM completes an inventory of the wilderness resource as part of its obligations under section 201(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1711(a) (2000), and reaches the conclusion that no lands meeting the necessary criteria, other than those in existing wilderness study areas, are present in the project area, BLM may properly include a summary of its completed inventory and evaluation process in the final environmental assessment, and the brevity of that summary does not constitute a failure to take the "hard look" required by the National Environmental Policy Act of 1969, 42 U.S.C. § 4332(2)(C) (2000). No further examination of the wilderness resource is necessary when such resource is determined not to be present in the project area, other than in existing wilderness study areas.

APPEARANCES: Peter M. Lacy, Esq., and Kristin F. Ruether, Esq., Portland, Oregon, for appellants; Pat Ryan, Field Manager, Malheur Resource Area, Vale, Oregon, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Oregon Natural Desert Association (ONDA) and Western Watersheds Project (WWP) have appealed from and requested a stay of an August 13, 2007, Decision Record (DR) issued by the Field Manager, Malheur (Oregon) Resource Area, Bureau of Land Management (BLM), which authorized the implementation of general land management actions within the North Fork Malheur Geographic Management Area (NFMGMA).[1] The actions challenged by appellants can generally be described as vegetative treatments and are identified in the DR at 6 as including western juniper treatment, exotic annual grass treatment, brush mowing, rangeland seeding, and aspen and mountain mahogany treatments. *See* DR at 7-8.

Appellants contend that the Field Manager erred in authorizing the treatments because BLM violated the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1784 (2000), and the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4361 (2000), in completing the Final EA and FONSI upon which the Field Manager based his decision. In their statement of reasons (SOR), appellants offer five specific arguments, which they assert in their petition for stay establish their likelihood of success on the merits of their appeal. Those arguments are: (1) BLM violated NEPA by failing to take a "hard look" at the environmental consequences of the authorized treatments on wilderness values; (2) BLM violated FLPMA by failing to balance wilderness and other multiple uses of the public lands in question; (3) BLM violated NEPA by failing to prepare an environmental impact statement (EIS); (4) BLM violated NEPA, FLPMA, and the applicable land use plan (the 2002 Southeastern Oregon Resource Management Plan

[1] The Administrative Record (AR) forwarded to the Board contains a 41-page index of the accompanying 409 documents constituting that record. The index provides the date of the document, the title, the author, the number of pages in the document, and a brief description of the document. The DR and Finding of No Significant Impact (FONSI), each dated Aug. 13, 2007, and the Final Environmental Assessment (EA) #OR-030-006-007, which analyzed the environmental impacts of the actions in question, as well as numerous grazing permit decisions that are not before us in this appeal, are presented in the AR as a single paginated document (Document 1). The FONSI is found at pages 3-5 of that document, the DR at 6-10, and the Final EA at 11-225.

(SEORMP)) in its analysis of sagebrush obligates and noxious weeds; and (5) BLM violated NEPA by failing to conduct a meaningful cumulative effects analysis.

BLM has provided a comprehensive Response to the Petition for Stay and Answer to Statement of Reasons (Response/Answer), which is accompanied by Ex. 1, the Declaration of Brandon Knapton, the Wildlife Biologist for the BLM Malheur Resource Area, Vale District, who states that he was directly involved in the NFMGMA project and the NEPA process for the project, as well as being the lead for the wilderness characteristic inventory update for the project. Ex. 1, ¶1. Therein, BLM addresses each of the arguments raised by appellants.

Based on our review of the case record and pleadings in this matter for purposes of addressing appellants' petition for stay, we have determined that none of appellants' arguments establishes any error in the DR. Accordingly, we affirm BLM's decision and deny the petition for stay as moot.

Background

The NFMGMA encompasses 237,556 acres near the North Fork of the Malheur River within Malheur, Grant, and Harney Counties in eastern Oregon. The area is a patchwork of public and private lands with BLM managing 123,677 acres of public lands therein, which are divided into 19 grazing allotments. DR at 6; Final EA at 14. In 2000 and 2001, a BLM interdisciplinary team conducted field assessments of upland and riparian health in the NFMGMA in accordance with the rangeland health regulations in 43 C.F.R. Subpart 4180 to determine whether the rangeland was in compliance with the Standards for Rangeland Health and Guidelines for Livestock Grazing Management on Public Lands in Oregon and Washington (S&Gs).[2] BLM evaluated the results of those field assessments, and it released the collected resource data in 2003 and 2004 as the NFMGMA Standards of Rangeland Health Determinations (2003 and 2004 Determinations) (AR, Document 4, Appendix C), which documented resources in the allotments that were or were not meeting the S&Gs. BLM developed the vegetative treatments analyzed in the EA process and authorized in the DR to address situations in which one or more S&Gs were not being met due to factors other than livestock grazing. *See* DR at 8; Response/Answer at 2.

In April 2006, BLM released the Draft EA in which it formulated activity plan level objectives, consistent with objectives set forth in the SEORMP Record of Decision (ROD), to guide management actions providing natural resource protection and improvement in ecological conditions in the NFMGMA. Therein, BLM analyzed

[2] The five standards relate to (1) Watershed Function – Uplands; (2) Watershed Function – Riparian/wetland areas; (3) Ecological Processes – Uplands; (4) Water Quality; and (5) Native, Threatened and Endangered, and Locally Important Species.

three alternatives and the no action alternative. ONDA provided comments on the Draft EA on behalf of ONDA and WWP. BLM states in its Response/Answer at 3 that, following receipt of ONDA's comments, it "began to systematically update the resource inventory of lands within the NFMGMA for wilderness characteristics in August of 2006" and that the "updates were completed in May of 2007."[3]

The Field Manager signed the DR in August 2007 authorizing vegetative treatments in 16 allotments, including treatment of western juniper in all 16 allotments,[4] and other vegetative treatments in 5 of those allotments, such as mowing sagebrush in 1 allotment and eradicating a noxious weed (medusahead) in 2 allotments.[5] *See* DR at 6-8. The projects were to be implemented between 2007 and 2018. Appellants appealed.

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[3] One wilderness study area (WSA) (the Castle Rock WSA containing 6,200 acres) and part of another WSA (1,100 acres of the 19,580 acre Beaver Dam WSA) are located in the NFMGMA. BLM's authority under sec. 603 of FLPMA, 43 U.S.C. § 1782 (2000), to designate WSAs expired as of October 21, 1993. *Colorado Environmental Coalition*, 162 IBLA 293, 298 (2004). BLM may, however, exercise its general inventory, land use planning, and management authority under FLPMA to assess and protect wilderness characteristics. *See* secs. 201, 202, and 302 of FLPMA, 43 U.S.C. §§ 1711, 1712, and 1732 (2000).

[4] BLM stated that, although western junipers provide habitat for some species, "the impact of their encroachment into mountain shrub, conifer, and sagebrush areas is currently limiting the suitability of many habitats within the assessment area for wildlife. The risk of loss of crucial components and habitat conductivity for a number of species exists with the current extent of juniper invasion within NFMGMA." Final EA at 66.

[5] In the Final EA, BLM explained how it identified areas of western juniper encroachment. It then stated that the driving factor for treatment area identification was "the desire to promote vegetation community progress to the DRFC [Desired Range of Future Conditions] identified in the SEORMP ROD as follows:

> Western juniper dominance is limited to rock outcrops, ridges, mesas, or other sites where wildfire frequency is limited by site productivity. Western juniper generally occurs in low densities in association with vigorous shrub, grass, and forb species, consistent with site potential. Historic western juniper sites retain old-growth characteristics."

Final EA at 22. BLM defines the DRFC in the SEORMP ROD at page 24 as "a vision of the long-term condition of the ecosystem, and serves as a guide on how the public land will be managed."

Discussion

Section 102(2)(C) of NEPA requires the agency to consider the potential impacts of a proposed action in an EIS, if that action is a "major Federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C) (2000). In circumstances involving tiering of environmental documents, the Board has stated:

> In the context of a challenge to a FONSI based on an EA which is tiered to an EIS, the issue before the Board is whether the EA demonstrates that BLM has taken a hard look at the proposed action, identified relevant areas of environmental concern, and shown that any environmental impacts of the proposed action not previously analyzed in the EIS are insignificant. *Blue Mountains Biodiversity Project*, [139 IBLA 258] at 266 (1997); *Southern Utah Wilderness Alliance*, [124 IBLA 162], at 169 [1992].

Southern Utah Wilderness Alliance, 158 IBLA 212, 220 (2003).

A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or a demonstrable error of fact, or that BLM failed to consider a substantial environmental question of material significance to the proposed action. *National Wildlife Federation*, 169 IBLA 146, 155 (2006); *Rainer Huck*, 168 IBLA 365, 402 (2006). Mere differences of opinion about the likelihood or significance of environmental impacts provide no basis for reversal. *Oregon Chapter of the Sierra Club,* 172 IBLA 27, 47 (2007); *Western Slope Environmental Resource Council*, 163 IBLA 262, 286 (2004).

I. BLM Did Not Fail to Take a "Hard Look" at the Wilderness Resource

Much of appellants' appeal is devoted to its contention that BLM violated NEPA because it "refused to consider wilderness values and impacts to the wilderness resource." SOR at 5. The record refutes that contention.

[1] First, as detailed in Knapton's Declaration at ¶¶ 4-21, in accordance with its inventory obligations under section 201(a) of FLPMA, 30 U.S.C. § 1711(a) (2000), BLM updated and maintained its inventory of lands in the NFMGMA containing wilderness characteristics by analyzing ONDA's citizen inventory, as well as other relevant and new information on the presence or absence of wilderness characteristics outside existing WSAs. Based on that assessment, the Field Manager, Malheur Resource Area, concurred in the interdisciplinary team's recommendation that no lands outside the existing WSAs contained the requisite wilderness characteristics. That determination, reached in accordance with BLM's FLPMA

obligations, then formed the basis for BLM's discussion of wilderness characteristics in the Final EA at 84-85 concluding that, "based on the results of the evaluation," no areas of the NFMGMA outside the existing WSAs contained all the criteria (size, natural condition, and outstanding opportunities for solitude and/or primitive and unconfined recreation) necessary to be considered of wilderness character.[6] BLM stated that, based on that conclusion, "wilderness character . . . will not be addressed further in this analysis." Final EA at 85.

Appellants argue that BLM's "extraordinary brief dismissal of the wilderness issue [in the Final EA] violates NEPA." SOR at 9. We disagree. The Council on Environmental Quality regulations provide at 40 C.F.R. § 1508.9(b) that an EA "[s]hall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E) [of NEPA], of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted." When BLM has completed an inventory of the wilderness resource as part of its FLPMA obligations and reached the conclusion that no lands meeting the necessary wilderness criteria, other than lands within the existing WSAs, are present, there is, as BLM emphasized in its Response/Answer at page 9, "*nothing to analyze in the EA*." As BLM stated in the Final EA at page 85, "the authorized officer has the discretion to manage for the maintenance of the characteristics where they are found to exist." We find no fault with BLM's brief discussion of wilderness characteristics in the Final EA. Under the circumstances, the brevity of that discussion does not constitute a failure to take the "hard look" required by NEPA.[7]

Appellants further contend that BLM's wilderness characteristic determination "must appear in the NEPA document itself." SOR at 10. In support of that argument, appellants cite *Klamath-Siskiyou Wildlands Center v. BLM*, 387 F.3d 989 (9th Cir. 2006), in which the court declared inadequate the cumulative impact analyses in two EAs concerning timber sales in Oregon. The court found the generalized conclusory statements in those EAs to be lacking, stating, as quoted by appellants, that "while

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[6] "All three criteria . . . have to be met in order for an area outside of a designated wilderness or WSA to be found to contain 'wilderness character.'" Final EA at 85.

[7] In *Southern Utah Wilderness Alliance v. Norton*, 457 F. Supp. 2d 1253 (D. Utah 2006), the District Court held that BLM violated NEPA by deciding to lease public lands for oil and gas without undertaking supplemental NEPA analysis, when, subsequent to previous NEPA analysis and before leasing, BLM recognized that the lands in question either had wilderness characteristics or might have them. No additional NEPA analysis is necessary in this case because BLM has determined that, aside from existing WSA lands, the lands in the NFMGMA do not exhibit wilderness characteristics sufficient to be considered of wilderness character. *See Biodiversity Conservation Alliance*, 171 IBLA 218, 234 n.9 (2007).

the conclusions of agency experts are surely entitled to deference, NEPA documents are inadequate if they contain only narratives of expert opinions." 387 F.3d at 996. The court relied on *Idaho Sporting Congress v. Thomas,* 137 F.3d 1146, 1150 (9th Cir. 1998), as the basis for that statement, specifically the *Idaho* court's statement that "allowing the Forest Service to rely on expert opinion without hard data either vitiates a plaintiff's ability to challenge an agency action or results in the courts second guessing an agency's scientific conclusions." We believe the *Klamath-Siskiyou* court's language cited by appellants does not dictate a different result in this case.

In this case, BLM explained the wilderness evaluation process in the Final EA, and the documents to support that process are contained in the case record and were available to the public. Thus, the agency did not rely on expert opinion without "hard data," the deficiency cited by the *Idaho* court. Moreover, the preparation of a cumulative impacts analysis is a NEPA requirement, at least for an EIS (*see* 40 C.F.R. §§ 1508.7 and 1508.25(c)). There is no NEPA requirement that BLM include a wilderness resource discussion in an EA, unless the proposed action will result in environmental impacts to such a resource.[8] *See* 40 C.F.R. § 1508.9(b). When BLM has compiled the "hard data" in satisfaction of its FLPMA inventory obligation that support its determination that the requisite wilderness characteristics are not found within the project area outside of existing WSAs, that "hard data" need not be repeated in the EA concluding that no impact will occur to the wilderness resource.

Appellants cite a District Court case and two orders issued by the Hearings Division, Office of Hearings and Appeals, in support of their position. The District Court case cited, *Oregon Natural Desert Association v. Rasmussen*, 451 F.Supp. 2d 1202 (D. Or. 2006), is distinguishable on its face. In that case the court found that BLM's decision to proceed with a range project "in the absence of current information on wilderness values" was a violation of NEPA. That case turned on BLM's failure to show that it had evaluated current information, a defect that does not exist in this case. Moreover, BLM calls our attention to a more recent District Court case involving ONDA, *ONDA v. Shuford*, No. CIV. 06-242-AA, 2007 WL 16951162 (D. Or. June 8, 2007), which is not cited by ONDA. In that case, ONDA challenged a BLM decision for failing to address wilderness values, the decision being BLM's approval of the Andrews-Steens Resource Management Plan. The court upheld BLM's

[8] BLM addressed the impacts of the alternatives on existing Special Management Areas, including WSAs. Final EA at 155-60. In the FONSI, BLM concluded that those areas would not be significantly affected by implementation of the treatments. FONSI at 4 ("Any negative impacts in WSAs, from the project work proposed, are offset by the cumulative benefits to ecosystem health and function which will contribute directly to enhanced naturalness").

methodology under NEPA and FLMPA in that case, and it distinguished *Rasmussen* on its facts, finding that the record in *Shuford* showed that BLM had evaluated existing information and information submitted by ONDA relating to wilderness resources. *Id.* at *6. The wilderness resource evaluation process described by the court in *Shuford* is similar to that undertaken by BLM in this case.[9]

ONDA also cites two orders issued by Administrative Law Judge James H. Heffernan staying BLM decisions approving the construction of range improvements, *Oregon Natural Desert Association v. BLM*, No. OR-010-07-01 (June 25, 2007) and *Oregon Natural Desert Association v. BLM*, No. OR-010-07-02 (July 6, 2007), in which ONDA made similar arguments concerning wilderness values. Those orders have no bearing on this case. They are preliminary orders in grazing cases set for hearing. As BLM states in its Response/Answer at 12, n.5, "BLM has not yet had the opportunity at hearing to put on evidence and testimony in support of its decisions."

Although appellants characterized BLM as failing to "consider" wilderness characteristics, it is quite clear that their disagreement is with BLM's conclusion on the issue because the case record shows consideration of the issue by BLM. Mere differences of opinion do not provide any basis for reversing a BLM determination. *Southern Utah Wilderness Alliance*, 163 IBLA 14, 28-29 (2004).

II. BLM Did Not Violate Either its Multiple Use Mandate under Section 302(a) of FLPMA or the Requirement of Section 302(b) of FLPMA to Prevent Unnecessary and Undue Degradation of the Public Lands

Appellants charge that by relying on "outdated or inaccurate wilderness inventory information" BLM violated both its multiple use mandate contained in section 302(a) of FLPMA, 43 U.S.C. § 1732(a) (2000), and section 302(b) of the same statute, 43 U.S.C. § 1732(b) (2000), requiring BLM to prevent unnecessary or undue degradation of public lands. This argument is based on appellants' claim, established above as lacking merit, that BLM failed to examine the wilderness values of NFMGMA lands. This is the same type of argument raised by ONDA and rejected by the *Shuford* court. We agree with the court's analysis:

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[9] We note that in discussing the issue of roads the *Shuford* court stated at *8: "BLM only has to consider an adequate baseline of resource information to satisfy NEPA's 'hard look' requirement, and BLM can rely on its expertise to determine whether a parcel has the requisite wilderness characteristics, including the presence or absence of roads." Further, "it is under no obligation to agree with ONDA's assessment of routes." *See, e.g.*, *Hells Canyon Alliance v. United States Forest Service*, 227 F.3d 1170, 1184 (9th Cir. 2000) (an agency is entitled to rely on its own expertise in its evaluation method).

> In sum, ONDA has not shown that BLM's baseline information on wilderness was outdated or inaccurate to the point that the agency did not meet its FLPMA requirements for managing for multiple use and preventing unnecessary or undue degradation. The record demonstrates that BLM considered ONDA's wilderness inventory and agreed that one parcel possessed the requisite wilderness characteristics. In addition, BLM added several parcels to its wilderness inventory, reflecting that some level of updating occurred during the RMP process. Even if BLM excluded parcels that ONDA believes have wilderness characteristics, BLM has wide discretion in conducting its wilderness analysis and need not agree with ONDA's assessment. This court will defer to the agency's expertise in this regard, absent a showing that BLM failed to analyze the RMP's impact on an obviously-present resource value. *See CBD* [*Center for Biological Diversity v. BLM*], 422 F.Supp. 2d [1115] at 1167-68 [(N.D. Cal. 2006)]. Accordingly, ONDA cannot prevail on its FLPMA wilderness claims.

2007 WL 1695162 at *10.

In this case, BLM has established that it conducted an inventory under section 201(a) of FLPMA that allowed it to make a judgment regarding the wilderness characteristics of the public lands in question; that its judgment was that no public lands in the NFMGMA outside the present WSA lands contain the necessary wilderness characteristics; and that, therefore, it did not have to manage those lands under section 302 of FLPMA to protect the wilderness resource. Appellants have failed to show any violation of section 302 of FLPMA.

III. BLM Was Not Required to Prepare an EIS in this Case

Returning to another NEPA claim, appellants assert that the "sheer size and scope of the project" authorized by the DR dictate that an EIS be prepared.[10] SOR at 13. BLM counters that it tiered the EA in this case to the 2001 Proposed SEORMP and Final EIS (AR, Documents 397-99) and that vegetative treatments, including the types of treatments authorized in this case, were discussed in that document. Appellants point to the statement in the Final EA at 15 that "[p]roposed management actions and impacts to NFMGMA were not identified as specific line items in the

[10] Appellants repeatedly refer to the western juniper treatment as having been approved for over 84,000 acres. *See* SOR at 4, 5, 13, 18, 20. As stated in the Final EA at page 23, however, considerably less acreage is scheduled for treatments: "Due to staff and funding constraints, over the life of the plan (approximately 10 years), treatment of western juniper in this alternative [the selected alternative] would not exceed 20,000 to 50,000 acres."

SEORMP FEIS and ROD," as evidence that the SEORMP Final EIS "simply does not analyze the specific impacts of landscape-wide vegetative treatments in the NFMGMA, such as weed infestations and decreased possibility of future wilderness protections." SOR at 15.

Appellants attempt to create an issue where none exists. The Final EIS was not intended to analyze the impacts of all future actions in the project area. That EIS examined the impacts of various alternatives for addressing identified objectives, and included general discussions of the impacts of the types of vegetative treatments approved in this case. *See* AR, Document 396 at 204-214, 217-19, 405-434, 442-49. The Final EA in this case addresses the impacts of specific vegetative treatments in the NFMGMA, tiering to that earlier Final EIS. There is no evidence that BLM in the DR approved projects outside the scope of those treatments identified and discussed in the Final EIS or that any approved project, with applicable mitigation, would significantly affect the human environment. As BLM stated in the FONSI, "[t]o the extent there are impacts beyond those described in the SEORMP/EIS, they are not significant." FONSI at 3.

Appellants take issue with BLM's discussion of the context and intensity factors in the FONSI, finding that discussion to be "cursory and unpersuasive." SOR at 13. That argument arises from the regulation addressing the meaning of the term "significantly" as used in NEPA. *See* 40 C.F.R. § 1508.27. That rule states that "[s]ignificantly as used in NEPA requires considerations of both context and intensity," with explanations of those terms appearing in 40 C.F.R. § 1508.27(a) and (c), respectively. The FONSI at pages 3-5 contains a discussion of both of those factors, the intensity factor being broken down into the 10 criteria set forth at 40 C.F.R. § 1508.27(b)(1) through (10).

The Board finds BLM's discussion supportive of its determination that there will not be any significant impacts from proceeding with the action, particularly in light of the monitoring and mitigation measures imposed by BLM. *See* Final EA at 164-68. Appellants have not shown any error in BLM's FONSI determination.

IV. BLM's Analysis of Sagebrush Obligates and Noxious Weeds Complies with the SEORMP, FLPMA, and NEPA

We first address appellants' arguments concerning sagebrush obligates. Appellants contend that BLM is required by the SEORMP ROD to maintain, restore, or enhance populations and habitats of special status species and by section 302(a) of FLPMA, 43 U.S.C. § 1732(a) (2000), to manage public lands in accordance with applicable land use plans. They argue that the action authorized by the DR will "*degrade* habitats for sagebrush obligate species, such as sage grouse and pygmy rabbits, both of which are special status species." SOR at 15. "BLM's approval of

such degradation . . . evinces a failure to take a 'hard look' at impacts of the project under NEPA." *Id.* at 16.

Although appellants quote various sentences of the Final EA, which they claim support the proposition that the project will not maintain, restore, or enhance populations and habitat, most of the quoted language concerns impacts from fire. In addition, appellants' quotations are selective and do not reflect the overall thrust of the analysis. Nothing in the DR requires that western juniper treatments, which are the vast majority of the authorized treatments, be undertaken with fire. In fact, the Final EA states at page 144: "From the standpoint of wildlife habitat management, mechanical control of sagebrush and Western juniper would be considered the preferred land treatment option because of the chances for relatively rapid and reliable sagebrush recolonization and comparatively fewer risks than from broadcast fire treatment or chemical applications." In addition, BLM requires the following project design element for western juniper treatment: "Sage-grouse leks - Invasive western juniper would be aggressively treated within greater sage-grouse 2-mile lek buffers. Treatment methods would be limited to cutting and individually burning western juniper within the buffer area. No treatments would be allowed within the buffer area from March 1 to June 15." *Id.* at 29. As BLM stated at page 9 of the DR: "The Proposed Action enhances big game range and sage-grouse habitat within the planning area by reducing western juniper encroachment into browse areas and sagebrush habitats."

In the SEORMP ROD, BLM stated that management to achieve DRFC would proceed on the basis of management objectives identified in the SEORMP ROD for rangeland management at pages 38-41. All actions approved in the DR are consistent with and advance the identified objectives. Moreover, BLM will engage in adaptive management in pursuing the approved projects, adaptive management being "a continuing process of planning, implementation, monitoring, and evaluation," that allows BLM to make corrections to management prescriptions based on feedback in order to meet objectives." Final EA at 18. Appellants have failed to establish any violation of the SEORMP, FLPMA, or NEPA with regard to BLM's analysis of impacts on sagebrush obligates.

Apparently appellants assert the same violations with regard to BLM's analysis regarding noxious weeds, claiming that BLM's "extremely brief" section on noxious weeds fails to address the existence of numerous kinds of noxious weeds found in the NFMGMA, "such as bur butter cup, whitetop, scotch thistle, and perennial pepperweed." SOR at 16. Appellants' bare assertion does not expose any weakness in BLM's analysis. On page 37 of the Final EA, BLM states that "[u]pland sites in degraded condition are often characterized by having . . . (3) high densities and cover of exotic species such as cheatgrass, medusahead, bur buttercup, or whitetop, and (4) Western juniper encroachment." In its analysis of the impacts of the projects

on noxious weeds, BLM states that it would continue to monitor noxious weed sites and treat them "as time and funding allow." Final EA at 99. Noxious weed establishment at project sites would be addressed by various mitigation measures. *Id*. Appellants have not shown any error in BLM's analysis of impacts of the project on noxious weeds.

V. BLM's Cumulative Impacts Analysis Is Adequate Under NEPA

Appellants complain that BLM did not adequately analyze the cumulative impacts of the proposed action on weeds, sagebrush obligate wildlife, wilderness, and other resources, thereby violating NEPA. Cumulative impact is defined as:

> [T]he impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7.

In support of their argument, appellants cite *Klamath-Siskiyou Wildlands Center v. Bureau of Land Management*, 387 F.3d 989 (9th Cir. 2004), in which the court held, as previously noted, the cumulative impacts analyses contained in two timber sale EAs were inadequate. Appellants assert that "[a]n analysis is not adequate where 'there is no quantified assessment of [projects'] combined environmental impacts' or 'any objective quantification of the impacts,'" citing *Klamath-Siskiyou,* 387 F.3d at 994. SOR at 17. Appellants argue that the same quantification is lacking in the present case.

The case cited by appellants involved two separate EAs for timber sales in a Tier 1 watershed, which is a river basin contributing directly to the survival and restoration of at-risk salmonids. The watershed involved in that case provided critical habitat for the endangered coho salmon. The court examined in detail the cumulative impacts analysis in each EA. It found that each EA discussed "only the direct effects of the project at issue on its minor watershed" but "no quantified assessment of their combined environmental impacts." 387 F.3d at 994. Although BLM had a table in each EA in which environmental factors were judged as unchanged, improved, or degraded, the court found that "[t]he reader is not told what data the conclusion was based on." *Id*. *Klamath-Siskiyou* is clearly distinguishable because in this case the reader of the Final EA is told what data BLM relied on.

In this case, BLM provided the baseline information in the 2003 and 2004 Determinations (AR, Document 4, Appendix 3) and in the Affected Environment section of the Final EA (Section 3). The analysis section (Section 5) discusses present management and the impacts of implementation of each of the alternatives on the resource values, summarizing the impacts at the end of the discussion of each alternative and discussing whether resource objectives would be met. Thus, for example, in discussing the general impacts on wildlife and wildlife habitat from proposed actions involving temporary removal of shrub overstory canopy structure, BLM acknowledged that short term adverse effects would result but stated that the total amount of

> big sagebrush rangeland converted to grasslands from historic and proposed BLM land treatments (not including past wildfires) would increase from 0.4% (400 acres) to about 7.8% (400 existing acres + 7,081 proposed acres for a total of 7,481 acres). The cumulative impacts of land treatment would meet the NFMGMA Terrestrial Wildlife Objective 1 which is to limit grassland conditions . . . resulting from BLM actions alone, to a level at or below a 20% threshold in big sagebrush rangeland sites.

Final EA at 142.

The cumulative effects section of the Final EA (Section 6), which appellants find "stunningly brief and conclusory" (SOR at 17), is, in fact, brief, but its stated conclusions are supported by underlying data. Appellants have failed to show a violation of NEPA.[11]

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[11] In a Supplemental SOR, appellants raise an additional argument, *i.e.*, that BLM failed to comply with the requirement of the SEORMP ROD that only a maximum of 124,500 acres of western juniper will be treated during the life of the plan, using fire and/or mechanical means and that wildfire acreage will be included in that total. Appellants speculate that the acreage proposed for treatment in the DR "will cause the Vale District to exceed the maximum amount of land permitted to be treated pursuant to the SEORMP." Supplemental SOR at 2. BLM provides a detailed response to the Supplemental SOR completely refuting appellants' speculation. It includes estimated acreage figures for acres treated (by BLM-initiated activities and wildfire) at the time of the decision, additional acres burned in 2007 after the decision, and the acreage remaining for treatment during the remainder of the life of SEORMP. BLM concludes that the acreage targeted for treatment in the DR, which includes acreage burned by wildfires both before and after the date of the DR, is "well within the SEORMP ROD limit." Response at 3. It is clear that BLM is aware of the SEORMP ROD limitation.

To the extent appellants raise other arguments not specifically discussed herein, they are rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the DR is affirmed. The petition for stay is denied as moot.

/s/
Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

/s/
H. Barry Holt
Chief Administrative Judge