WESTERN WATERSHEDS PROJECT

183 IBLA 297 Decided April 18, 2013

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

WESTERN WATERSHEDS PROJECT

IBLA 2012-42 Decided April 18, 2013

Appeal from a decision by the Schell (Nevada) Field Manager, Bureau of Land Management, approving a watershed restoration plan for the South Steptoe Valley Watershed. DOI-BLM-NV-L020-2011-0013-EA.

Affirmed.

1. Administrative Practice--Administrative Review: Generally--Administrative Review: Burden of Proof--Appeals: Generally

   Appellant bears the burden to affirmatively demonstrate error in the decision on appeal. Conclusory allegations, unsupported by objective evidence showing error, do not suffice. The requirement is not met when an appellant merely reiterates the arguments considered by the decision-maker below, as if there were no decision addressing those points. In such cases, the decision may be affirmed in summary fashion.

2. Administrative Practice--Administrative Review: Generally--Administrative Review: Burden of Proof--Appeals: Generally

   The expert opinion of the Bureau of Land Management's (BLM's) technical experts is entitled to deference and will not be overturned except upon a showing that BLM acted arbitrarily and capriciously or contrary to law; or that, by a preponderance of the evidence, it erred as a matter of fact because its methodology was improper; or, although its methodology was proper, it relied on inappropriate or insufficient data, engaged in erroneous calculations or analysis, or reached unjustified conclusions.

3. Administrative Procedure: Burden of Proof--Appeals: Generally--Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements--Rules of Practice: Appeals: Burden of Proof--National Environmental Policy Act of 1969: Finding of No Significant Impact

A BLM decision to proceed with a watershed restoration project, based on an environmental assessment tiered to an environmental impact statement (EIS), will be upheld where BLM has taken a hard look at the potentially significant environmental consequences of the project, and its decision is supported by an administrative record that establishes that a careful review of environmental impacts has been made, all relevant areas of environmental concern have been identified, and BLM has made a convincing case that no significant impact that was not addressed in the EIS will result, or that any such impact will be eliminated or reduced to insignificance by the adoption of appropriate mitigation measures.

APPEARANCES: Katie Fite, Boise, Idaho, for the appellant; Janell M. Bogue, Esq., Office of the Regional Solicitor, Pacific Southwest Region, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Western Watersheds Project (WWP) has appealed from an October 20, 2011, Decision Record (DR) and Finding of No Significant Impact (FONSI) issued by the Field Manager for the Schell Field Office (SFO) (Ely, Nevada), Bureau of Land Management (BLM), for the South Steptoe Valley Watershed Restoration Plan (Restoration Plan or Project).[1] The purpose of the Project is to stabilize and

[1] WWP filed comments on the Preliminary Environmental Assessment (EA), which was issued on June 24, 2011. Administrative Record (AR), Tab 12. BLM responded to those comments in Appendix E of the final EA, which WWP received, along with the DR/FONSI, by certified mail on Nov. 18, 2011. AR, Tab 28. WWP timely filed a "Notice of Appeal, Statement of Reasons, Appeal, and Petition for Stay" (SOR) with the SFO on Dec. 5, 2011. AR, Tab. 27. With its SOR, WWP submitted a "Statement of Standing" in which Katie Fite, Biodiversity Director for WWP, averred that she "has frequently visited and recreated in this landscape including the Schell Creek range and valleys and other areas for 20 years or more, and plans to continue returning in (continued...)

strengthen plant cover in the watershed by "restor[ing] natural vegetative conditions"; that is, by shifting the vegetation mosaic away from overdeveloped large shrub communities and pinyon-juniper woodlands and reintroducing botanical communities of small and medium-size shrubs, perennial grasses, and forbs that would more nearly approximate a natural fire regime.[2] FONSI at unpaginated (unp.) 2, DR at 5. Out of 201,522 acres in the watershed, approximately 20-30%, or between 40,000 and 60,000 acres, is targeted for treatment over the 10-year life of the plan. FONSI at unp. 2; EA at 98, 151. The Project would involve using a variety of "proven treatment methods" to remove stands of pinyon and juniper trees and over-mature sagebrush where "establishment and density are at undesired levels," and reseeding land areas with native seedings in wilderness areas, and a mixture of native and non-native seedings elsewhere. FONSI at unp. 3; EA at 15-57.

In issuing the DR/FONSI approving the Project, the Field Manager relied on a September 26, 2011, EA, DOI-BLM-NV-L020-2011-0013-EA, prepared by the SFO to analyze potential significant environmental impacts of the Project. The EA was tiered to the November 2007 *Ely Proposed Resource Management Plan/Final Environmental Impact Statement* (PRMP/FEIS), which BLM's Ely Field Office prepared in connection with the August 2008 *Ely District Record of Decision and Approved Resource Management Plan* (ROD/RMP).[3]

---

[1] (...continued)
summer 2012 if not sooner." WWP has demonstrated that it has standing to appeal under the Board's test for standing set forth in *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA 79, 81-86 (2005). In this Decision we deny WWP's Petition for Stay as moot.

[2] In ecological usage, "regime" means "a regular pattern of occurrence or action." Michael J. Mac, et al., *Status and Trends of the Nation's Biological Resources*, Volume (Vol.) 2, 907 (Department of the Interior, U.S. Geological Survey (USGS): 1998) (AR, Tab 56, Vol. 2). "Fire regime" is a statistical concept grounded in "fire frequency and fire severity" that is used to classify deviations from a natural fire regime. *Fire Regime Condition Class Guidebook Version 3.0 September 2010* (*FRCC Guidebook*), at 97-98 http://www.fire.org/niftt/released/FRCC_Guidebook_2010_final.pdf (last visited on Mar. 20, 2013). A "natural fire regime" is "a general classification of the role fire would play across a landscape in the absence of modern human intervention but including the possible influence of aboriginal fire use. *FRCC Guidebook* at 14.

[3] At some point subsequent to the November 2007 release of the PRMP/FEIS and prior to issuance of the August 2008 ROD/RMP, the Ely Field Office was designated as the Ely District Office.

In its appeal and SOR, WWP contends that BLM's DR/FONSI and supporting EA violate section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2006), by failing to (1) report baseline inventories and accurate site-specific information, and instead relying on flawed rangeland studies and computer modeling (SOR at 3-4, 8); (2) analyze a reasonable range of alternatives (*id.*at 7-8); (3) adequately consider a number of environmental impacts, including the effects of ecosystem destruction from removing pinyon/juniper woodlands and other vegetation on soils, wildland values, special species, vegetation and wildlife habitat, and wildfire (*id.* at 3-7); and (4) consider cumulative impacts from mining and other development, including livestock grazing, in the watershed (*id.* at 2-3). WWP argues that, for all the above reasons, BLM should have prepared an EIS. *Id*. at 4.

In this order, we affirm the October 20, 2011, DR/FONSI, because we find that WWP has not affirmatively demonstrated error in the decision on appeal. We more fully explain below.

Background

"Great Basin" is the name the 19th century explorer, John C. Frémont, gave to the vast area stretching between the Sierra Nevada and the Rocky Mountains, which, for the most part, does not drain to the oceans. AR Tab 56, Vol. 2, 505 (*see* n.2 for full cite [4]). The arid climate of the Basin's deserts is "one of the most varied and extreme in the world." *Id.* at 506. The Sierra Nevada and the Rocky Mountains capture moisture from Pacific and Gulf of Mexico storm fronts (respectively) and precipitation at lower elevations is scarce. *Id.*

Nevada lies within the Great Basin – Mojave geographic region,[5] which is home to both hot and cold deserts and hundreds of "long, narrow, and roughly parallel mountain ranges that are separated by deep valleys." AR, Tab 56 at 505. The South Steptoe Valley watershed (Watershed) lies within Nevada's northeastern Great Basin, in the Central Great Basin Ecoregion.[6] The average precipitation for the

[4] Where source citations are lengthy, we have footnoted them to render the text more readable. Where, in the text, "*id.*" follows a footnoted citation, it refers the reader to the same source.

[5] The Ely District Office manages part of the northern Mojave Desert, but that area is not at issue here. *See* PRMP/FEIS at 3.2-1.

[6] http://www.blm.gov/pgdata/etc/medialib/blm/nv/resources/racs/trirac/nov_2009.Par.69909.File.dat/Ecoregional_Assessments_by_JTague.pdf (last visited on Jan. 2, 2013). In this decision, the Board has considered a number of publications

(continued...)

last 30 years in the communities of Ely, which lies north of the Watershed, and Caliente, which lies south, has been just under 10 inches per year. PRMP/FEIS at 3.2.

The Watershed is accessed to the south-southeast from Ely via the Great Basin Highway and White Pine County Road 45. It measures approximately 230 miles (north to south) by 115 miles (east to west) within Lincoln, White Pine, and a portion of Nye Counties. ROD/RMP at 1. It drains to the north towards Ely, and is characterized by mostly north to south trending mountains, gently to steeply sloping benches and piedmonts, and a valley bottom composed of level to slightly rolling terrain. The watershed is flanked by the South Schell Creek Mountains to the east and the Egan Range and South Egan Range to the west-southwest. To the south, it encompasses a portion of the Mount Grafton Wilderness Area. Elevations vary from about 6,700 feet in the valley bottom to 10,900 feet at the summit of the Egan Mountain Range. EA at 1.

The northeastern Nevada Great Basin is vulnerable to both noxious and invasive plant species and wildfire. PRMP/FEIS at 3.2-4 to 3.2-5 and 3.21-2 to 3.21-3. Cheatgrass and other noxious "annual bromes" have invaded some of the land in the northeastern Nevada Basin at lower elevations. *Id.* at 3.21-2. Noxious weeds and invasive plants, like pinyon/juniper woodlands understoried by cheatgrass and like bromes, threaten healthy watersheds by commandeering available water, and supplying fodder for understory fuel. *Id*. at 3.21-1 to 3.21-3. Mountainous land forms trigger sudden thunder and lightning storms as moist air moves over them. *Id.*

---

[6] (...continued)
such as the one just cited that are not included in BLM's case file, but are posted on governmental or organizational websites. Under 43 C.F.R. § 4.24(b), official notice may be taken of the public records of the Department of the Interior and of any matter of which the courts may take judicial notice. Here, we take official notice of extra-record materials, including materials from reliable internet sites, in order to determine "whether the agency has considered all relevant factors and has explained its decision," and, because "supplementing the record is necessary to explain technical terms or complex subject matter" (internal quotation marks omitted). *Southwest Center for Biological Diversity v. U.S. Forest Service*, 100 F.3d 1443, 1450 (9th Cir. 1996); *Inland Empire Pub. Lands Council v. Glickman*, 88 F.3d 697, 703-04 (9th Cir. 1996) (quoting *Friends of the Payette v. Horseshoe Bend Hydroelectric Co.*, 988 F.2d 989, 997 (9th Cir. 1993). *Cf. American Wild Horse Preservation Campaign v. Salazar*, 859 F. Supp. 2d 33, 43 n.6 (D.D.C. 2012) ("Consideration of extra-record material is appropriate *inter alia* when simply reviewing the administrative record is not enough to resolve the case.").

All that is needed for the proliferation of wildfires ignited by lightning (or humans) is an available vegetative fuel source. *Id*. at 3.21-3.[7]

It is generally accepted among rangeland scientists knowledgeable in Great Basin – Mojave Desert ecology that the synergistic relationship between wildfire and aggressive non-native plants like cheatgrass in mature shrub and woodland communities erodes the resilience of native ecosystems.[8] PRMP/FEIS at 3.21-2 to 3.21-3. Indeed, the relationship between arid and semi-arid climates in the Western States and the distribution of grasses, shrubs, noxious and invasive weeds, and woodlands; and the consequent implications for hydrologic processes, wildfires, and ecological thresholds have been the subject of a welcomed surge in rangeland and ecological research literature that is far beyond the scope of this decision.[9] It is enough for our purposes to note that credible research with respect to ecosystems, wildfire, and fire ecology indicates that logging and livestock overgrazing practices in the West beginning in the mid-1800's and perpetuated through the mid-1900's removed the most fire resistant trees, depleted native grasses, and disrupted soil structures, making way for invasive annual bromes and encroachment of

---

[7] The greatest number of fires between 1986 and 2005 in the Ely planning area were in pinyon/juniper woodlands, followed by sagebrush and grassland communities. The FEIS reports that, during that time period, about 932,725 acres (approximately 8% of the planning area) burned in over 3,250 wildland fires, averaging about 49,000 acres and 170 wildfires annually. PRMP/FEIS at 3.20-3.

[8] *See generally* PRMP/FEIS Reference List at 83, citing Billings, W.D., "*Ecological Impacts of Cheatgrass and Resultant Fire on Ecosystems in the Western Great Basin,*" in Monsen, S.B., and Kitchen, S.G., *Proceedings–Ecology and Management of Annual Rangelands*; 1992 May 18-21; Boise, ID. Gen. Tech. Rep INT-GTR-313. Ogden, UT: U.S. Department of Agriculture, Forest Service, Intermountain Research Station, found at http://www.fs.fed.us/rm/pubs_int/int_gtr313.html (last visited Mar. 20, 2013).

[9] *See*, *e.g.*, reference lists in the Ely PRMP/FEIS, R-1 through R-27, the EA at 119-21, and the reference list for the *FRCC Guidebook*. BLM's administrative record also includes a number of pertinent research articles. *E.g.,* AR, Tab 45 (Thurow and Hester, "*How an increase or reduction in juniper cover alters rangeland hydrology*" in *Juniper Ecology and Management: 1997 Juniper Symposium Proceedings.* http://texnat.tamu.edu/library/symposia/juniper-ecology-and-management/how-an-increase-or-reduction-in-juniper-cover-alters-rangeland-hydrology/ (last visited Mar. 20, 2013).

pinyon/juniper woodlands on landscapes historically inhabited by grasses, forbs, and low shrubs. The current challenge is to restore resilience to weakened ecosystems.[10]

The Great Basin rangelands have become the focus of much interest with respect to landscape-level "watershed restoration," a term defined as "holistic action" taken with respect to "a major subdivision of a drainage basin" in order to "modify an ecological system to achieve desired, healthy, and functioning conditions."[11] Plans for watershed restoration in the Great Basin developed after a particularly gruesome fire season in 1999 that destroyed over 1.7 million acres.[12] After the 1999 fires, a team of BLM and state resource and fire specialists set out to identify resource issues caused by invasive species and wildfires in the Great Basin, and to develop a strategy to address them. This endeavor led to the formation of the Great Basin Restoration Initiative (GBRI). *Id.* In furtherance of the GBRI, BLM adopted a "management by watershed" approach, stating that "[t]he Approved RMP would implement a policy change that directs the Ely Field Office to integrate the watershed analysis process described in BLM Handbook, H-4180-1 Rangeland Health Standards," with the goal of allowing the Ely Field Office "to focus on integrated management techniques . . . necessary to accommodate the functionality of the watershed." PRMP/FEIS, S-ii, 1.4-3. This approach would also "allow a shift from species- and individual-use-driven management to natural systems management that supports watersheds in properly functioning conditions." *Id.*

In August 2007, an interdisciplinary team of resource specialists (team) within the Ely Field Office finalized the "*South Steptoe Valley Watershed Evaluation Report*." AR Tab 4. To characterize the status of resource conditions, the team used "[a]vailable monitoring data, standardized methodologies and field assessments, including line-point intercept cover data collected for the mountain big sagebrush, Wyoming big sagebrush, black sagebrush communities and for pinyon-juniper

---

[10] Billings, W.D., *supra* at n.8 (last visited Mar. 30, 2013); *see generally* AR 49, "*Protecting People and Sustaining Resources in Fire-Adapted Ecosystems: A Cohesive Strategy–The Forest Service Management Response to the GAO Accounting Office Report GAO/RCED-99-65*" (Oct. 13, 2000) at 21-27.

[11] PRMP/FEIS at Appendix G-33. http://www.blm.gov/pgdata/etc/medialib/blm/nv/field_offices/ely_field_office/ely_resource_management/rmppdftext.Par.23465.File.dat/09%20-%20Glossary%20References%20Index.pdf (last visited Mar. 20, 2013).

[12] *See generally* BLM, National Office of Fire and Aviation, "*Out of Ashes, An Opportunity*" (Nov. 1999), available at http://www.sagestep.org/educational_resources/bibliographies/articles/1999_BLM_GBRI.pdf (last visited Mar. 20, 2013).

woodlands."[13] *Id.* at 5. Then they compared existing vegetative health and cover composition to ecological site descriptions developed by the Natural Resources Conservation Service using current soil survey information, to determine the divergence between existing conditions and vegetation potential.[14] With respect to grazing allotments in the watershed, the team evaluated "[a]llotment specific data such as utilization, ecological condition, line intercept cover, use pattern mapping and trend" that had been collected "at key areas and examined as part of the allotment evaluations for livestock." *Id.* at 5. Detailed allotment data analyzed and evaluated as a part of the watershed evaluation was summarized in Appendix A to the Report.

In August 2008, the Ely District Office released a "Determination of Standards" documenting the watershed's "level of compliance with the rangeland health standards established by the Northeastern Great Basin Resource Advisory Council." (NGB RAC) (AR Tab 3). The team determined that the watershed fails to meet rangeland health standards and guidelines [15] with regard to three of the five NGB RAC standards: those pertaining to upland sites, riparian wetlands, and wildlife habitat. AR Tab 3 at 1-3. Specifically, the team found that (1) upland soils fail to exhibit "infiltration and permeability rates that are appropriate to soil type, climate and land form"; (2) riparian and wetland areas fail to exhibit "a properly functioning condition and achieve state water quality criteria"; and (3) habitats fail to exhibit "a healthy, productive, and diverse population of native and/or desirable plant species, appropriate to the site characteristics, to provide suitable feed, water, cover, and living space for animal species and maintain ecological processes"; and to "meet the life cycle requirements of threatened and endangered species." AR Tab 3 at 1-2.

---

[13] The watershed analysis did not collect data pertaining to aspen, high elevation conifer, curlleaf mountain mahogany, or winterfat; those species will be considered on a smaller site-specific scale during pre-monitoring for project-level implementation. AR Tab 4 at 9.

[14] Three computer models are discussed in the Ely PRMP: LANDFIRE (Landfire) biophysical setting models, Fire Regime Condition Class (FRCC) models, and ecological "state and transition models." PRMP at C-19. They are used by BLM to "provide information and context for vegetation management and interpretation of plant community succession." *Id.* As we point out in more detail *infra*, they all make use of data collected via the "ecological site inventory," which is "the basic inventory of present and potential vegetation on BLM rangelands." *Id.*

[15] Rangeland health standards and guidelines for the Ely Field Office are established by 43 C.F.R. Subpart 4180 and the NGBRAC.

Essentially, the watershed analysis revealed that while late seral [16] big sagebrush communities and pinyon/juniper woodlands are flourishing, the early seral sagebrushes, perennial grasses, and forbs that are essential to wildlife for food and cover, and to soils for proper filtration of water and nutrients, are in decline. AR Tab 4 at 7, 9.

BLM's Use of Landfire Mapping and Models

The Ely District Office and the SFO use Landfire data, maps, and models to establish their watershed restoration, fire, and vegetation management objectives. *See, e.g.*, ROD/RMP at 25-33, 105-08; PRMP/FEIS 2.3-2, 3.5-13, C-19 through C-23. Landfire, also called the "Landscape Fire and Resource Management Planning Tools Project," is a "comprehensive national mapping and computer modeling project launched in 2004 by the U.S. Forest Service (Forest Service) and the Department of the Interior, and designed to implement a scientific approach to wildfire and vegetation management across the United States."[17] Its "data products consist of over 50 spatial data layers in the form of maps and other data that support a range of land management analysis and modeling." *Id.* Those products were developed by "integrating a collection of advanced scientific procedures, including relational databases, georeferenced land-based plots and polygons representing field conditions, satellite-enabled remote sensing, systems ecology, gradient analysis, predictive landscape modeling, and vegetation and disturbance dynamics." *Id.* Landfire is a cooperative endeavor sponsored by multiple agencies within the Forest Service and the Department of the Interior, including five principal project partners: the Forest Service's Rocky Mountain Research Station (RMRS) and Missoula Fire Sciences Laboratory in Missoula, Montana; the USGS Center for Earth Resources Observation and Science in Sioux Falls, South Dakota; the National Interagency Fuels, Fire, and Vegetation Technology Transfer group within RMRS; the Forest Service's Remote Sensing Applications Center, Salt Lake City, Utah; and The Nature Conservancy (TNC).[18]

---

[16] "Seral stage," also called succession stages or classes (in the ROD, "Landfire classes" (*e.g.*, ROD at 27-32, Tables 2-10)), refers to a "developmental phase of a forest stand or rangeland with characteristic structure and plant species composition." PRMP/FEIS, Glossary at G-29.

[17] http://www.landfire.gov/documents/LF_fact_sheet.pdf (last visited Mar. 20, 2013).

[18] Landfire also has 11 Wildland Fire Leadership Council sponsors and three private partners: Nature Serve; Systems for Environmental Management, Science Application International Corporation; and Sanborn. http://www.landfire.gov/partners.php (last visited Mar. 20, 2013).

Between 2004 and 2009, designers of Landfire built a reference and spatial database from 331,900 georeferenced vegetation plots [19] that were used to "ground-truth" geographic information systems base spatial layers, satellite imagery from the USGS-National Aeronautics and Space Administration Landsat program,[20] topographical data from USGS's National Elevation Dataset (specifically, Elevation Derivatives for National Applications), and biophysical gradients.[21] The accuracy of vegetation data was assessed by "using a combination of two techniques: quantitative, site specific agreement assessment by map zone and groups of map zones using withheld field plots, and case studies in selected areas."[22] The "reference

---

[19] The 331,900 figure is quoted from a TNC PowerPoint slide entitled "Spatial Data" from a video presentation entitled "*Cooking Conservation Stew: Data and Tools from Landfire.*" https://www.youtube.com/watch?v=jvFrUPE6Rmc (last visited Mar. 20, 2013).

[20] The Landsat Program is "a series of Earth-observing satellite missions jointly managed" by the National Aeronautics and Space Administration and USGS. "The Landsat series of satellites began with the launch of ERTS-1 (Earth Resources Technology Satellite, later renamed Landsat 1) in 1972, and continues to represent the world's longest continuously acquired collection of space-based land remote sensing data." The most recent satellite, Landsat 8, was launched on Feb. 11, 2013. http://landsat.usgs.gov/ (last visited Mar. 22, 2013).

[21] "Key biophysical gradients for understanding vegetation distributions include moisture, temperature, evaporative demand, nutrient availability, and solar radiation. Models to predict plant community distributions across landscapes can be developed by identifying the unique set of biophysical gradients that drive the physiological responses of plant species across landscapes." Holsinger, L., *et al.*, "Development of Biophysical Gradient Layers for the Landfire Prototype Project," in Rollins, M.G., and Frame, C.K., tech. eds., *The Landfire Prototype Project: Nationally Consistent and Locally Relevant Geospatial Data for Wildland Fire Management,* General Technical Report RMRS-GTR-175 (2006). http://www.fs.fed.us/rm/pubs/rmrs_gtr175.html (last visited Mar. 20, 2013).

[22] http://www.landfire.gov/faq.php?faq_id=224&sort_id=3 (last visited Mar. 20, 2013). For FRCC modeling, map or method accuracy refers to "the similarity between calculation inputs and actual field conditions." *FRCC Guidebook* at 101. Protocols also dictate that vegetation mapping be rectified, or corrected, for accuracy. *E.g.*, U.S. Department of Agriculture*, Existing Vegetation Classification and Mapping Technical Guide Version 1.1*, 3-125, 3-129, 5-10. http://www.fs.fed.us/emc/rig/documents/protocols/vegClassMapInv/EV_TechGuideV1-1-2.pdf (last visited Mar. 20, 2013). For FRCC modeling, map or method accuracy refers to "the similarity between calculation inputs and actual field

(continued...)

and spatial databases feed in to classification and regression tree algorithms to model Landfire's vegetation maps: environmental site potential, biophysical setting, existing vegetation type, existing vegetation cover and existing vegetation height."[23] The vegetation maps "are delivered in raster format and have a spatial resolution of 30 meters, corresponding to the Landsat Thematic Mapper imagery from which they are modeled."[24] They may be combined "with vegetation dynamics models that are used to map historical fire regimes and calculate vegetation conditions."[25]

Biophysical Settings and Fire Regime Condition Class Mapping

For all its sophistication in terms of science, math, mapping, and modeling, the logic behind the Landfire approach is relatively simple. In layman's terms,[26] the basic premise is that vegetation systems progress through seral stages as they age, eventually reaching a climax community. At certain points in the growth of developing ecosystems, transitions will occur that prevent return of that system to its prior state: Particular plant groups begin to dominate, others recede, and mature vegetation systems generally become self-perpetuating. Landscape-sized disturbances, such as wildfire, historically reset the clock. With the onset of EuroAmerican development, the role that natural fire cycles has played has been unnaturally suppressed, giving rise to an imbalance in certain vegetation communities that now poses a threat to the ecological resilience of entire watersheds.

The northeastern Nevada Great Basin is home to the following dominant vegetation communities: pinyon/juniper woodlands, aspen, high elevation conifer, ponderosa pine, salt desert shrub, sagebrush, mountain mahogany, Mojave desert vegetation, and blackbrush. *E.g.*, ROD/RMP at 27-33, Tables 2 through 11. The ecological premise is that, as each of those communities ages, it has or will pass through a number of states, or successional phases. *See generally* PRMP/FEIS,

---

[22] (...continued)
conditions." *FRCC Guidebook* at 101.

[23] https://connect.natureserve.org/files/bwb2012/Poster_KBlankenship.pdf (last visited Mar. 20, 2013).

[24] Goetz, W. *et al*. (2006), "*Landfire Existing Vegetation Products—How Useful for Midlevel Forest Needs?*" at unp. 2. http://www.fs.fed.us/eng/rsac/documents/pdfs/0074-TIP1.pdf (last visited Mar. 22, 2013).

[25] https://connect.natureserve.org/files/bwb2012/Poster_KBlankenship.pdf (last visited Mar. 22, 2013).

[26] This is an extremely simplified summary of the "state and transition" concept, which was "developed to describe and explain observed non-equilibrium succession." PRMP/FEIS, Appendix C. Our simplification is not intended to be comprehensive.

Appendix C.[27] As an example, pinyon/juniper woodlands can progress from the herbaceous state (where the trees are in essence saplings), to the immature woodland phase, to the mature woodland phase state, to the overmature woodland phase, to an altered state where the site is also dominated by invasive species or weeds. *Id.* at 27. Absent EuroAmerican interference, natural wildfires did and would occur on a relatively cyclical basis, preventing the overmature juniper/pinyon woodland phase from being reached on a large scale, thus allowing the continued cyclic replenishment of grasses, herbaceous shrubs, and saplings. However, once the natural fire cycle has been suppressed and growth thresholds have been crossed on a landscape scale, vegetation systems are likely to become over-mature and relatively closed, rendering the landscape without a viable opportunity to reset the clock, leaving it more vulnerable to catastrophic wildfire, insect infestations, and other ecological ills.

The goal of the Ely ROD/RMP is to achieve a "desired range of conditions" within each vegetation community, one that will reset the clock by a percentage large enough to keep vegetation communities within the watershed from growing into overmature, closed, or uncharacteristic [28] states that will overtax ecosystems by making them more susceptible to catastrophe. *E.g.*, ROD at 27-33, Tables 2 through 11. The mathematical part of the process, that is, the computer modeling, provides a process for calculating those percentages and mapping them with precision, with the goal of achieving ecologically sound results on the ground.

We turn our attention now to how the SFO used biophysical settings and the FRCC model to create a plan for achieving the desired range of conditions for the Watershed.

Biophysical settings "represent the vegetation that may have been dominant on the landscape prior to EuroAmerican settlement and are based on both the current biophysical environment and an approximation of the historical disturbance regime."[29] They describe "vegetation, geography, biophysical characteristics,

---

[27] This Appendix to the PRMP/FEIS is entitled "*State and Transition Models*, *Landfire, and Fire Regime Condition Class*."

[28] BLM uses the term "uncharacteristic succession class" to mean that "the percentage of exotic vegetation is high, or desired understory vegetation is depleted." EA at 4.

[29] Biophysical settings models were developed "[b]etween 2005 and 2009, [in] numerous modeling workshops . . . held across the U.S., in which teams of local experts were solicited to develop the models for LANDFIRE mapping zones. . . . They compiled professional literature and local knowledge and used public-domain software to describe and

(continued...)

succession stages, and disturbance regimes . . . and some of the major disturbance types affecting these ecosystems prior to significant alterations by European settlers."[30] This definition mirrors what the EA says about biophysical settings:

> Biophysical setting models establish a reference condition that is described as the potential vegetative community for a given site prior to European influence reflecting a range of natural disturbances. These reference conditions specify a range, in percentages, of seral classes that describe the vegetation progression post-disturbance. The RMP utilized the BPS [Biophysical settings] data in delineating the vegetative goals for the district. The percentages within the RMP vary slightly from the BPS models for certain vegetation types. The RMP percentages are described as the [desired future condition] for the district for which the Ely District Office is managing towards.

EA at 31.

We turn now to BLM's use of FRCC as an assessment tool in the EA.

The FRCC Assessment for the Watershed Project

The EA describes the purpose and need for the project in terms of moving the landscape "towards FRCC 1 with a mosaic of seral stages attaining the potential cover percentages of grasses and forbs for the respective biophysical models." EA at 3. The EA further explains:

> One of the tools used to make the assessment of the watershed's condition is Fire Regime Condition Class (FRCC), which is an interagency, standardized tool based on scientific and peer reviewed literature for determining the *degree of departure from a reference vegetation condition within a given biophysical setting* (BPS) . . . . Assessing FRCC can help guide management objectives and set priorities for treatments. The classification is based on a relative measure describing the degree of departure from the historical natural disturbance regime for a given BPS. This departure is described as

---

[29] (...continued)

> quantitatively model the array of biophysical settings in each LANDFIRE map zone, that is, for all ecological Systems in the United States.

http://www.frames.gov/documents/niftt/docs/Using%20BpS%20Descrips_2009.03.25.pdf at 3, 4 (last visited Mar. 20, 2013).

[30] *Id.* at 3.

changes to one or more of the following ecological components: vegetation characteristics (species composition, structural stages, stand age, canopy closure and mosaic pattern); fuel composition; fire frequency, severity and pattern; and other associated disturbances (*e.g.* insects and disease mortality, grazing and drought).

There are three FRCC classes used to describe the departure from reference BPS conditions. The three classes are based on low (0-33% departure; FRCC 1), moderate (34-66% departure; FRCC 2) and high (67-100% departure; FRCC 3) departure from [the] central tendency of the natural (historical) regime. Low departure is considered to be within the natural (historical) range of variability, while moderate and high departures are outside the range of variability. The FRCC rating is accompanied by indicators of the potential risks that may result.

Biophysical setting models have been developed for most major vegetation types. These models describe the vegetation, geography, biophysical characteristics, succession stages, disturbance regimes, and assumptions for each vegetation type (Havlina *et al*, 2010). Reference conditions described in the BPS models are compared to actual conditions for purposes of determining the current FRCC rating. A[n] FRCC rating is determined for the entire watershed by determining the weighted average of all major vegetation FRCC ratings. FRCC 1 is desired for each BPS and for the entire watershed. A departure from FRCC 1 (reference condition) to FRCC 2 or FRCC 3 serves as an indicator that changes need to be [e]ffected.

Map 1.2, "Strata Fire Regime Condition Class (FRCC) for the South Steptoe Valley Watershed" (p. 5) illustrates the moderate to high departure from natural conditions across the . . . Watershed. The FRCC data layer used depicts departures for the entire . . . Watershed. The analysis of the Watershed determined the causal factors for this departure to be a combination of drought, fire suppression efforts, and historic livestock overgrazing.

Fire frequencies are departed from historical frequencies by multiple return intervals. The risk of losing key ecosystem components within the . . . Watershed is considered moderate. Vegetation attributes have been altered from their historical range and now include uncharacteristically high densities of trees and below normal levels of perennial grass and forb composition. While the majority of the project area is FRCC 2, much of the FRCC 2 area is at the high end of the

> FRCC 2 range (departure scores of 34-65%). This suggests that management actions could prevent these ecosystems from departing further towards FRCC 3 and instead move toward a more ecologically sound condition.
>
> Each vegetation type is stratified into succession classes or seral stages: A, B, C, D, E, and U. An "A" classification is a vegetative community in early succession (ecological condition immediately after disturbance) and [succeeding] classes represent varying seral states as vegetation progresses [along a continuum] following disturbance. A "U" succession class is an uncharacteristic vegetation classification, meaning the percentage of exotic vegetation is high or desired understory vegetation is depleted. BPS models describe the typical distribution of succession classes that would be naturally exhibited across the landscape for each vegetation type based on natural disturbance regimes, geography, and other factors (Havlina *et al*., 2010).

EA at 3-4 (paragraph breaks added; emphasis added).[31] Using the biophysical models and the FRCC assessment, BLM determined that "[t]he current watershed FRCC ratings are 9% for FRCC 1, 44% for FRCC 2 and 48% for FRCC 3, with an overall departure" of 57 or 58%. EA at 3, 79-80. The objective of the treatments would be to reduce the average departure from the average historical reference within the watershed to 43%, which places the watershed in the lower third of FRCC 2. *Id.* In turn, BLM states, this will improve habitat for wildlife and overall rangeland health. *Id.*

With the use of the BPS models,[32] BLM developed a proposed action to treat seven separate areas of the watershed with a variety of treatment methods. EA at 30-55. The BPS maps and models enabled BLM to map distinct treatment units, to designate exact acreage amounts for treatment within each unit, and to provide

[31] The EA contains additional detail about fire regime groupings and FRCC classifications for the watershed at 80-81.

[32] For each major vegetation type in the watershed, Appendix C of the EA reports the current acreage and composition percentage by BPS model number and seral class. It also lists for each major vegetation type, in terms of a percentage, the desired future condition established by the RMP, and the overall impact of the proposed action in terms of acreage and percentage composition. Lastly, it reports any remaining departure from desired future condition, by composition percentage, as compared with the current departure condition.

detailed maps, objectives, and methods for each treatment area.[33] *Id.* The EA also includes a section entitled "Treatment Restrictions Common to all Treatment Methods," detailing restrictions pertaining to timing, design, visual resource, cultural, mineral, travel, grazing, hydrology, cadastral, private land, air quality, non-native invasive and noxious species, rights-of-way, and wilderness. EA at 15-20. Specified treatment methods include group tree removal (chaining), individual tree removal by mastication or other mechanical means, tree removal by hand cutting, removal of large shrub sagebrush or trees by dixie harrow or roller chopper (both of which would allow seeding to be done simultaneously), mowing, various herbicide treatments, prescribed fire, non-native and native seedings, fencing to restrict livestock, and wildland fire as prescribed within the 2004 Ely Fire Management Plan. EA at 20-30. The plan for each treatment unit specifies primary treatment types, and, in the event adaptive management is needed, secondary treatments. EA at 34, 37, 40, 41-42, 45, 48, 51, and 55.

To assess impacts, "[m]onitoring would be conducted before and after implementation of the proposed vegetation treatments to establish baseline vegetation characteristics and determine post treatment success towards meeting treatment objectives." EA at 55. Vegetation monitoring methods could include "line-point intercept for cover, two meter belt transects for density, grazing exclosures and photographs," and the same "monitoring locations and methods used to establish baseline data would be used to determine if post treatment vegetation objectives are being met." *Id.* The EA also provides for "[a]dditional monitoring locations and methodologies" to be used "if needed to address resource concerns." *Id.*

In the EA, BLM considered two alternatives in depth: the proposed action and a no action alternative. EA at 13, 55. It also briefly considered five additional alternatives: (1) no chemical, (2) native seed only, (3) natural fire only, (4) passive restoration, and (5) hand cutting only. Each of those was rejected for further analysis, and a rationale for each rejection was provided. *Id.* at 56-57.

BLM considered the following resource values as part of the affected environment: air quality; soil resources; rangeland, and forest and woodland vegetation; vegetative products; special status plants; non-native invasive and noxious species; fish and wildlife; migratory birds and raptors; special status animals, including greater sage grouse and pigmy rabbits; wetlands and riparian areas; floodplains; prime and unique farmlands; livestock grazing; recreation; wilderness; visual resource management; fuels; fire management; and climate change. EA at

[33] To the extent conditions on the ground do not conform to the BPS locations mapped by TNC, the EA specifies that "the error will be resolved and the percentages used to determine target acreages would be used to determine new acreages." *E.g.*, EA at 33.

61-82. BLM then considered environmental impacts from the restoration plan to those resource values, and determined there would be no significant adverse impacts that could not be reduced to insignificance by design features, monitoring, and adaptive management. EA at 85-108; FONSI at unp. 3, ¶ 5.

Relevant to WWP's concerns, the EA addressed potential impacts of the proposed action on soil resources, forest and woodland vegetation, special status species, wilderness, and fire and fuels management. EA at 85-89, 93, 97-104. The impacts of the no action alternative on these resource values were also made clear. *Id.* at 87, 88, 92, 93, 97, 103, and 104. BLM addressed the impacts of all of the treatment types to soil resources, and the long-term benefits if the action is taken. *Id.* at 85-87. With regard to livestock grazing, the EA stated that treatment areas would be rested "for a minimum of two years or until vegetation management objectives have been met . . . ," and that "[t]he rest period may be extended pending the rate of progress towards vegetative establishment." *Id.* at 95-96. With reference to special status animals, BLM stated that, with best management practices, timing stipulations, and the design features of treatments, individual animals could be "disturbed, displaced, or killed" during pinyon/juniper treatments, but overall impacts to special status species would be minimal. *Id.* at 93. In the long run, "[t]reatments are expected to improve habitat for greater sage-grouse, pygmy rabbits and other special status species by removing pinyon pine and juniper trees, increasing available sagebrush habitat, and increasing grass and forb production in sagebrush communities," whereas

> the increase of pinyon pine, juniper, and decadent sagebrush stands could result in large, uncontrolled wildfires that have the potential to eliminate large tracts of existing habitat for special status species. Additionally, the spread of pinyon pine and juniper trees on sagebrush communities potentially limits available strutting grounds, nesting and summer habitat, possibly resulting in a decline in local greater sage-grouse populations.

Id. As for wilderness areas, the EA noted that prescribed fire within a wilderness area can benefit the area if properly conducted. *Id.* at 97. BLM stated that treatments within the wilderness area "would be designed to be in full compliance with the applicable Wilderness Management plan"; "[t]reatment methods and design would be reviewed by the Ely District Wilderness Planner using a Minimum Requirement Decision Guide analysis to ensure the least amount of potential impact"; and "[s]pecific design features would be incorporated as the treatment design is finalized prior to implementation." *Id.* at 20.

With regard to cumulative impacts, BLM considered past actions (grazing, mining, recreation, hunting, fuels treatments (chainings and mowings), range

improvement projects, rights-of-way development, and wildfire), and present actions (wildfire management, mining, recreation, grazing, and hunting). EA at 105. Reasonably foreseeable future actions, BLM noted, include seven other watershed restoration projects that are in various stages of development; a travel management plan; a wilderness management plan for the Mount Grafton, South Egan Range, Far South Egans, and Highland Range Wilderness Areas; a groundwater development project including a proposed power line; and the Wilson Creek Wind Energy Facility, which would place "some of the 350 proposed wind energy turbines" in the nearby Lake Valley Watershed. *Id.* at 105-06. BLM concluded that cumulative impacts from the restoration projects will generally be positive, as the overall "ecological departure of a large landscape" will be decreased, and watersheds may move towards a more diverse, thriving ecology. *Id.* at 106-07. BLM acknowledged that "the primary cumulative impact to the watershed would be if cheatgrass increased the fire frequency regime and an increasing area was converted to cheatgrass monoculture." *Id.* at 107. It stated, however, that "design features of the Proposed Action should prevent fine fuel loads from cheatgrass and . . . [other] monocultures." *Id.*

In the FONSI, the Schell Field Manager determined that "the proposed action will not significantly affect the quality of the human environment, and that preparation of an EIS is not required." FONSI at unp. 4. In doing so, she found:

> The project will be beneficial to the environment overall by improving the health of the . . . Watershed through restoration of natural vegetative conditions and reducing the risk of catastrophic wildfire in the area. Vegetation and wildlife will be the primary beneficiaries of the action. Adverse impacts may include short term soil compaction from heavy equipment, hydrophobicity following severe prescribed fire, establishment of non-native or invasive vegetation following treatment, and short term impacts on visual resources. Design features of the proposed action ensure that no threshold of significance is approached. Beneficial impacts greatly outweigh the potential short term negative impacts.

Id. at unp. 2. The Field Manager further stated that while chaining and herbicidal treatments are sometimes controversial, all treatment methods "are well known and documented as successful tools for reducing fuel continuity and improving habitat conditions." *Id.* at unp. 3. She found that impacts from chaining and herbicides will be reduced to insignificance because the treatment design calls for leaving islands and creating a mosaic pattern to mitigate the visual imprint of chaining, and herbicidal treatments are designed "using criteria that will minimize any potential impacts." *Id.*

The Schell Field Manager approved the Watershed Restoration Plan by Decision dated October 20, 2011, finding, among other things, that habitat for wildlife will be increased in the long run, the threat of large-scale wildfires will be reduced in the area, and the project "will set the stage" for natural disturbance to be reintegrated into the ecosystem by moving its departure from a high FRCC 2 status "towards FRCC 1." Decision at 5. The Field Manager also noted that comments on the Preliminary EA were accepted through July 24, 2011, and addressed in an Appendix E to the EA.[34] *Id.* at 6.

Arguments

In its SOR, WWP first contends that BLM's DR/FONSI and its supporting EA violate NEPA by failing to report baseline inventories and accurate site-specific information and relying on flawed rangeland studies and computer modeling rather than site-specific baseline inventories; moreover, they fail to adequately consider adverse environmental outcomes. SOR at 3-4, 8. Specifically, WWP argues that FRCC methodology is flawed, computer models cannot substitute for site-specific inventories, and outcomes are admittedly uncertain; that BLM's "system of ever changing fuels models . . . obfuscates understanding of ecological systems" to justify habitat destruction, as the treatments destroy sagebrush and trees "in the name of saving them"; and the fuels projects are increasing fire risk by "spawning cheatgrass and other noxious weeds." *Id.* at 3, 5. In sum, WWP argues that BLM relies on flawed science: The purported restoration project is in fact "habitat destruction," because removing pinyon/juniper woodlands and other vegetation will adversely impact soils, wildland values, special species, wildlife, and wildfire. *Id.* at 3-8.

Second, WWP argues that BLM's EA failed to consider a reasonable range of alternatives because it failed to consider WWP's suggested alternative "focusing on passive restoration and selective hand cutting, with seeding sagebrush in crested wheatgrass wastelands and other provisions." SOR at 6. Third, WWP contends that BLM's cumulative impacts analysis is flawed, because it failed to adequately consider proposed geothermal, cyanide heap leaching, and other development projects in the Watershed. *Id.* at 2-3. Lastly, WWP argues that, for all the above reasons, BLM should have prepared an environmental impact statement (EIS) "that focuses on restoration – not intensive livestock degradation . . . ." *Id.* at 4, 8.

In response, BLM maintains that WWP "provides no evidence to show that BLM's studies and models are flawed," and its "bare assertion that the FRCC is not an appropriate tool to evaluate the vegetation condition in the Watershed is unsupport-

[34] In Appendix E, BLM responded to 211 separate comments, 191 of which were submitted by WWP. BLM's responses to WWP's comments encompass 35 pages of text. EA at 139-78. We address Appendix E in more detail *infra*.

ed." Response at 8-9. BLM argues that "the EA's range of alternatives was reasonable," and that "passive restoration" and "hand cutting," without additional treatment methods, would not adequately meet the purposes and need for the project. *Id.* at 7-8. BLM maintains that the EA adequately analyzed the project's impacts, including cumulative impacts, and that WWP has not met its burden to establish that an EIS is required. *Id.* at 4-6.

Analysis

Appellant's Burden to Show Error in the Decision

[1] An appellant bears the burden to affirmatively demonstrate error in the decision on appeal. *Powder River Basin Resource Council*, 183 IBLA 83, 89-90 (2012); *Great Basin Mine Watch*, 159 IBLA 325, 353 (2003); *Southern Utah Wilderness Alliance*, 158 IBLA 212, 219-20 (2003); *The Ecology Center*, 140 IBLA 269, 271 (1997); *United States v. De Fisher*, 92 IBLA 226, 227 (1986). Conclusory allegations, unsupported by evidence showing error, do not suffice. *See, e.g., Powder River Basin Resource Council*, 183 IBLA at 89-90; *J. W. Weaver*, 124 IBLA 29, 31 (1992); *Glanville Farms, Inc. v. BLM*, 122 IBLA 77, 85 (1992); *Shama Minerals*, 119 IBLA 152, 155 (1991), and cases cited. Nor is the requirement to affirmatively demonstrate error in the decision on appeal satisfied when an appellant "has merely reiterated the arguments considered by the [decisionmaker below], as if there were no decision . . . addressing those points." *In Re Mill Creek*, 121 IBLA 360, 361-62 (1991) (quoting *Shell Offshore, Inc.*, 116 IBLA 246, 250 (1990)). In such cases, BLM's decision properly may be affirmed in summary fashion. *Id.; Powder River Basin Resource Council*, 183 IBLA at 89-90; *In Re North Trail Timber Sale*, 169 IBLA 258, 261-62 (2006).

BLM's Decision is in Part Summarily Affirmed

In this particular case, BLM provided detailed responses to WWP's comments on the EA at Appendix E. In that Appendix, BLM answered, by numbered response, 191 comments made by WWP. We reviewed the first 100 numbered comments (nos. 21 through 121) and BLM answers in Appendix E. *See* EA at 121-60. With respect to those 100 numbered comments, BLM responded point by point to many of the specific challenges WWP voiced, including 6 comments by WWP pertaining to its cumulative impacts analysis, 5 comments pertaining to the range of alternatives, 50 comments pertaining to the potential for adverse impacts, 26 comments pertaining to protection of the livestock industry, and 18 comments pertaining to

flawed methodology.[35] Yet WWP has not acknowledged any of BLM's responses or pointed out why they are erroneous or inadequate. Where WWP continues to reiterate arguments before this Board that BLM satisfactorily addressed in Appendix E, we summarily affirm BLM.[36] Accordingly, we will not address in detail WWP's arguments that BLM failed to consider a reasonable range of alternatives, that BLM's cumulative impacts analysis is flawed, and that BLM failed to take into account potential adverse impacts, including livestock grazing and future development projects. *Powder Basin Resource Council*, 183 IBLA at 89-90; *Center for Native Ecosystems*, 182 IBLA 37, 50-51 (2012); *In Re North Trail Timber Sale*, 169 IBLA at 261-62.

WWP's Remaining Arguments Lack Merit

We find two areas that BLM did not clearly address in its comments. First we consider WWP's argument, advanced in myriad complaints, that BLM's watershed restoration analysis and plan is based on a fundamentally flawed methodology that relies too heavily on computer analysis based upon inadequate field data and biased assumptions, and fails to take into account the potential for unintended negative consequences. In essence, WWP argues that because outcomes are uncertain and negative outcomes may prevail, *no* action is better than *this* action, and its own reasonable proposal that BLM rejected is better than either.

[2] The expert opinion of BLM's technical experts is entitled to deference and will not be overturned except upon a showing that BLM acted arbitrarily and capriciously or contrary to law; or that, by a preponderance of the evidence, it erred as a matter of fact because its methodology was improper; or, although its methodology was proper, it relied on inappropriate or insufficient data, engaged in

[35] Some of WWP's numbered comments in Appendix E addressed more than one topic. Where that is the case, we counted each topic addressed within a comment as a "separate" comment. There were also occasions where BLM provided no direct response, answering with the word "Noted." With regard to the potential for adverse impacts, BLM's response was "Noted" in 10 out of 50 responses (20%); for flawed methodology, BLM responded with the word "Noted" 7 out of 18 times (over 33%).

[36] For example, in its SOR, WWP alleges that "woefully inadequate information on stand characteristics, tree age, location of unique or old growth and mature areas [of pinyon-juniper] are provided." Yet the EA requires BLM to "[a]void removal of pinyon pine and juniper displaying old-growth characteristics"; and BLM stated, in response to WWP's comment to "[p]lease conduct systematic baseline surveys for old growth pinyon/juniper and sagebrush," that "no prioritization has been made as of yet; this comment will be noted as treatments are selected for implementation." EA at 15, 155 (Appendix E, Comment 103).

erroneous calculations or analysis, or reached unjustified conclusions. *ANR Company, Inc.*, 182 IBLA 248, 261 n.11 (2012), citing *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 378 (1989); *Powder River Basin Resource Council*, 180 IBLA 32, 48 (2010); *Wyoming Outdoor Council*, 173 IBLA 226, 235 (2007) (citing *Fred E. Payne*, 159 IBLA 69, 77-78 (2003)). Conclusory allegations of error and/or a mere difference of expert opinion will not suffice to demonstrate that BLM erred, or otherwise justify reversing its determination. *Id.* Above all, the party "must show not just that the results of . . . [BLM's analysis and conclusions] *could be* in error, but that they *are* erroneous." *ANR Company, Inc.*, 182 IBLA at 261 n.11; *West Cow Creek Permittees v. BLM*, 142 IBLA 224, 238 (1998). The fact that an appellant has a differing opinion about likely environmental impacts or prefers that BLM take another course of action does not show that BLM violated the procedural requirements of NEPA. *Southern Utah Wilderness Alliance*, 182 IBLA 377, 386 (2012); *Biodiversity Conservation Alliance*, 174 IBLA 1, 13 (2008); *Wyoming Audubon*, 151 IBLA 42, 50 (1999); *San Juan Citizens Alliance*, 129 IBLA 1, 14 (1994).

WWP has not met its burden to show either legal or factual error with regard to BLM's technical expertise: WWP has voiced general, unsubstantiated *opinions* about BLM's technical analysis; it has not provided proof by a preponderance of the evidence that BLM's methodology was improper, or shown that the methodology, though proper, relied on inappropriate or insufficient data, engaged in erroneous calculations or analysis, or reached unjustified conclusions. Equally unfounded is WWP's allegation that BLM did not rely on site-specific inventories. Site-specific inventories are the foundation for both the rangeland health evaluation, *and* BLM's computer modeling and mapping systems. *See*, *e.g.,* n.21, pertaining to mapping protocols. WWP has not shown that BLM's methodology under Landfire mapping and modeling protocols, though complicated, is erroneous or legally insufficient.

[3] We next consider WWP's argument that BLM erred in failing to prepare an EIS.[37] Section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C) (2006), requires consideration of the potential environmental impacts of a proposed action in an EIS if that action is a "major Federal action[] significantly affecting the quality of the human environment." To determine whether an EIS is necessary, the agency may prepare an EA documenting its consideration of all relevant matters. 40 C.F.R. §§ 1501.3, 1501.4(c); *Oregon Chapter Sierra Club*, 176 IBLA 336, 346 (2009). The agency may go forward with the project if the analysis in the EA establishes that the project will not have a significant impact on the human environment or that any significant impact can be mitigated to insignificance. *Oregon Chapter Sierra Club*,

[37] BLM did not substantively respond to WWP's comments that an EIS was warranted because at the time the responses were made, BLM had not yet issued the DR/FONSI. *See, e.g.,* EA at 144, 145 (comments 35 and 45).

176 IBLA at 346; *cf. Utah Shared Access Alliance v. U.S. Forest Service*, 288 F.3d 1205, 1213 (10th Cir. 2002) (quoting *Committee to Preserve Boomer Lake Park v. Dept. of Transportation*, 4 F.3d 1543, 1554, n.9 (10th Cir. 1993) ("[O]ne of the principal purposes of an EA is to '[b]riefly provide sufficient evidence and analysis for determining whether to prepare an [EIS] or a [FONSI].'")). EAs are routinely tiered to EISs, land use plans, and conservation strategies, which bear upon the issues presented and the geography involved. *See*, *e.g.*, *Powder River Basin Resource Council*, 180 IBLA 1, 12 (2010); *Southern Utah Wilderness Alliance*, 127 IBLA 282, 286, 289 (1990).

A BLM decision to proceed with a proposed action, based on an EA tiered to a programmatic EIS, will be upheld as being in accord with section 102(2)(C) of NEPA where BLM has, considering all relevant matters of environmental concern, taken a hard look at the potentially significant environmental consequences of doing so, and its decision is supported by an administrative record that establishes that a careful review of environmental impacts has been made, all relevant areas of environmental concern have been identified, and BLM has made a convincing case that no significant impact that was not addressed will result, or that any such impact will be eliminated or reduced to insignificance by the adoption of appropriate mitigation measures. *Southern Utah Wilderness Alliance*, 182 IBLA at 386; *Powder River Basin Resource Council*, 180 IBLA at 47-48; *The Wilderness Workshop*, 175 IBLA 124, 132-33 (2008); *Wyoming Outdoor Council*, 173 IBLA at 235. A party challenging a BLM decision must show that it was premised on a clear error of law or demonstrable error of fact or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. *Harriet Natter*, 181 IBLA 72, 84 (2011); *Oregon Chapter Sierra Club*, 176 IBLA at 347; *The Wilderness Workshop*, 175 IBLA at 132-33.

Our review of the administrative record, set forth, *supra*, in the factual background, demonstrates that BLM's EA meets the above standard. BLM created a process that brought together many groups and individuals with pertinent knowledge and expertise to develop and analyze a project that would conserve and restore watersheds and fragile ecosystems. WWP has not met its burden to demonstrate, with objective proof, that BLM failed to consider a substantial environmental question of material significance to the proposed action, or has otherwise failed to abide by section 102(2)(C) of NEPA.

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 decision appealed from is affirmed, and WWP's petition for stay is denied as moot.

/s/
Christina S. Kalavritinos
Administrative Judge

I concur:

/s/
James F. Roberts
Administrative Judge