



ROSEBURG RESOURCES COMPANY ET AL.

186 IBLA 325

Decided November 23, 2015



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Office of Hearings and Appeals
Interior Board of Land Appeals
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IBLA 2015-161

Decided November 23, 2015

Appeal from a decision of the BLM denying a protest of the Rabbit Mountain Fire Safe Cow Decision Record. DOI-BLM-OR-RO50-2014-0004-EA.

Affirmed.

1. National Environmental Policy Act of 1969: Generally-- National Environmental Policy Act of 1969: Environmental Assessments

A decision to proceed with a proposed action based on an EA and FONSI will generally be affirmed if the record shows BLM considered all relevant matters of environmental concern, took a “hard look” at potential environmental impacts, and made a convincing case that no significant impact will result (or will be reduced to insignificance by appropriate mitigation measures). An appellant challenging that decision must demonstrate, with objective proof, that BLM failed to consider a substantial environmental question of material significance to the proposed action or otherwise violated NEPA.

2. National Environmental Policy Act of 1969: Generally
BLM is under no obligation to identify a project’s purpose and need until it releases a NEPA document for public comment. A preliminary statement of purpose and need in a letter, email, text message, or other non-environmental document is not binding on an agency. To bind BLM to a preliminary purpose and need statement contained in its solicitation for scoping comments, before development of even a draft NEPA document, would run counter to one of the essential purposes of the scoping process – to narrow the issues to receive in-depth treatment and determine the range of actions, alternatives, and impacts to be addressed.

3. National Environmental Policy Act of 1969: Generally

The purpose and need of a project drives the identification and choice of alternatives. BLM need only consider alternatives that will accomplish the project's intended purpose, are technically and economically feasible, and will avoid or minimize adverse environmental impacts.

4. National Environmental Policy Act of 1969: Generally

NEPA applies only to agency action, even if agency inaction has environmental consequences.

APPEARANCES: Dominic M. Carollo, Esq., Roseburg, Oregon, for Roseburg Resources Company et al., Steven Lydick, Field Manager, South River Field Office, Bureau of Land Management, Roseburg, Oregon for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE JACKSON

Roseburg Resources Company (RRC) and the American Forest Resources Council (AFRC) appeal from an April 27, 2015, decision of the Field Manager, South River [Oregon] Field Office, Bureau of Land Management (BLM), denying their protest of the Rabbit Mountain Fire Safe Cow Decision Record (DR). The DR was based on the Rabbit Mountain Fire [Late-Successional Reserve (LSR)] Recovery Environmental Assessment (EA), DOI-BLM-OR-R050-2014-0004-EA, and a finding of no significant impact (FONSI) that were prepared pursuant to rules implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2012).¹ See 40 C.F.R. §§ 1500.1-1518.4; 43 C.F.R. Part 46. For the reasons discussed below, we affirm BLM's decision.²

Background

The instant appeal arises from a series of wildfires that started on July 26, 2013. The Rabbit Mountain Fire burned 23,984 acres with burn severity ranging

¹ Appellants filed a timely statement of reasons (SOR). BLM responded to on Sept. 7, 2015 (Answer), which Appellants replied to on Sept. 28, 2015. Our resolution of this appeal was expedited pursuant to 43 C.F.R. § 4.416.

² The administrative record contains 34 documents that are arranged in chronological order and labeled as Exhibits 1 through 34 (e.g., the DR is Ex. 12, the FONSI is Ex. 13, and the EA is Ex. 19). Many of these documents may also be found at <http://www.blm.gov/or/districts/roseburg/plans> (last visited Sept. 21, 2015).

from low to high, of which 6,266 acres were public lands administered by BLM's South River Field Office (SRFO). *See* EA at 1. SRFO initiated a NEPA scoping process by letters dated November 22, 2013, and January 17, 2014, which identified the Project area as LSR affected by the Rabbit Mountain Fire. *See id.* at 6; Scoping Notice dated Jan. 17, 2014 (Ex. 29). SRFO stated it intended to address resulting conditions "that are hazardous to forest users and established infrastructure, created abnormally high levels of forest fuels, and inhibit attainment of late-successional habitat." Scoping Notice at 1.

AFRC responded to the Scoping Notice by asking BLM to "include the entire landscape in its analysis" and consider "salvaging and conducting restoration on every piece of affected land down to 10 acres in size." Ex. 26 (AFRC Scoping Comments) at 3. RRC responded by expressing its desire for "an aggressive, landscape-scale approach focused primarily on addressing safety and future large fire risks," recommending that the purpose and need statement "emphasize the importance of maximizing the scope and intensity of the project" to ensure that BLM "substantially reduce future fire effects throughout the fire area." Ex. 22 (RRC Scoping Comments) at 4, 5; *see id.* at 7-8.

BLM issued an EA and draft FONSI for public comment on October 14, 2014. *See* EA; Ex. 18 (Draft FONSI). The EA describes the purpose and need for action as including four elements: (1) roadside, railroad right-of-way, and quarry safety; (2) roadside fuels reduction; (3) habitat restoration; and (4) road decommissioning. *See* EA at 1-5. BLM analyzed two alternatives: a no action alternative plus a proposed action alternative addressing each identified element with specified project design features. *See id.* at 22-30. Its proposed action included safety treatments along 12.4 miles of road, above a railroad right-of-way, and around three quarries (524 acres), roadside fuel reduction activities on 98 acres, habitat restoration on 1,392 acres, and decommissioning 3.0 miles of road. *See id.* at 23-25. BLM found its proposed safety treatments and roadside fuel reduction "would lower the risk of roadside, human caused ignition by removing the fuels in the area most susceptible to human caused fires," adverse impacts from hazardous tree removal would be minimal, and that its proposed habitat restoration would move the area towards a "functional, interacting late-successional forest ecosystem." *Id.* at 53, 44. The EA analyzed potential impacts on the Northern Spotted Owl (NSO), its critical habitat, aquatic species, their habitat, water quality, soil productivity, slope stability, visual resources, and carbon emissions. *See id.* at 74-80,³ 93-98, 108-20.

³ BLM later consulted with the U.S. Fish and Wildlife Service, as required by the Endangered Species Act, which issued a Biological Opinion that concluded the "proposed action is not likely to jeopardize the continued existence of the [NSO] and is not likely to adversely modify spotted owl critical habitat." Ex. 13 (Biological Opinion dated March 11, 2015) at 83.

Appellants commented on the EA and draft FONSI. See Exs. 15 (RRC Comments), 16 (AFRC Comments). BLM responded to their comments in the Rabbit Mountain Fire Safe Cow DR and the Rabbit Mountain Fire Silvicultural Habitat Restoration DR that was issued on November 24, 2015 (Restoration DR).⁴ See DR at 8, 15-29 (Appendix B); Restoration DR at 5-6 (Appendix A). In responding to Appellants' request for salvaging "every piece of affected land down to ten acres in size," BLM stated it considered but eliminated such an alternative because it was "not in accordance with management direction from the Roseburg District ROD/RMP" and would not be "consistent with BLM policy objectives of maintaining the natural component of fire-created snags and downed wood, and creating landscape diversity through treatment of portions of the landscape." DR at 15 (citing EA at 2, 31).⁵ Moreover and in any event, "[l]andscape level fuels reduction was outside the purpose and need and scope of [the] project. Such an effort would most certainly have required an EIS, which would not allow the BLM to accomplish the critical hazard tree removal work that must be accomplished now." *Id.* at 16. BLM rejected developing an alternative that would alter snag and down wood retention guidelines because such a change would require approval by the Regional Ecosystem Office, which could not be realistically secured within a reasonable amount of time. See *Id.*

The DR here appealed authorized "continuing implementation of Alternative Two (EA, pp. 22-30), as was chosen in the [Restoration DR]." DR at 1; see *supra* note 3. It specified hazardous tree identification/felling in "roadside, railroad right-of-way, and quarry safety areas," totaling 75 acres (2.6 miles of road), and roadside fuel reduction activities on 20 acres (e.g., piling, burning, removing, and/or chipping felled trees). *Id.*; see *id.* at 2-3. BLM reasoned that implementing these actions would achieve identified EA objectives by "creating a safe environment by felling and removing dead hazard trees, above and below roads, above the railroad right-of-way, and adjacent to the quarries[and] providing access to manage future

⁴ BLM issued 2 DRs based on the EA. The one here on appeal, plus the Restoration DR that is found at http://www.blm.gov/or/districts/roseburg/plans/files/Rabbit_Mtn_Fire_Silv_Hab_Rest_DR_FINAL.pdf. The Restoration DR approved replanting roughly 1,000 acres of LSR, "which partially implements [the proposed action] described in the EA (pp. 22-30)." Restoration DR at 1. No one protested or appealed from the Restoration DR.

⁵ The above-referenced ROD/RMP is the 1995 Roseburg Record of Decision and Resource Management Plan (ROD/RMP), which was based on a 1994 final environmental impact statement (EIS) and is the applicable land use management plan for this area. See EA at 16-17.

wildfires by maintaining the ingress/egress onto BLM lands through roadside hazard tree removal and fuels reduction.” *Id.* at 4 (Decision Rationale, citing EA at 2).⁶

Appellants timely protested the DR and again claimed BLM should consider “one or more alternatives designed to reduce fuel loading and future fire risk across the landscape,” which was within the project scope identified in the Scoping Notice. Ex. 9 (Protest) at 2; *see id.* (“BLM arbitrarily limited its consideration to a single alternative focused solely on treating roadside and right-of-way areas, ignoring the fuel and fire risks present across the rest of the landscape within the project area.”). As they explained, their alternative for modifying “snag and downed wood retention guidelines in high and medium risk fire areas was targeted directly at the purpose and need described in the scoping notice.” *Id.* at 3. Appellants also disputed BLM’s claim that their alternative would require approval by the Regional Ecosystem Office (REO) and could not be timely accomplished. *See id.* (“The need for a concurrence or authorization from a federal agency for a potential federal action is not an excuse for eliminating a reasonable alternative from consideration.”). Although a landscape level fuel reduction project would require preparation of an environmental impact statement (EIS) and delay responding to the Rabbit Mountain Fire, Appellants claimed such was irrelevant because BLM was already required to prepare an EIS due to “significant environmental impacts resulting from BLM’s decision to not conduct any landscape level fuel reduction.” *Id.*

BLM denied their protest by decision dated April 27, 2015. *See* Ex. 8 (Decision). It admitted the “preliminary purpose and need” identified in the Scoping Notice “broadly considered managing current and future fuel loading” but asserted that as the project developed and was analyzed, its purpose and need was “refined,” identified in the EA, and “made available for public comment.” Decision at 5. BLM maintained that it properly identified the purpose and need in the EA. *Id.* at 4 (citing *City of Angoon v. Hodel*, 803 F.2d 1016, 1021 (9th Cir. 1986); *Powder River Basin Resource Council*, 183 IBLA 242, 248 (2013)). BLM therefore concluded that it considered a reasonable range of alternatives and properly rejected a landscape-level fuels reduction project alternative as being beyond the EA’s purpose and need. *See* Decision at 2-4. As BLM explained: “Landscape level fuels reduction in the LSR . . . would reduce the amount of coarse woody debris below adequate levels (ROD/RMP

⁶ SRFO also issued two other fire-related decisions: Rabbit Mountain Fire Suppression-Created Log Removal DR (removal of 230,000 board feet of logs within 50 feet of existing roads that were placed there during fire mop-up), which was categorically excluded from NEPA review by 516 DM 11.9(C)(2), DOI-BLM-OR-R050-2013-0008-CX (Oct. 23, 2013); and Rabbit Mountain Fire Emergency Stabilization, Rehabilitation and Restoration DR (erosion and sediment controls, drainage restoration, and reforestation), which were categorically excluded by 16 DM 22.9, DOI-BLM-OR-R050-2013-0001-CX (Dec. 20, 2013).

p. 30). Therefore, the land use allocations established by the ROD/RMP preclude the BLM from considering landscape level fuels reduction in the LSRs, and doing so would not be a reasonable alternative.” *Id.* at 3. Responding to Appellants’ argument that it was required to prepare an EIS because of the increased risk of a catastrophic fire if it did not do more than roadside fuels removal, BLM stated that fire risk “is speculative and cannot be reliably forecast,” whereas this project would, in fact, reduce the risk of a future fire. *Id.* at 6 (citing EA at 24-25).

Appellants timely appealed from the Decision,⁷ which is now ripe for our expedited review and resolution.

Discussion

Appellants characterize their appeal as being “about one fundamental issue,” the need for BLM to treat hazardous forest fuels following catastrophic wildfires in Southwestern Oregon. SOR at 2; *see id.* at 2-3 (“BLM’s failure to treat dangerous fuel conditions on its lands following catastrophic wildfire exposes RRC’s lands to unreasonable, unnecessary, and substantial risks of future catastrophic fires.”). They reiterate the same issues earlier raised in their comments on the EA and protest and contend that BLM violated NEPA by arbitrarily narrowing the purpose and need statement in the EA and by failing to develop an alternative that addresses “fuel loading across the landscape and the risk of future catastrophic wildfire” or prepare an EIS due to that failure (*i.e.*, “the significant adverse effects to the environment that are likely to result from BLM’s decision to not treat hazardous forest fuels within the Project area”). *Id.* at 10, 15. Appellants urge the Board to set aside and remand the DR and direct BLM to either “take a ‘hard look’ at an action alternative aimed at substantially reducing the amount of snags and down wood in the Project area” or prepare an EIS. *Id.* at 3; *see id.* at 15-24.

BLM urges the Board to dismiss this appeal, claiming Appellants lack standing because they have not sufficiently shown the DR is “substantially likely to cause injury to a legally cognizable of interest” held by them. Answer at 2 (citing 43 C.F.R. § 4.410); *see id.* at 4-7. BLM then defends the purpose and need identified in the EA, claiming it was the result of comments received and “in consideration of public safety.” *Id.* at 9. In any event, BLM states its action here “does not preclude or foreclose the BLM from addressing fuel loads outside of road prisms with future action, as NEPA does not require that the BLM address all facets of a problem at once.” *Id.*; *see also id.* at 22-25. As to its consideration of alternatives and rejection of those proposed by Appellants:

⁷ Appellants claim they are appealing the EA and FONSI, but only a decision can be appealed to this Board. *See* SOR at 1; 43 C.F.R. § 4.410(a); *Southern Utah Wilderness Alliance*, 122 IBLA 17, 20 (1992).

BLM considered a large range of factors in determining where and to what extent salvage was appropriate. Foremost among the considerations was expedited provision for the safety of the travelling public, including individuals working on private timberlands, and infrastructure within the fire perimeter [EA at 9-12]. Other factors considered internally and in the [EA] were objectives for the LSR land use allocation in providing late-successional and old-growth habitat [EA at 22-23], accessibility to many of the more severely burned areas [EA at 22], the cost and time that would be incurred with marginal return on the investments, the safety of Federal employees who would be engaged in the preparation of salvage sales, and risk management factors.

Answer at 17; *see id.* at 14-15, 18-20. BLM also responded to Appellants' claim that an EIS was required by its decision not to engage in landscape-wide fuels treatment by explaining that a failure to act is not a "federal action" and does not constitute an irreversible commitment of resources that will affect the environment. *Id.* at 21.

We first address BLM's motion to dismiss and then the merits of this appeal.

I. Appellants Have Standing to Pursue this Appeal.

Standing is governed by 43 C.F.R. § 4.410, which requires that an appellant be both a "party to a case" and "adversely affected" by the decision; an appeal must be dismissed if either of these elements is lacking. *See, e.g., Western Watersheds Project*, 185 IBLA 293, 298 (2015), and cases cited. It is undisputed that RRC and AFRC are parties to this case as they each responded to the Scoping Notice, commented on the EA, and protested the proposed DR. *See* 43 C.F.R. § 4.410(b). However, for them to meet the "adversely affected" criterion, they must also make colorable allegations of adverse effect, supported by specific facts, sufficient to establish a causal relationship between the approved action and the injury alleged. *See* 43 C.F.R. § 4.410(d) ("A party to a case is adversely affected, . . . when that party has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest."); *Coalition of Concerned National Park [Service] Retirees*, 165 IBLA 79, 81-82 (2005); *The Fund for Animals, Inc.*, 163 IBLA 172, 176 (2004); *Southern Utah Wilderness Alliance*, 127 IBLA 325, 327 (1993).

BLM questions RRC's standing, stating that its claim that BLM inaction will injure them is "speculative." Answer at 5. However, we find RRC has proffered sufficient facts to show it has a legally cognizable interest that is likely to be injured by the DR and decision on appeal. *See* SOR at 12-13 (citing declaration of RRC's Land and Timber Manager, Phil Adams). For example, Adams avers: "BLM's decision to not reduce fuels in medium and high stand damage areas presents a clear and present risk of injury to RRC's adjacent lands, the replanted tree seedlings, the soils and soil productivity and wildlife habitat." Adams Decl. at ¶ 12. His declaration is more

than adequate to present colorable allegations of adverse effect, supported by specific facts that establish a causal relationship between the action approved by BLM and the injury alleged by RRC.

Appellants assert that AFRC also has standing under the doctrine of representational standing. SOR at 13 n.2 (citing *Solomon River Concerned Citizens v. Robertson*, 32 F.3d 1346, 1352 n.10 (9th Cir. 1994)). For example, Tom Partin, AFRC President, avers that it will be adversely affected by BLM's decision to leave vast acres of dead trees and tons of fuel in the Project area because it would injure lands owned by an AFRC member, RRC. See Partin Decl. at ¶ 6. The Board recognizes that “for an organization to have a right of appeal, one or more of its members must have an interest in their own right that is or may be adversely affected by the decision.” *Coalition of Concerned National Park [Service] Retirees*, 165 IBLA at 86; see also *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 181 (2000) (“An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization’s purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.”). Because RRC has demonstrated that it may be adversely affected by the decision at issue, we conclude that AFRC also has standing to pursue this appeal.

II. *Appellants have not Carried their Burden to Show Error in the Decision on Appeal.*

[1] NEPA requires an EIS for any major Federal action significantly affecting the quality of the human environment. 42 U.S.C. § 4332(2)(C) (2012); 43 C.F.R. § 46.300. An agency may prepare an EA to determine whether an EIS is required for a proposed action. See 40 C.F.R. §§ 1501.4(b), 1508.9(a)(1). If an agency determines that an EIS is not required, it must issue a FONSI that briefly states the reasons why the proposed agency action will not have a significant impact on the human environment. See 40 C.F.R. §§ 1501.4(e), 1508.13; 43 C.F.R. § 46.325; *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 756-58 (2004). A decision to proceed with a proposed action based on an EA and FONSI will generally be affirmed if the record shows BLM considered all relevant matters of environmental concern, took a “hard look” at potential environmental impacts, and made a convincing case that no significant impact will result (or will be reduced to insignificance by appropriate mitigation measures); an appellant challenging that decision must demonstrate, with objective proof, that BLM failed to consider a substantial environmental question of material significance to the proposed action or otherwise violated NEPA. *Klamath Siskiyou Wildlands Center*, 157 IBLA 332, 337 (2002). To summarize:

A BLM decision to proceed with a proposed action based on an EA will be upheld as being in accord with section 102(2)(C) of NEPA,

42 U.S.C. § 4332(2)(C) (2006), where the record demonstrates that BLM has, considering all relevant matters of environmental concern, taken a “hard look” at potential environmental impacts, and made a convincing case that no significant impact will result or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. *Powder River Basin Resource Council*, 180 IBLA 1, 12 (2010), and cases cited. The Board is guided by a “rule of reason” in assessing an EA’s adequacy, and an appellant seeking to overcome a decision based on an EA carries the ultimate burden of demonstrating, with objective proof, that BLM failed to consider a substantial environmental question of material significance to the proposed action, or otherwise failed to comply with section 102(2)(C) of NEPA. *Bales Ranch, Inc.*, 151 IBLA 353, 357 (2000).

Birch Creek Ranch, 184 IBLA 307, 317 (2014).

Appellants claim BLM violated NEPA by narrowing the purpose and need for the Project when issuing the EA, which circumscribed its consideration of alternatives, and by failing to prepare an EIS in light of the significant environmental impacts likely to occur if BLM does not more broadly and comprehensively address the risk of wildfire in the area. We address each claim separately below.

A. *Appellants Have Not Demonstrated that BLM Improperly Narrowed the Purpose and Need for the Project.*

The NEPA scoping process is used to “determine the scope of the issues to be addressed and for identifying the significant issues related to a proposed action.” *Alaska Center for the Environment*, 189 F.3d 851, 859 (9th Cir. 1999). As later explained in *Kootenai Tribe v. Veneman*, 313 F.3d 1094 (9th Cir. 2002):

The primary purpose of the scoping period is to notify those who may be affected by a proposed government action which is governed by NEPA that the relevant entity is beginning the EIS process; this notice requirement ensures that interested parties are aware of and therefore are able to participate meaningfully in the entire EIS process, from start to finish. Other purposes of the scoping period include narrowing the issues to receive in-depth treatment in the EIS and determining the range of actions, alternatives, and impacts to be addressed in the EIS. Beyond providing adequate notice and beginning a meaningful dialogue with members of the public about a proposed action, the affirmative duties NEPA imposes on a government agency during the scoping period are limited. See 40 C.F.R. § 1501.7.

Id. at 1116-17 (citations omitted). BLM has discretion to define a proposed project's purpose and need, along with reasonable alternatives, which we review under a "rule of reason." *Cascadia Wildlands*, 184 IBLA 385, 408 (2014); *see Powder River Basin Res. Council*, 183 IBLA 242, 248 (2013); *Committee For Idaho's High Desert et al.*, 158 IBLA 322, 333-34 (2003); *see also Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 73 (D.C. Cir. 2011); *Nat'l Parks & Conservation Ass'n v. BLM*, 606 F.3d 1058, 1070 (9th Cir. 2010).

Appellants contend the purpose and need in the January 2014 Scoping Notice was "arbitrarily narrowed" when BLM issued the October 2014 EA and rejected their suggested alternatives. SOR at 15; *see id.* at 15-23. They claim BLM did so to avoid addressing "the true underlying purpose and need for the project, which is to reduce hazardous forest fuels to reduce the risk of future catastrophic wildfire" (or consider their proposed alternatives). *Id.* at 18.

The Scoping Notice is not a decision, proposed decision, or environmental document. Rather, it is an invitation to participate in a process that may lead to an EA or EIS. BLM stated it was considering actions "to address resource conditions resulting from the Rabbit Mountain Fire" and had preliminarily identified three needs: safety along roads, in a railroad right-of-way, and around quarries in LSR; habitat restoration for NSO; and "hazards caused by fuel loading." Scoping Notice at 1. BLM also cited ROD/RMP provisions for removing snags, logs, and trees "if they are a hazard to public safety" and for salvaging "if essential to reduce future risk of fire." *Id.* at 2. RRC responded by claiming it is imperative for BLM to "*substantially reduce future fire risks throughout the fire area*" and that it "broaden the scope, and include stronger objectives, into the statement of purpose and need." RRC Scoping Comments at 5 (emphasis added); *see id.* at 8 ("[If BLM] takes a hard look at a landscape-level purpose and need and holds itself accountable to strong objectives for success, it will conclude that widespread fuel reduction and salvage work and immediate reforestation must be undertaken to reduce the risk of future large scale fire from occurring in the area."); *see also* AFRC Scoping Comments at 3 (BLM should promptly salvage trees from "every piece of affected land down to 10 acres in size").

BLM stated the purpose and need for action in the EA and solicited public comment on that EA. *See* 43 C.F.R. § 46.310(a)(2) (an EA must briefly discuss the "need for the proposal"). BLM reiterated safety concerns for roads, rights-of-way, and quarries and clarified that its fuel loading concerns were focused on priority roadsides so as to "eliminate safety hazards, reduce fuel loading, [] provide access to manage future wildfires," clear escape routes, and improve the ability to contain wildfires by "maintaining access along roadways." EA at 4; *see id.* at 2-4. BLM

explained why it did not consider Appellants' suggestion that it engage in landscape-level salvaging and alter snag and down wood retention guidelines to reduce fire risk throughout the Project area. *See id.* at 31-34.

RRC responded in its EA comments by claiming BLM was bound by the Scoping Notice and that it was "arbitrary for BLM to try to redefine the purpose and need in the EA as reducing fuels *only along roads.*" RRC Comments at 4; *see also* AFRC Comments at 2. BLM responded to those comments in the DR: "Landscape level fuels reduction was outside the purpose and need and scope of this project. Such an effort would most certainly have required an EIS, which would not allow the BLM to accomplish the crucial hazard tree removal work that must be accomplished now." DR at 16. Moreover, it did not conform to the RMP and was "not consistent with BLM policy objectives of maintaining the natural component of fire-created snags and down wood." *Id.* at 15; *see id.* 22-23.

[2] We reject Appellants' claim that BLM is bound by the purpose and need statement in its Scoping Notice. BLM is under no obligation to identify a project's purpose and need until it releases an EA for public comment. *See* 43 C.F.R. § 46.310 (Contents of an environmental assessment); 40 C.F.R. § 1508.9(b). We are aware of no Board precedent or judicial decision finding a preliminary statement of purpose and need in a letter, email, text message, or other non-environmental document to be binding on an agency. BLM has considerable discretion in formulating its purpose and need statement, which it is free to change between draft and final NEPA documents. *See City of Carmel-by-the-Sea v. United States DOT*, 123 F.3d 1142, 1156 (9th Cir. 1997). To somehow bind BLM to a preliminary purpose and need statement contained in its solicitation for scoping comments, before development of even a draft EA, would run counter to one of the essential purposes of the scoping process – to "narrow[] the issues to receive in-depth treatment . . . and determine[e] the range of actions, alternatives, and impacts to be addressed." *Kootenai Tribe v. Veneman*, 314 F.3d at 1117.

Appellants do not contest the reasonableness of BLM acting to reduce roadside fuels, but contend it must do more (*i.e.*, act more broadly and aggressively to reduce the risk of fire on BLM-lands). Accumulated fuels from the Rabbit Mountain Fire may present an increased risk of fire, but the DR "does not preclude or foreclose the BLM from addressing fuel loads outside of road prisms with future action, as NEPA does not require that the BLM address all facets of a problem at once." EA at 23. According to BLM, a landscape-level fuels reduction project would require preparation of an EIS, which would delay its ability to act and address hazard trees along roads. Applying a "rule of reason" to these circumstances, we find BLM's focusing of its statement of purpose and need on near-term safety and roadside fuel reduction was reasonable and is supported by the record. *See e.g., Cascadia Wildlands*, 184 IBLA at 408; *Powder*

River Basin Res. Council, 183 IBLA at 248; *Theodore Roosevelt Conservation P'ship*, 661 F.3d at 73; *Nat'l Parks & Conservation Ass'n*, 606 F.3d at 1070.

B. *Appellants Have Not Demonstrated that BLM Failed to Consider a Reasonable Range of Alternatives.*

[3] Appellants contend BLM failed to consider a reasonable range of alternatives, under and as required by NEPA. An EA must include a brief discussion of appropriate alternatives. See 40 C.F.R. § 1508.9(b) (citing 42 U.S.C. § 4332(2)(E)); *S. Utah Wilderness Alliance*, 182 IBLA 377, 390 (2012), and cases cited. However, the purpose and need of a project drives the identification and choice of alternatives. See *Theodore Roosevelt Conservation P'ship*, 661 F.3d at 73 (“If the agency's objectives are reasonable, we will uphold the agency's selection of alternatives that are reasonable in light of those objectives.”); *City of Carmel–By-The-Sea v. U.S. Dep’t of Transp.*, 123 F.3d at 1155 (“The stated goal of a project necessarily dictates the range of reasonable alternatives.”); *Westlands Water Dist. v. U.S. Dep’t of Interior*, 376 F.3d 853, 868 (9th Cir. 2004) (an agency need only evaluate alternatives “reasonably related to the purposes of the project”). BLM need only consider alternatives that “will accomplish the project's intended purpose, are technically and economically feasible, and will avoid or minimize adverse environmental impacts.” *Cascadia Wildlands*, 184 IBLA at 409; see *Biodiversity Conservation Alliance*, 183 IBLA 97, 124 (2013). NEPA does not set a minimum number of alternatives, but it generally suffices for an agency to consider a no action and preferred action alternative in an EA, particularly if the proposed action will achieve environmental benefits. See *Earth Island Inst. v. United States Forest Serv.*, 697 F.3d 1010, 1022 (9th Cir. 2012).

BLM repeatedly explained why Appellants’ alternatives would not accomplish the project's intended purpose. In denying their protest, BLM reiterated that a landscape-level salvaging was “not needed to provide for the safe use of roads, the railroad right-of-way, or quarries in the burned area.” Decision at 2 (citing EA at 42-43, 50). BLM rejected their alternatives because they were “outside the scope of the EA,” did not “respond to the purpose and need of the project,” were “not consistent with BLM policy objectives of maintaining the natural component of fire-created snags and downed wood,” and could have required an EIS that would have delayed “critical hazard tree removal work that must be accomplished now.” Decision at 3 (citing EA at 2, 34 and DR at 15). We find no error in BLM refusing to give detailed consideration to the additional alternatives proposed by Appellants.

Appellants have a differing opinion on how BLM should manage the public lands, but they have not carried their burden to demonstrate that the purpose and need statement and range of alternatives addressed in its EA violated NEPA. *See, e.g., SUWA*, 152 IBLA 216, 224 (2000) (“The fact that a party may favor an alternative other than that adopted by BLM does not render the action taken by BLM erroneous.”). We therefore affirm the Decision and DR regarding the purpose and need statement and consideration of alternatives in the EA.

C. *Appellants Have Not Demonstrated that an EIS was Required.*

[4] Appellants claim BLM failed to analyze effects “stemming from BLM’s decision to not treat hazardous forest fuels.” SOR at 24. Put another way, they allege BLM violated NEPA by not preparing an EIS due to the environmental consequences of not doing what they wanted it to do. BLM correctly notes that NEPA applies only to agency action, even if inaction has environmental consequences. *See Answer* at 21, and cases cited; *Fund for Animals, Inc. v. Thomas*, 127 F.3d 80, 84 (D.C. Cir. 1997). Moreover, Appellants have not identified a substantial environmental question of material significance to the proposed action that BLM failed to address in its EA or any error made in the FONSI.

In sum, we affirm BLM’s denial of Appellants’ protest. We find the EA’s statement of purpose and need to be reasonable and that the EA considered a reasonable range of alternatives. We also find that BLM properly concluded that an EIS was not required in this case.

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.

_____/s/
James Jackson
Administrative Judge

I concur:

_____/s/
Amy Sosin
Administrative Judge