



OREGON NATURAL DESERT ASSOCIATION

174 IBLA 341

Decided June 9, 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

IBLA 2008-27

Decided June 9, 2008

Appeal from a Record of Decision issued by the Burns (Oregon) District Manager, Bureau of Land Management, which authorized the implementation of the North Steens Ecosystem Restoration Project within the Steens Mountain Cooperative Management and Protection Area.

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

An assertion that BLM failed to take a “hard look” at the environmental consequences of a proposed action by failing to consider the wilderness resource in its environmental impact statement is properly rejected when the record shows that BLM considered the wilderness resource during the preparation of an environmental impact statement for a resource management plan and that BLM tiered to that earlier environmental impact statement in the challenged process.

2. Environmental Quality: Environmental Statements--National
Environmental Policy Act of 1969: Environmental Statements

Under NEPA, Federal agencies are required to use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment, explore and objectively evaluate all reasonable alternatives, and for alternatives eliminated from detailed study, briefly discuss the reasons for their elimination. The requirement to discuss alternatives is subject to a construction of reasonableness, and alternatives that would not satisfy the purposes of the proposed action need not be discussed.

3. Federal Land Policy and Management Act of 1976: Wilderness

BLM did not violate the non-impairment standard of section 603(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (2000), or the Interim Management Policy for Lands Under Wilderness Review (IMP), H-8550-1 (July 7, 1995), by approving vegetative treatments for wilderness study areas in the Steens Mountain Cooperative Management and Protection Area, when the proposed activities will not impair the suitability of such areas for preservation as wilderness and are consistent with the overall guidance of the IMP.

APPEARANCES: Peter M. Lacy, Esq., and Kristin F. Ruether, Esq., Portland, Oregon, for appellant; Bradley Grenham, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Portland, Oregon, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Oregon Natural Desert Association (ONDA) has appealed from and requested a stay of a Record of Decision (ROD) issued by the Burns (Oregon) District Manager, Bureau of Land Management (BLM), on September 28, 2007, which authorized the implementation of the North Steens Ecosystem Restoration Project (Project) within the Steens Mountain Cooperative Management and Protection Area (CMPA).¹ The actions challenged by ONDA can generally be described as multi-year, landscape-level vegetative treatments and are identified in the ROD at page 1 as including western juniper treatment, prescribed fire, fencing and seeding, and planting.

ONDA argues in its Statement of Reasons (SOR) that the District Manager erred in authorizing the treatments because BLM violated the Federal Land Policy and Management Act of 1976 (FLPMA), the National Environmental Policy Act of 1969 (NEPA), the applicable land use plan, and BLM's Interim Management Policy for Lands Under Wilderness Review (IMP), H-8550-1 (July 7, 1995). ONDA adopted

¹ On Sept. 26, 2007, the Andrews Resource Area Field Manager recommended adoption and implementation of the Preferred Alternative for the Project, which had been analyzed in the July 2007 Final Environmental Impact Statement (FEIS or Project FEIS) for the Project. ROD at 34. The Burns District Manager approved the ROD as recommended on the same date. *Id.* The Burns District Manager distributed copies of the ROD to interested parties by letter dated Sept. 28, 2007. The parties refer to the ROD as being issued on Sept. 28, 2007.

those arguments as the basis for its likelihood of success on the merits of its appeal in its accompanying Petition for Stay (Petition). In a Response to Stay Request (Response), BLM addressed each of ONDA's arguments.

Following receipt of BLM's Response, ONDA filed a Supplemental SOR (SSOR) raising several additional arguments, again charging violations of NEPA, FLPMA, the land use plan, and the IMP, as well as the Wild and Scenic Rivers Act of 1968 (WSRA) and the Clean Water Act of 1977 (CWA). BLM filed an Answer addressing each of these additional arguments.

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

Background

The vast majority of the Project Area, which includes approximately 336,000 acres of public and private land, is included in the Steens Mountain CMPA, which is administered by BLM's Andrews Resource Area. ROD, Map 1.² The Steens Act established the CMPA, which contains 496,136 acres of land, of which 428,156 acres are public, "to conserve, protect, and manage the long-term ecological integrity of Steens Mountain for future and present generations."³ 16 U.S.C. § 460nnn-12(a) (2000). Within the CMPA, the Steens Act created the Steens Mountain Wilderness Area; added 29 miles to the WSRA system; withdrew 1.1 million acres from mining and geothermal development; established a Wildlands Juniper Management Area for experimentation, education, interpretation, and demonstration of juniper management and restoration of native vegetation; and established the Donner und Blitzen Redband Trout Reserve. Response at 3.

The Steens Act directed BLM to prepare a management plan for the CMPA by October 30, 2004. 16 U.S.C. § 460nnn-21(b) (2000). To comply with this requirement, BLM completed the Andrews Management Unit/Steens Mountain CMPA Proposed Resource Management Plan (RMP) and FEIS in August 2004 (hereinafter

² Of the total acreage in the Project area, 297,703 acres fall within the CMPA boundary; the remaining acreage is within BLM's Andrews Management Unit. FEIS at 5. However, ROD, Map 1 shows very little public land acreage outside the CMPA boundary. ONDA does not make any specific argument relating directly to those public lands outside the CMPA boundary.

³ BLM states that "Section 121 of the Steens Act, 16 U.S.C. § 460nnn-41, [encourages] cooperative cross-boundary voluntary landscape restoration efforts with private landowners." Response at 5-6, citing ROD at 1.

CMPA PRMP/FEIS). On July 15, 2005, BLM issued an ROD adopting the final RMP (hereinafter, CMPA RMP). The CMPA RMP established three goals for woodlands: (1) maintain or improve ecological integrity of old growth juniper woodlands; (2) maintain, restore, or improve the ecological integrity of mountain mahogany and quaking aspen stands/groves; and (3) manage woodland habitat so that the forage, water, cover, structure, and security necessary to meet the life history requirements of woodland-dependent and woodland-associated wildlife species are available on public lands.⁴ CMPA RMP at 28.

Following adoption of the Steens Mountain CMPA/RMP, BLM prepared the Project FEIS to further the goals of the CMPA RMP and to address the Congressional mandate in section 113(c) of the Steens Act, 16 U.S.C. § 460nnn-23(c) (2000), to actively manage western juniper on a landscape level in the CMPA through “the restoration of the historic fire regime,” including “the use of natural and prescribed burning.”⁵ As BLM stated at page 23 of the FEIS, “[t]he North Steens Project is a landscape-level project, the goal of which is to reduce the juniper related fuel loading and improve the ecological health of the area by encouraging a healthy functioning ecosystem through appropriate land uses.” The Project is designed to decrease the effects of potential severe wildfires by reducing fuels and curtailing western juniper expansion in various types of sagebrush, quaking aspen, mountain mahogany, old-growth juniper, and riparian communities. ROD at 1.

In the FEIS, BLM analyzed six alternatives and selected the “Preferred Alternative,” which was adopted by BLM in the ROD. FEIS at 43-54. Under the “Preferred Alternative,” BLM would implement the Full Treatment Alternative, as described in the FEIS, in all portions of the Project Area, including WSAs, but excluding the Steens Mountain Wilderness Area. The Continuation of Current Management Alternative would be applicable to the Wilderness Area, which BLM explains means that “Project implementation is wholly excluded from designated Wilderness until future analysis and decision making is undertaken.” Response at 7.

ONDA has challenged the ROD, and below we address ONDA’s specific arguments.

⁴ The objectives of goals (2) and (3) are, respectively, to “[r]educ[e] the component of western juniper and other associated woody plant species in quaking aspen and mountain mahogany stands” and to “[r]educ[e] the influence of western juniper trees less than 120 years old to restore riparian and sagebrush habitats.” CMPA RMP at 28.

⁵ BLM tiered the FEIS to the CMPA PRMP/FEIS. FEIS at 4; *see* 40 C.F.R. § 1502.20.

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 such as this involving tiering of environmental documents, an analysis of environmental issues found in an agency’s broad EIS on a program or policy is incorporated by reference by that agency into a subsequent EIS or EA “on an action included within the entire program or policy.” 40 C.F.R. § 1502.20; *see* 40 C.F.R. § 1508.28; *Southern Utah Wilderness Alliance*, 123 IBLA 302, 305-06 (1992). Agencies are encouraged to do this in order “to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review.” 40 C.F.R. § 1502.20.

An EIS must constitute a detailed statement that takes a “hard look” at the potentially significant environmental consequences of the proposed Federal action and reasonable alternatives thereto, considering all relevant matters of environmental concern. *Biodiversity Conservation Alliance*, 174 IBLA 1, 14 (2008), and cases cited. Significant impacts are expected when an agency prepares an EIS. *Id.* In determining whether the agency has taken a “hard look” at environmental consequences, the courts have applied a “rule of reason,” the critical question being whether the EIS contains a reasonably thorough discussion of the significant aspects of the probable environmental consequences of the proposed actions and alternatives thereto. *Citizens for Alternatives To Radioactive Dumping v. U.S. Dept. Of Energy*, 485 F.3d 1091, 1098 (10th Cir. 2007) (stating that a rule of reason standard is “essentially an abuse of discretion standard”); *Swanson v. U.S. Forest Service*, 87 F.3d 339, 343 (9th Cir. 1996); *California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982). A party challenging a BLM decision based on an EIS must demonstrate by a preponderance of the evidence and with objective proof that BLM failed to adequately consider a substantial environmental question of material significance to the proposed action, or otherwise failed to abide by section 102(2)(C) of NEPA. *Western Exploration Inc. and Doby George LLC*, 169 IBLA 388, 399 (2006), and cases cited.

I. *BLM Did Not Fail to Take a “Hard Look” at the Wilderness Resource.*

[1] ONDA submits that BLM failed to take a “hard look” at the environmental consequences of the proposed action by failing to consider the wilderness resource in the NEPA process. ONDA charges that it submitted a nearly 200-page report to BLM in 2002 identifying 24 areas as having significant wilderness values, most of which lie within the Project area. ONDA identifies that report as containing significant new information that “should have at least been *considered* during the NEPA process.” SOR at 5.

ONDA ignores both the facts and the law. The facts are initially reflected in the CMPA PRMP/FEIS, which states:

The Oregon Natural Desert Association (ONDA) provided proposed WSA information to the Andrews Field Manager in September and November 2002. An ID [Interdisciplinary] team formed, developed a review protocol, reviewed the 24 proposals, and made recommendations to the District Manager. The internal review was completed in August 2003. The team identified one ONDA proposal (Alvord Desert Addition) as having wilderness characteristics, as a result of a change in conditions on the ground. The team also identified three parcels within the CMPA that were acquired by purchase or land exchange, as having wilderness characteristics. The four parcels (DRMP/DEIS Map 2.18) are Alvord Desert (2,033 acres), Bridge Creek (1,526 acres), High Steens (629 acres), and Lower Stonehouse (2,176 acres). The options for protection of the wilderness characteristics, which could lead to some level of use or development of these four parcels, are outlined in Section 2.23.1.2 and analyzed in Section 4.23.4.

CMPA PRMP/FEIS at 3-72.⁶

Because the interdisciplinary team determined that only one of the parcels identified by ONDA contained the requisite wilderness characteristics, the remaining parcels identified by ONDA were not analyzed further for management of wilderness characteristics during the CMPA RMP process. That determination then formed the basis for BLM's discussion of wilderness characteristics in the Project FEIS at page 241 concluding that, "[b]ecause none of the WSA proposals within the North Steens Project Area were found to have wilderness characteristics, there is no requirement to further analyze or protect values the BLM has found not to be present." FEIS at 241.

ONDA argues that BLM's "very brief dismissal of the wilderness issue violates NEPA." SOR at 8. We disagree. ONDA directly challenged BLM's assessment of the wilderness values in the CMPA RMP process in *ONDA v. Shuford*, No. CIV. 06-242-AA, 2007 WL 16951162 (D. Or. June 8, 2007), claiming that BLM violated NEPA. The court rejected that argument. It held that

⁶ BLM states that the Alvord Desert Addition parcel, which had been identified by ONDA, is outside the Project area, while the other three parcels, which were not inventoried by ONDA, are all within the CMPA. Those parcels, BLM explains, were acquired by BLM following completion by BLM of the 1991 Wilderness Study Report for Oregon.

the record shows that BLM evaluated ONDA's proposed WSAs and identified one parcel, the Alvord Desert Addition, as having wilderness characteristics. AR 26648. BLM also included three additional parcels that were acquired by BLM after the original inventory and were not included in ONDA's proposed wilderness inventory. At the same time, BLM determined that the other parcels proposed by ONDA did not possess the required characteristics of "wilderness" and did not further analyze those parcels in the EIS. AR 17416. For example, ONDA asserted that the "Table Mountain Proposed WSA Addition" should have been included as part of the baseline wilderness resource in BLM's environmental analysis. However, BLM disagreed, finding that the area did not possess sufficient wilderness characteristics to be included as part of the baseline wilderness resource. AR 02966.

In sum, I find that BLM considered the WSAs proposed by ONDA, as well as areas not proposed by ONDA. Notably, NEPA does not require that BLM designate wilderness study areas when considering the impacts of an agency action. Rather, it is sufficient that BLM considered additional parcels as wilderness resources and other resources in the planning area; NEPA does not require that BLM reach a particular substantive outcome, and this court cannot substitute its judgment for that of the agency. *See, e.g., Strycker's Bay [Neighborhood Council v. Karlen]*, 444 U.S. [223] at 227-28 [(1980)]. Therefore, I find that BLM had an adequate environmental baseline and took the requisite "hard look" at the RMP's effects on wilderness resources. [Footnote omitted.]

2007 WL 1695162, at *7; *see Oregon Natural Desert Association*, 173 IBLA 348, 354-55 (2008).

In its SOR at page 8, ONDA merely states that it "respectfully disagrees with the court's conclusion." In its SSOR at pages 8-10, it attempts to distinguish *Shuford*, arguing that the court's conclusion related only to BLM's obligations at the RMP level of land use planning and that the Project ROD is a site-specific implementation decision that must be supported by a detailed analysis of the wilderness values of the Project lands.

In this case, BLM's discussion of wilderness values for the lands in question is contained in a previous NEPA document, the CMPA PRMP/FEIS. BLM asserts, and we agree, that it "may rely on and tier to this CMPA [P]RMP FEIS determination as part of the Project." Answer at 6. We find no fault with BLM's brief discussion of wilderness characteristics in the Final EIS. Under the circumstances, the brevity of that discussion does not constitute a failure to take the "hard look" required by NEPA.

ONDA further contends that BLM's wilderness characteristic determination must appear in the NEPA document itself, not in a preceding land use plan. SOR at 7; SSOR at 1.

In this case, BLM explained the wilderness evaluation process in the FEIS and tiered the FEIS to the PRMP/FEIS. There is no NEPA requirement that an agency inventory wilderness resources on the affected land for each proposed action. As the court stated in *Shuford*: "NEPA does not contain an explicit requirement that an agency inventory wilderness characteristics on the affected land for each proposed action."⁷ 2007 WL 1695162, at *4. In this case, BLM undertook an analysis of the wilderness resource information offered by ONDA in connection with its development of the CMPA RMP. In the PRMP/FEIS, to which the Project FEIS is tiered, BLM summarized the process it engaged in to evaluate ONDA's information and the results thereof. FEIS at 3-72. No additional analysis of the wilderness resource is required in the Project FEIS⁸

Although ONDA characterized BLM as failing to consider wilderness characteristics, it is clear that its disagreement is with BLM's conclusion because the case record shows consideration of the issue by BLM. ONDA's difference of opinion

⁷ ONDA claims that BLM's wilderness review does not appear in the CMPA RMP or the PRMP/FEIS. It states that that review is contained only in the *Shuford* court administrative record and that BLM may not tier to a document that has not itself been subject to NEPA review, citing *Kern v. BLM*, 284 F.3d 1062, 1073 (9th Cir. 2002). First, the *Shuford* court expressly rejected the argument that BLM's wilderness review had to be included in the FEIS for the CMPA RMP: "I find that BLM did not violate NEPA by omitting from the EIS the discussion of areas which it found to have no wilderness characteristics." 2007 WL 1695162 at *7. Second, the CMPA PRMP/FEIS did have a discussion of those areas exhibiting wilderness characteristics.

⁸ To the extent ONDA relies on *Oregon Natural Desert Association v. Rasmussen*, 451 F. Supp. 2d 1202 (D. Or. 2006), and 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), they are, respectively, distinguishable and not applicable for the reasons set forth in *Oregon Natural Desert Association*, 173 IBLA at 354-55.

does not demonstrate that BLM's analysis is unreasonable or invalid. *See Committee for Idaho's High Desert*, 130 IBLA 327, 332 (1994).⁹

II. *BLM Did Not Violate NEPA in Its Analysis of the Impacts of Project Activities.*

ONDA alleges that BLM failed to take a "hard look" at the environmental impacts of the Project when it did not disclose the exact location of many important Project components, such as fence construction, road blading, and vegetative treatments. SSOR at 26. Failure to provide specific locations, ONDA argues, deprives the NEPA process of the required "public scrutiny," citing 40 C.F.R. § 1500.1(b).

BLM responds to this argument at pages 15-18 of its Answer by providing specific citations to pages of the FEIS where it analyzed the specific treatment methods authorized and the effects of those treatments and provided acreage targets per year. While ONDA complains that BLM has not explained what treatments will be undertaken where, the purpose of the FEIS is generally to consider the impacts of the Project and to allow BLM the flexibility, through utilization of adaptive management, to adjust to situations arising and information developed during Project implementation.¹⁰ Monitoring of results, which is critical to adaptive management, will allow BLM to utilize the information gathered "to determine how, when, and where to best apply the range of proposed treatments analyzed in this EIS." FEIS at 35. We find no violation of NEPA in BLM's approach.

III. *BLM Considered a Reasonable Range of Alternatives.*

[2] ONDA argues that BLM failed to take a "hard look" at the impacts of livestock grazing on "ecosystem health and juniper expansion" or consider an alternative in the FEIS that addressed it. SSOR at 28. ONDA argues that by failing to "analyze any alternative involving reduction or removal of grazing in order to

⁹ ONDA also argues that BLM failed to address impacts to the wilderness resource for two parcels in the Project area identified as possessing wilderness characteristics-- Bridge Creek and High Steens. BLM took a hard look at the impact of various RMP alternatives on parcels with wilderness characteristics. PRMP/FEIS at 4-249 to 4-256. BLM need not revisit the multiple use decisions made in the RMP. BLM considered the impacts of the Project on WSAs and on lands with wilderness characteristics but no special designation. FEIS at 177-82.

¹⁰ We note that to the extent ONDA's principal concern in this appeal is with lands containing wilderness values, BLM addressed the issue of fencing in WSAs in the Nov. 17, 2007, Declaration of Karla Bird, the Andrews Resource Area Field Manager, who states at ¶5 that "[t]o preserve wilderness values in WSAs, the Project ROD only allows for temporary, not permanent, fencing in WSAs."

accomplish the project's main goal of ecological restoration, BLM necessarily has run afoul of NEPA's range of alternatives requirement," citing 42 U.S.C. § 4332(2)(C) (2000). *Id.* at 30-31.

NEPA requires agencies to consider reasonable alternatives to the proposed action in an EIS. 42 U.S.C. § 4332(2)(C)(iii) (2000). NEPA's alternatives requirement forms the "heart of the environmental impact statement" and agencies must "[r]igorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14. Accordingly, NEPA requires federal agencies, to the fullest extent possible, to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E) (2000).

During development of the RMP, BLM determined that the goal for livestock grazing in the CMPA would be to "manage for a sustained level of livestock grazing while maintaining healthy public land resources," and it established objectives to meet that goal. CMPA RMP at 53; *see* PRMP/FEIS at 2-6. It also described a process involving allotment evaluations and rangeland health assessments, which could result in appropriate changes to grazing regimes.

In the FEIS, BLM considered but eliminated from further analysis a removal of livestock grazing alternative, noting that "current grazing practices in the Project Area are not considered a causal factor for juniper establishment, and cessation or modification of such activities would not reduce undesirable juniper."¹¹ FEIS at 58. BLM concluded that such an alternative "would not meet the objectives of the proposed project."¹² *Id.* at 60.

We find that, in light of the Project's goal to "reduce juniper-related fuels and restore various plant communities through restoration of habitat," FEIS at 26, BLM has analyzed a reasonable range of alternatives to achieve this goal. The range of alternatives is dictated by the goal of the project and only alternatives accomplishing

¹¹ While ONDA asserts that it is widely acknowledged that livestock grazing results in juniper invasion, the only source cited is quoted by ONDA as stating that "[i]ntroduction of livestock reduced fine fuels, which 'probably contributed to an increase in shrub density and cover, thus providing a greater number of safe sites for western juniper establishment.'" (Emphasis added.) SSOR at 29-30.

¹² BLM also noted in the ROD at 11 that implementation of a removal of a grazing alternative could result in increased grazing on upper reaches of critical riparian areas, much of which are privately owned. It stated that such an alternative "does not consider the effects on the total ecosystem, including both public and private land." *Id.*

that goal need be considered. *Escalante Wilderness Project*, 163 IBLA 235, 240 (2004). Because BLM need not consider alternatives that are “inconsistent with the basic policy objectives for the management of the area,” *Headwaters, Inc. v. Bureau of Land Management*, 914 F.2d 1174, 1180 (9th Cir. 1990), there was no error in its decision not to consider a removal of livestock grazing alternative in detail.¹³

IV. *BLM Has Adequately Considered the Cumulative Impacts of the Project.*

ONDA also argues that BLM has failed to analyze the cumulative impacts of the Project on resources, including weeds, wilderness, and other resources. ONDA cites *Klamath-Siskiyou Wildlands Center*, 387 F.3d 989, 994 (9th Cir. 2006), arguing that the cumulative effects analysis is too vague and “lacks any objective quantification of impacts,” the kind of analysis that was overturned as inadequate in *Klamath-Siskiyou Wildlands Center*.

BLM is required to consider the potential cumulative impacts of a planned action, together with other past, present, and reasonably foreseeable future actions. See 40 C.F.R. §§ 1508.7 and 1508.27(b); *Biodiversity Conservation Alliance*, 174 IBLA at 20. The FEIS must include a “discussion and an analysis in sufficient depth and detail to assist the decisionmaker in deciding whether, or how, to alter the program to lessen cumulative impacts.” *Northwest Environmental Advocates v. National Marine Fisheries Serv.*, 460 F.3d 989, 994 (9th Cir. 2006).

We find that BLM considered the cumulative impacts of the Project. We agree with BLM that it appropriately considered the effects of each type of proposed treatment and habitat (FEIS at 115-92) and in so doing achieved the purpose of a cumulative impacts analysis by informing the decision maker of the impacts and assisting the decision maker in deciding how, or whether, to alter the proposed activities to lessen cumulative impacts. The ROD reflects that BLM utilized the overall effects analysis to develop 48 Project Design Elements (PDEs) set forth at pages 22-25 of the ROD. BLM stated that the PDEs “were developed to help meet project objectives and will also aid in mitigating adverse effects to resources.” ROD at 22.

We disagree with ONDA that the Project FEIS suffers from the deficiency in the NEPA documents rejected by the Ninth Circuit in *Klamath-Siskiyou Wildlands Center*. In that case, the court found that the cumulative impact analyses in two EAs

¹³ While ONDA asserts that BLM should have considered a reduction in grazing alternative, it is clear, based on determinations made in the CMPA RMP that, as BLM states in its Answer at page 22, “BLM reasonably determined to address grazing through separate processes rather than through the Project.”

concerning timber sales were “legally insufficient” because they did “not sufficiently identify or discuss the incremental impact that can be expected from each successive timber sale, or how those individual impacts might combine or synergistically interact with each other to affect the . . . environment.” 387 F.3d at 997. In that case, however, BLM divided an original timber-sale project into four component timber sales, preparing environmental assessments for two of them, *id.* at 991-92, which were analyzed separately, thus obscuring the cumulative impact of successive, related actions.

In contrast, in this case there was no project splitting. In fact, in the FEIS BLM undertook an analysis of all anticipated treatments over the entire Project area. ONDA has not shown a failure to analyze cumulative impacts.

V. *BLM Did Not Violate the Multiple Use Mandate of Section 302 of FLPMA.*

ONDA charges that BLM violated section 302(a) of FLPMA, 43 U.S.C. § 1732(a) (2000), requiring that public land be managed under principles of multiple use and sustained management by relying on “outdated or inaccurate wilderness inventory information.” SOR at 9. It claims that BLM decided in the FEIS “not to examine impacts to wilderness resource values in the action area based on an outdated, and undocumented, determination that such values do not exist.” *Id.* at 10. This argument must be rejected. It is based on ONDA’s claim, established above as lacking merit, that BLM failed to examine the wilderness values of Project lands. This is similar to the argument raised by ONDA and rejected by the *Shuford* court. See 2007 WL 1695162 at *10; *Oregon Natural Desert Association*, 173 IBLA at 355-56. ONDA has failed to show any violation of section 302 of FLPMA.

VI. *BLM Did Not Violate Either Section 603(c) of FLPMA or the IMP in Proposing Treatments for WSAs.*

[3] ONDA also argues that BLM violated section 603(c) of FLPMA, 43 U.S.C. § 1782(c) (2000), and the IMP by extending proposed treatments to WSAs.¹⁴ Those lands, ONDA asserts, must be managed in accordance with section 603(c) so as not to impair the suitability of such areas for preservation as wilderness, as well as to prevent unnecessary or undue degradation. ONDA states that, “In short, BLM cannot

¹⁴ BLM’s specific management of the lands is governed by the IMP, which sets forth certain nonimpairment criteria. These criteria are designed to ensure that no activity will occur that will jeopardize or negatively affect Congress’s ability to find that a WSA has the necessary wilderness characteristics. See *Committee for Idaho’s High Desert*, 139 IBLA 251, 253 (1997).

show that the [Project] will not impair nearly 80,000 acres of Wilderness Study Areas.” SSOR at 18.

While ONDA cites various provisions of the IMP relating to vegetative manipulation (IMP, H-8550-1, Chap. III.C.2) and forestry (IMP, H-8550-1, Chap. III. F), which could be read as preventing certain of the proposed treatments, we find that, given the intention of the Project to improve the long-term viability of the WSA ecosystem, and the fact that other provisions of the IMP, described below, allow for the enhancement of wilderness values, ONDA’s argument fails. Moreover, we recognize that the provisions of the IMP are in the nature of guidelines and are not intended to necessarily provide inflexible constraints, but must be interpreted to preclude activities that would impair an area’s suitability for preservation as wilderness.

In this case, the Project involves active management in WSAs due to the unnatural build-up of juniper, which poses a threat to ecological values. ROD at 17. BLM has explained that, without treatment, the ecological health and diversity in WSAs are likely to decline as a result of juniper expansion. ROD at 17; FEIS at 193. The Project is designed to restore an historic fire regime in the CMPA, as required by section 113(c) of the Steens Act, 16 U.S.C. § 460nnn-23(c) (2000), through the active management of juniper on a landscape level. While BLM concedes that the Project may result in some short-term impact to wilderness values, these values will be enhanced in the long term (many years to decades) by helping to restore a more natural fire regime and limit juniper expansion to its historic range. FEIS at 15, 193. Without active treatment, “[s]ome wilderness values could decline in areas where juniper expansion continues to the point native shrubs and grasses are suppressed or lost, especially if large, stand-replacing wildfires occur.” FEIS at 15. It is clear from the FEIS that BLM thoroughly analyzed the effects to wilderness values of taking action and failing to take action. *Id.* at 177-82.

As BLM stated in the FEIS, “[p]reservation of wilderness values is the ‘overriding consideration’ of WSA management.” *Id.* at 193. Further, BLM has included PDEs to protect wilderness characteristics in WSAs. Response at 22, citing ROD at 22, 24.

While ONDA asserts that the Project violates the guidelines set forth in the IMP, the IMP permits “[u]ses and facilities that clearly protect or enhance the land’s wilderness values or that are the minimum necessary for public health and safety in the use and enjoyment of the wilderness values.” IMP, H-8550-1, Chap. I.B.2. Further, “[a]ctions that clearly benefit a WSA’s wilderness values through activities that restore, protect, or maintain these values are allowable.” H-8550-1, Chap. I.B.6. Prescribed fires, which are the primary focus of the Project in WSAs, are allowed by the IMP, which provides that “[p]rescribed burning may be used where necessary to

maintain fire-dependent natural ecosystems.” H-8550-1, Chap. III.C.2. BLM emphasizes that juniper cutting, to which ONDA objects, will be used only if prescribed fire alone does not meet the Project’s objectives following a 3-to 5-year interval Project review. ROD at 2.

In her November 17, 2007, Declaration, the Andrews Resource Area Field Manager states:

Prior to [a] 3 to 5 year review (which will investigate and document a number of treatments and wildfires within the immediate area and their after effects), the mechanical treatments of juniper in WSAs will be limited to girdling of trees and drooping of limbs on some individual trees to help prescribed fire carry through burn units. These techniques are described in the environmental impact statement. This girdling and drooping is not expected to work as effectively as cutting every third tree, but is intended to assist prescribed burns to mimic historic natural fire and, consequently, will be consistent with protecting the naturalness of WSAs.

Bird Declaration at ¶2.

Given the goal of the Project - to restore a more natural ecological balance by addressing the encroachment of juniper - we find that the implementation of the Project in WSAs, as explained by BLM, is consistent with the guidance of the IMP. To the extent that any approved Project activities appear to vary from specific provisions of the IMP, any such variation has been adequately justified by BLM.

VII. *BLM’s Analysis and Findings Regarding Transportation Issues Are Adequate.*

ONDA alleges that BLM will in effect construct an unknown number of roads in the Project area by performing maintenance. ONDA charges that such action is a violation of the Steens Act because BLM has failed to demonstrate that any of the exceptions to the Steens Act prohibition on road construction apply, citing 16 U.S.C. § 460nnn-22(d)(1) (2000). SSOR at 23.

We find no indication that the ROD approves activities violating 16 U.S.C. § 460nnn-22(d)(1) (2000). That provision precludes the construction of new roads or trails on Federal lands in the CMPA for motorized or mechanical vehicles, unless the Secretary determines that such a road or trail is necessary for “public safety or protection of the environment.” The Secretary may invoke that exception, however, only in consultation with the Steens Mountain Advisory Council and the public. The ROD cannot be construed as a blanket approval of an exception to new construction. Moreover, as BLM points out, the general prohibition of off-road use of motorized or

mechanical vehicles on Federal lands in the CMPA contained in 16 U.S.C. § 460nnn-22(b)(1) (2000) is subject to the subsection (b)(2) exception if the Secretary determines that such use is appropriate for “ecological restoration projects.”

To the extent ONDA is concerned with the conversion of ways to roads in WSAs, thereby jeopardizing their designation as wilderness, that concern is not justified.¹⁵ BLM makes clear it “will not be maintaining ways in WSAs to convert these ways to roads.” Answer at 12; see Bird Declaration at ¶4. Outside of WSAs there is no prohibition against maintaining roads and trails. In fact, the Steens Act contemplates the development of a comprehensive transportation plan for the Federal lands in the CMPA to “address the maintenance, improvement, and closure of roads and trails as well as travel access.” 16 U.S.C. § 460nnn-22(a) (2000).

Further, ONDA argues that BLM’s approval of extensive maintenance within the CMPA violates the Steens Act transportation plan requirement since the District Court in *Shuford* found that “[b]ecause BLM’s transportation plan fails to address significant components, it is not comprehensive or integral under the ordinary meaning of those terms. Thus, I find that BLM’s transportation plan is arbitrary, capricious, and not in accordance with the Steens Act.” SSOR at 19, citing 2007 WL 1695162 at *19.

While the court found the CMPA RMP Transportation Plan (Appendix M to the CMPA RMP) to be inadequate because it failed to provide a comprehensive management system for travel over roads, ways, and trails, BLM points out that what is at issue in this case is the ROD’s approval of the Project, and, in accordance with the FEIS, only routes used for fire lines or as access to burned areas might experience heavy use, which could result in damage requiring maintenance, such maintenance to be consistent with identified maintenance standards.¹⁶ Answer at 12; FEIS at 190.

¹⁵ The distinction between “roads” and “ways” for the purposes of wilderness is significant because the definition of wilderness generally means that the parcel is roadless. See 16 U.S.C. § 1131 (2000). A way is defined in the FEIS at 217 as “[a] travel route in a WSA maintained solely by the passage of vehicles which has not been improved and/or maintained by mechanical means to ensure relatively regular and continuous use.” On the other hand, a road is a “[c]onstruced or evolved transportation route that is normally maintained for regular use (except during periods of closure) that can be reasonably and prudently driven by motorized or mechanical vehicles.” FEIS at 214. A route is “[a] linear ground transportation feature such as a way or road.” *Id.*

¹⁶ Maintenance of ways in WSAs would be in accordance with the guidance provided in the IMP. Because the overriding consideration for management of WSAs is the
(continued...)

Moreover, BLM states that it has now completed the comprehensive Steens Mountain Travel Management Plan, which fulfills the Steens Act Transportation Plan requirement.¹⁷ Answer, Ex. 4. It asserts that the maintenance of roads, ways, and trails in the Project area will be consistent with the Transportation Plan and Travel Management Plan. We find no violation of the Steens Act.

Finally, ONDA argues that the Project's proposed use of off-road motor vehicles is inconsistent with the non-impairment mandate of section 603(c) of FLPMA. However, the FEIS indicates that the Preferred Alternative, adopted in the Project ROD, "meet[s] the non-impairment criteria exception by protecting and enhancing wilderness values." FEIS at 194. The IMP expressly allows for motor vehicle or mechanical transport off boundary roads and existing ways "for official purposes by the BLM and other Federal, State, and local agencies and their agents when necessary and specifically authorized by the BLM for protection of human life, safety, and property; for protection of the lands and their resources." H-8550-1, Chap. I.B.11. To the extent that the use of motor vehicles off-road serves to carry out the Project, the purpose of which is to "restore landscape-level ecological health and diversity to areas where juniper expansion has increased . . .," FEIS at 194, we find that this use is consistent with section 603 of FLPMA and the IMP, which allows "activities that restore, protect, or maintain" a WSA's wilderness values. H-8550-1, Chap. I.B.6.

ONDA has failed to show error in BLM's analysis and findings regarding transportation issues.

VIII. *The Project's Treatment of Sagebrush Obligates Does not Violate the RMP or FLPMA.*

ONDA argues that the Project violates (1) the Special Status Species Goal of the CMPA RMP to maintain, restore, and improve Special Status plant and animal populations and prevent future Endangered Species Act listings, and (2) section 302(a) of FLPMA, 43 U.S.C. § 1732(a) (2000), requiring that BLM's actions be consistent with applicable land use plans. The violation results, ONDA asserts, because approved activities will degrade habitat for two Special Status

¹⁶ (...continued)

preservation of wilderness values, *see* H-8550-1, Chap. I.B., ways could not be maintained in a manner to convert them to roads.

¹⁷ On Nov. 28, 2007, the Andrews Resource Area Field Manager issued the Finding of No Significant Impact and Decision Record/Final Decision for the Travel Management Plan.

sagebrush obligates, *i.e.*, the pygmy rabbit and sage grouse.¹⁸ ONDA also states that, “[t]his degradation also contradicts BLM’s mandates under FLPMA to balance multiple uses and ‘take any action necessary to prevent unnecessary or undue degradation of the lands,’” quoting 43 U.S.C. § 1732(b) (2000). *Id.*

Contrary to ONDA’s assertions, the Project is designed to improve the sage grouse habitat, which is suffering from juniper expansion, while providing for a sufficient interim habitat during the implementation phase. FEIS at 36; ROD at 23. The Project is intended to stop the current effect of “loss of sagebrush and wetland habitats which would continue indefinitely.” FEIS at 153. BLM has taken a “hard look” at the various alternatives, explaining how each would or would not meet relevant sage grouse protection strategies. ROD at 20-21. BLM has explained in the ROD at 14 how the Preferred Alternative adopted in the ROD complies with the Greater Sage-Grouse Conservation Assessment and Strategy for Oregon (2005), and it has developed PDEs to protect sage grouse and sage grouse leks. *Id.* at 22. Thus, we find ONDA’s argument to be without merit.

IX. *BLM Did Not Violate the WSRA in Authorizing the Project.*

ONDA submits that BLM violated the WSRA by allowing vegetative treatments within designated river corridors. In 1968, Congress passed the WSRA establishing a nationwide system of outstanding free-flowing rivers. 16 U.S.C. § 1274(a)(5) (2000). The primary purpose of the WSRA is to balance river development with river protection and conservation. As part of the RMP process, BLM developed the Steens Mountain Wilderness and Wild and Scenic Rivers Plan (WSR Plan).¹⁹ CMPA RMP, Appendix P. The CMPA RMP contains 12 designated WSR segments included in 3 separate systems: the Donner und Blitzen System, the Wildhorse System, and the Kiger System. *Id.* at P-6 and 7. All designated river segments within the CMPA were designated as Wild by Congress, and are required to be managed “to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values.” 16 U.S.C. § 1281(a) (2000).

The WSR Plan designates several outstanding remarkable values (ORVs) for the designated WSR corridors within the CMPA, including scenic, recreational, fish, wildlife and vegetation values. WSR Plan at 8-9. ONDA argues that the

¹⁸ ONDA provides no evidence to contradict BLM’s list of Special Status Species occurring in the Project area, which does not include the pygmy rabbit. FEIS at 90.

¹⁹ By statute, a management plan is required for rivers covered by the WSRA. See 16 U.S.C. § 1274(d)(1) (2000).

implementation of the Project fails to protect and enhance the designated ORVs and, thus, violates the WSRA.

In reply, BLM first notes that 96 percent of the WSR acreage in the Project area is within the Steens Mountain Wilderness Area and that BLM “has decided not to undertake treatments in the Wilderness without further NEPA analysis and appeal opportunities.” Answer at 27; *see* FEIS at 96, 168. Second, contrary to ONDA’s allegation, BLM points to benefits to a number of river values from the reduction of juniper expansion. These benefits are enumerated in the FEIS. For instance, the reduction of juniper is expected to enhance fish, vegetation and botanical values. FEIS at 171. In contrast, BLM has determined that without treatment, juniper expansion could cause a reduction in scenic vistas and diversity through the loss of aspen groves and riparian vegetation. *Id.* at 168. A loss of riparian vegetation would “contribute increases in water turbidity and degradation of fish habitat.” *Id.*

We agree with BLM that “[t]he FEIS demonstrates the overall enhancement of river values that will occur with Project implementation in those river segments outside [the Steens Mountain] Wilderness.” Answer at 28.

X. *BLM Did Not Violate the CWA in Authorizing the Project.*

ONDA argues that BLM has violated the CWA by failing to ensure that its vegetative treatment activities comply with state water quality standards, citing 33 U.S.C. § 1323(a) (2000). SSOR at 33. Specifically, ONDA asserts that “[g]iven the underlying chronic impairment of water quality throughout the planning area,” SSOR at 34, BLM’s authorization of the Project is in violation of the CWA until Total Maximum Daily Loads (TMDLs) are established for the Project area.²⁰

The short answer to ONDA’s argument is that there is no evidence that the authorized treatments will degrade water quality. The Oregon Department of Environmental Quality (DEQ), which administers the CWA in Oregon, stated that it was highly supportive of this project, viewing “it as an opportunity for the BLM to halt or significantly reduce juniper expansion and evolve effective management prescriptions that will restore the function and productivity of upland and lotic

²⁰ Listing a segment of navigable water as a Water Quality Limited Segment (WQLS), as here, triggers an obligation by the State to develop a 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) (2000). Once approved by the U.S. Environmental Protection Agency, TMDLs are then incorporated by the State into its continuous water quality planning process. 33 U.S.C. § 1313(d)(D)(2) (2000).

riparian services.” Administrative Record (AR) 3-9 at page 1. Further, DEQ stated that, while it was generally neutral on the management alternative selected, it believed the No Action Alternative could result in detrimental long-term consequences.

If the juniper is left unchecked as a potential fuel source, a major conflagration within the “juniper belt” regime of the planning area could result in a catastrophic perturbation of the upland (flora, soil micro-flora, and faunal relationships), and riparian ecosystems. This would result in excessive sediment delivery to the receiving waters and significantly elevate stream temperatures. This potential outcome is antithetical to the DEQ’s objective of improving the quality of the waters of the state and is therefore not acceptable.

Id.

DEQ noted that, in order to comply with the CWA, the Project should include “planning elements that serve as a precursor to the development of total maximum daily load (TMDL) for this subbasin in 2010,” including “management or prescriptive treatment methods designed to improve riparian conditions and water quality, and the implementation measures should include short and long term monitoring of the physical and biological factors that affect the attainment of the beneficial uses.” *Id.* As BLM asserts, the Project does just this through the reduction of juniper expansion, which is designed to improve hydrologic function, riparian system resources, and preserve the ecological integrity of watersheds. ROD at 12-13. The FEIS provides for the monitoring of multiple resources, including water, FEIS at 198, as does the CMPA RMP, to which the Project is tiered. CMPA RMP at 21. This monitoring includes properly functioning condition assessments, water temperature, stream shade, macroinvertebrate sampling, and stream-channel cross sections. *Id.*

ONDA offers no specific evidence to contradict BLM’s analysis of the likely impacts of the Project on the quality of water in the Project area, and provides no evidence that the State considers the Project to be violative of the CWA. Accordingly, we find that ONDA has failed to demonstrate error on the part of BLM.

To the extent ONDA raises other arguments not specifically discussed herein, they are rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the ROD appealed from 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