WILDLANDS DEFENSE

IBLA 2018-43
Decided April 26, 2018


Affirmed.

1. National Environmental Policy Act:
   Environmental Assessments

   The Board will uphold a BLM decision to proceed with a proposed action after completion of an environmental assessment and finding of no significant impact when the record demonstrates that BLM has considered 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. An appellant challenging such a decision must make an affirmative showing that BLM failed to consider a substantial environmental question of material significance. Mere differences of opinion between an appellant and BLM do not provide a basis for reversal.

2. National Environmental Policy Act:
   Environmental Assessments

   NEPA requires that an EA include a brief discussion of appropriate alternatives. NEPA does not require that an
agency consider a minimum number of alternatives, and it generally suffices for an agency to consider a no action and proposed action alternative in an EA, particularly if the proposed action will achieve environmental benefits. The fact that a party may favor an alternative other than that adopted by BLM does not render the action taken by BLM erroneous.


FLPMA requires BLM to manage the public lands in accordance with the land use plans BLM develops. A management action is in conformance with a land use plan where it is specifically provided for in the plan, or if not specifically mentioned, is clearly consistent with the terms, conditions, and decisions of the approved plan.


FLPMA directs that BLM manage public lands under the principle of multiple use, which is defined, in part, as managing public lands and their resources so that they are utilized in the combination that will best meet the present and future needs of the American people. FLPMA affords BLM significant discretion in managing public lands, and an appellant has the burden of showing that BLM did not engage in a reasoned and informed decision-making process that balanced competing resource values.


The broad language in FLPMA directing BLM to prevent unnecessary or undue degradation leaves BLM with a great deal of discretion in deciding how to achieve this objective. The Board has interpreted unnecessary or undue degradation to mean the occurrence of something more than the usual effects anticipated from appropriately mitigated development.

6. Migratory Bird Treaty Act

The Migratory Bird Treaty Act prohibits the taking or killing of any migratory bird. This prohibition is not
violated when a project may result in the destruction of habitat used by migratory birds.


OPINION BY ACTING DEPUTY CHIEF ADMINISTRATIVE JUDGE SOSIN

WildLands Defense appealed and petitioned for a stay of the effect of a November 17, 2017, decision issued by the Bureau of Land Management’s (BLM) Battle Mountain (Nevada) District Office. In that decision, BLM approved the District-wide Roadside Fuel Break Hazardous Fuels Reduction Project, authorizing the establishment and maintenance of fuel breaks along existing roads on a total of up to 30,000 acres of public lands within the Battle Mountain District, including lands in Lander, Eureka, Nye, and Esmeralda Counties, Nevada.¹

In its appeal, WildLands Defense makes numerous claims that in approving the project, BLM violated the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and the Migratory Bird Treaty Act (MBTA). As the appellant, WildLands Defense’s burden is to demonstrate that BLM erred in its analyses and conclusions. As explained in detail below, we conclude that WildLands Defense does not meet its burden. We find that BLM complied with NEPA by analyzing the potential impacts of the project and appropriate alternatives and concluding that the project would not have significant impacts. We also find that BLM complied with FLPMA because the project is consistent with the governing land use plans and complies with FLPMA’s directives to manage public lands under the principle of multiple use and to prevent unnecessary or undue degradation. Finally, we find that BLM did not violate the MBTA by approving a project that may adversely impact migratory bird habitat. We therefore affirm BLM’s decision approving the District-wide Roadside Fuel Break Hazardous Fuels Reduction Project.

BACKGROUND

The Roadside Fuel Break Hazardous Fuels Reduction Project
And WildLands Defense's Appeal

The project at issue in this appeal involves establishing and maintaining fuel breaks on lands managed by the Battle Mountain District Office, within the Shoshone-Eureka and Tonopah Planning Areas in Lander, Eureka, Nye, and Esmeralda Counties, Nevada. Under the project, BLM would create fuel breaks to reduce hazardous fuels and protect wildlife habitat and community infrastructure from high intensity, large scale wildfires. The fuel breaks would be created alongside existing roads on up to 30,000 acres of BLM-managed lands, using various treatment methods. Treatment methods include mowing/masticating/disking shrub and grass fuel types; thinning piñon-juniper stands; using herbicides and targeted grazing to reduce cheatgrass fine fuel loadings; and broadcast and drill seeding.

Fuel break treatments would be implemented in phases over multiple years, with approximately 500 to 3,000 acres treated annually, and would occur only on lands where hazardous fuels are present in quantities that create a moderate or high risk of wildfire. Treatments would also be designed to minimize impacts of the fuel breaks on important resources such as Wilderness Study Areas; wetlands, floodplains, and riparian areas; Greater sage-grouse, a BLM-designated sensitive species; and other special status species, threatened or endangered species, and migratory birds. For example, to protect Greater sage-grouse, no ground-disturbing activity would occur within four miles of active leks between 6 pm and 9 am, during March 1-May 15; in brood-rearing areas during May 15-September 15; and in winter habitat use areas during November 1-February 28. In addition, BLM would undertake field surveys for threatened and endangered species, special status species, and migratory birds prior to creating fuel breaks and either avoid occupied sites or delay implementation to accommodate the animals found. Further, treatments would be conducted in ways that avoid disturbance of nesting

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2 DR at 1.
3 EA at 15.
4 Id.
5 Id. at 3, 15-16; DR at 1.
6 EA at 19-21 (Design Features); DR at 5-7.
7 EA at 20; DR at 5-6.
8 DR at 6.
migratory birds, including conducting pre-clearance surveys, using disturbance buffers, and imposing seasonal activity restrictions.9

BLM prepared an environmental assessment (EA)10 to analyze the potential environmental impacts of the project and a no action alternative. BLM posted a draft EA on its national e-Planning website in March 2017 for a 30-day public comment period, and issued its final EA in November 2017.

BLM tiered the EA to the environmental impact statements (EISs) supporting the governing land-use plans: the 1986 Shoshone-Eureka Resource Management Plan (RMP), the 1997 Tonopah RMP, and the 2015 Nevada and Northeastern California Greater Sage-Grouse Approved RMP Amendment (GRSG Amendment), which amended the Shoshone-Eureka and Tonopah RMPs.11 BLM also tiered the EA to two programmatic EISs supporting decisions authorizing the use of herbicides on BLM lands in 17 western states.12

Based on the EA, and after determining that the project would not result in any significant impacts,13 BLM issued its November 17, 2017, decision authorizing implementation of the project. In the decision, the District Manager concluded that the project employed “all practicable means to avoid or minimize environmental harm,” and was consistent with the Tonopah RMP and Shoshone Eureka RMP, which govern BLM’s management of public lands within the Battle Mountain District.14 The District Manager also concluded that the project would not unnecessarily or unduly degrade the public lands.15 Consistent with BLM’s

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9 See EA 133-138.
10 DOI-BLM-NV-B000-2015-0002-EA.
11 See id. at 8. The GRSG Amendment is available at https://eplanning.blm.gov/epl-front-office/projects/lup/21152/63235/68484/NVCA_Approved_RMP_Amendment.pdf (last visited Apr. 13, 2018).
12 See EA at 54 (citing the 2007 Final Programmatic EIS for Vegetation Treatments Using Herbicides on BLM Lands in 17 Western States and the 2016 Final Programmatic EIS for Vegetation Treatments Using Aminopyralid, Fluroxypur, and Rimulfuron on BLM Lands in 17 Western States).
14 DR at 3.
15 Id.
regulations for wildfire management decisions, the District Manager made the
decision effective immediately.\textsuperscript{16}

WildLands Defense timely filed an appeal and a petition to stay the
effectiveness of BLM’s decision.\textsuperscript{17} On February 20, 2018, we denied the petition for
a stay.\textsuperscript{18} BLM filed an answer with the Board on February 26, 2018.

DISCUSSION

In its appeal, WildLands Defense alleges that in issuing its decision, BLM
violated NEPA,\textsuperscript{19} FLPMA,\textsuperscript{20} and the MBTA.\textsuperscript{21} We address these arguments below.

A. BLM Complied With NEPA

1. The Standard of Review and Burden of Proof for NEPA Challenges

\textsuperscript{[1]} NEPA requires Federal agencies to prepare an EIS evaluating the
potential environmental impacts of major Federal actions significantly affecting the
quality of the human environment.\textsuperscript{22} An agency may prepare an EA instead of an
EIS if it determines that a proposed action is not likely to cause significant
impacts.\textsuperscript{23} An EA is “a concise public document,” with a “level of detail and depth of
impact analysis . . . limited to the minimum needed to determine whether there
would be significant environmental effects.”\textsuperscript{24} An EA “is intended to be an overview
of environmental concerns, not an exhaustive study of all environmental issues
which the project raises.”\textsuperscript{25}

\begin{footnotesize}
\textsuperscript{16} \textit{Id.}; \textit{id.} at 7; 43 C.F.R. § 5003.1(b) (“\textit{[W]hen BLM determines that vegetation, soil,
or other resources on the public lands are at substantial risk of wildfire due to
drought, fuels buildup, or other reasons, or at immediate risk of erosion or other
damage due to wildfire, BLM may make a wildfire management decision . . .
effective immediately . . . ”).} \\
\textsuperscript{17} Notice of Appeal, Statement of Reasons, Appeal, Statement of Standing, Petition
for Stay (Dec. 18, 2017) (SOR). \\
\textsuperscript{18} \textit{WildLands Defense}, 192 IBLA 209 (2018). \\
\textsuperscript{19} 42 U.S.C. §§ 4321-4370h (2012). \\
\textsuperscript{20} 43 U.S.C. §§ 1701-1785 (2012). \\
\textsuperscript{21} 16 U.S.C. §§ 703-712 (2012). \\
\textsuperscript{22} 42 U.S.C. § 4332(2)(C) (2012). \\
\textsuperscript{23} 40 C.F.R. § 1508.9(a); 43 C.F.R. § 46.300. \\
\textsuperscript{24} 40 C.F.R. § 1508.9(a), (b); 43 C.F.R. § 46.310(a), (e). \\
\textsuperscript{25} \textit{Duna Vista Resorts}, 187 IBLA 32, 47 (2016) (citing, \textit{inter alia}, 40 C.F.R. § 1508.9; 
43 C.F.R. § 46.310(a)(4); \textit{Bales Ranch, Inc.}, 151 IBLA 353, 358 (2000)).
\end{footnotesize}
The Board is guided by a “rule of reason” in assessing an EA’s adequacy. The Board will uphold a BLM decision to proceed with a proposed action after completion of an EA and finding of no significant impact (FONSI) when the record demonstrates that BLM has considered 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.

In evaluating the potential impacts of a proposed action, BLM necessarily relies “on the professional opinion of its technical experts, concerning matters within the realm of their expertise.” The Board’s role, therefore, is not to decide if an EA “is based upon the best scientific data and methodology available . . . , but rather to determine whether BLM’s analysis . . . was reasonable and supported by evidence in the record.”

To succeed in a challenge to a BLM decision to approve an action analyzed in an EA, an appellant must make an “affirmative showing that BLM failed to consider a substantial environmental question of material significance,” and cannot simply “pick apart a record with alleged errors and disagreements[,]” Nor can an appellant succeed by making conclusory allegations, unsupported by evidence showing error. Mere differences of opinion between an appellant and BLM do not provide a basis for reversal.

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26 Center for Biological Diversity, 189 IBLA 117, 129 (2016); Western Watersheds Project, 188 IBLA 234, 239 (2016); Southern Utah Wilderness Alliance, 185 IBLA 150, 156 (2014); Bales Ranch, Inc., 151 IBLA at 358.

27 Center for Biological Diversity, 189 IBLA at 129; Western Watersheds Project, 188 IBLA at 238; Center for Native Ecosystems, 182 IBLA 37, 50 (2012); Wyoming Outdoor Council, 173 IBLA 226, 235 (2007).

28 Western Watersheds Project, 188 IBLA 250, 258 (2016).

29 American Motorcyclist Association, 188 IBLA 177, 193 (2016) (quoting Center for Biological Diversity, 181 IBLA 325, 341 (2012)).


2. WildLands Defense Does Not Show Error in BLM’s Compliance with NEPA

WildLands Defense argues that BLM’s decision violates NEPA in numerous respects. Although it is difficult to discern from its appeal the precise number of distinct arguments WildLands Defense asserts, its allegations logically fall into three arguments: (1) BLM failed to prepare an EIS; (2) BLM did not take a “hard look” at the environmental impacts of the project on various resources; and (3) BLM did not consider a reasonable range of alternatives.

a. BLM Did Not Err in Relying on an EA and FONSI

The Board will uphold a BLM decision to proceed with a proposed action after completion of an EA and FONSI when the record demonstrates that the project will not have a significant impact on the human environment or that any significant impact will be reduced to insignificance by the adoption of appropriate mitigation measures.\textsuperscript{33} Under the regulations implementing NEPA, significance is determined by considering both context (for example, the effects on the locale) and intensity (the severity of impacts).\textsuperscript{34} The regulations list several considerations important to the evaluation of intensity, including “[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial”; “[t]he degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks”; and “[w]hether . . . it is reasonable to anticipate a cumulatively significant impact on the environment.”\textsuperscript{35}

WildLands Defense first argues that BLM should have prepared an EIS instead of an EA because the impacts of the project, including cumulative impacts, are significant.\textsuperscript{36} WildLands Defense states that the project “will have significant ecosystem adverse effects over the short, mid, and long terms.”\textsuperscript{37} It lists numerous impacts that will result from the project and that it claims are significant, including the destruction of mature and old growth woody vegetation, an increase in “flammable weeds,” and the application of herbicides “in unknown quantities and combinations with high potential for drift.”\textsuperscript{38} WildLands Defense further argues that BLM did not “assess the inter-related cumulative and harmful impacts of the

\textsuperscript{33} Western Watersheds Project, 183 IBLA 297, 318-19 (2013); Center for Native Ecosystems, 182 IBLA at 50.
\textsuperscript{34} 40 C.F.R. § 1508.27 (definition of “significantly”).
\textsuperscript{35} Id. § 1508.27(b)(3), (4), (5), (7).
\textsuperscript{36} See SOR at 4, 6, 14, 21, 22.
\textsuperscript{37} Id. at 5.
\textsuperscript{38} Id.; see id. at 6 ("[T]he impacts are significant and warrant an EIS.").
drastic disturbance schemes to be imposed on wildlife, riparian areas, uplands, watersheds, or the general health of the public lands and their wilderness and other values across the project area in combination with other disturbance.”39

But while WildLands Defense asserts that impacts from the project will be many and significant, it does not support this assertion with any convincing argument or evidence. Nor does WildLands Defense show that BLM’s analysis or its conclusion that the impacts of the project would not be significant was in error. Indeed, throughout its appeal, WildLands Defense argues that the likely impacts of the project will be devastating. WildLands Defense states that the project will “destroy[]” sagebrush and piñon-juniper habitat, cause “massive” habitat fragmentation, and “extirpate” wildlife species from the public lands.40 WildLands Defense refers to scientific studies throughout its appeal, and alleges that BLM failed to use “current high quality science,”41 but it does not show any nexus between these studies and alleged impacts from the project.42 Simply referring to studies is insufficient to demonstrate that BLM erred in concluding that the impacts from the project would not be significant.

Further, it does not appear that WildLands Defense considered the scope of BLM’s decision – i.e., that the decision authorizes treatments only within 300 feet of existing roads where there are levels of hazardous fuels that constitute a moderate or high risk of wildfire – and the fact that the decision incorporates numerous design features to avoid or minimize adverse impacts to various resources.43 For example, WildLands Defense argues that the project will “make the lands more fire prone” rather than limiting the spread of wildfires.44 It asserts that removing vegetation will cause “the hot, dry, deforested and de-shrubbed lands [to] . . . dry out rapidly,” resulting in the invasion and spread of cheatgrass and a proliferation of “flammable fuels like cheatgrass.”45 Yet WildLands Defense offers no evidence to support its assertion that the project will result in the invasion and spread of cheatgrass, and does not acknowledge that BLM’s decision specifically requires the

39 Id. at 22.
40 Id. at 1, 2, 3.
41 Id. at 21.
42 See WildLands Defense, 188 IBLA at 74 (“Without providing the nexus between general information in studies and its relevance to site-specific impacts from the Proposed Project, appellant’s allegations . . . are no more than assertions of remote and highly speculative impacts . . . .”).
43 EA at 19-21 (Design Features); DR at 5-7.
44 SOR at 17.
45 Id. at 18.
use of herbicides and bio-pesticides to control cheatgrass and the reseeding of areas affected by other surface-disturbing treatments.\textsuperscript{46}

Other impacts that WildLands Defense predicts will occur from the project are equally vague and highly speculative. WildLands Defense states, for example, that the project will “increase human disturbance in many ways,” by “expanding existing roads and increasing access and disturbance (visibility, noise, poaching) harms to wildlife as the protective vegetative sagebrush and tree cover is stripped bare.”\textsuperscript{47} NEPA, however, does not require consideration of speculative impacts.\textsuperscript{48} And these unsupported allegations do not satisfy WildLands Defense’s burden to make an “affirmative showing that BLM failed to consider a substantial environmental question of material significance.”\textsuperscript{49}

Similarly, WildLands Defense does not support its assertions that BLM’s cumulative effects analysis was inadequate. The regulations implementing NEPA define cumulative impact as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.”\textsuperscript{50} Reasonably foreseeable future actions are those actions not yet undertaken, but sufficiently likely to occur; they do not include actions that are highly speculative or indefinite.\textsuperscript{51}

In the EA, BLM identified the past, present and reasonably foreseeable future actions it considered in its analysis, including oil and gas exploration, mining, and livestock grazing and range improvements.\textsuperscript{52} BLM determined that the cumulative effects on various resources – e.g., water quality, floodplains, wetlands and riparian areas; wilderness study areas; noxious weeds and invasive and non-native species; and wildlife, special status species, and migratory birds – would not be significant.\textsuperscript{53} For example, with respect to wildlife, special status species, and migratory birds, BLM concluded that the project “may result in short-term

\textsuperscript{46} See EA at 22-24; DR at 2, 5.
\textsuperscript{47} SOR at 4.
\textsuperscript{48} See, e.g., Save Medicine Lake Coalition, 156 IBLA 219, 244 (2002).
\textsuperscript{49} Arizona Zoological Society, 167 IBLA at 357-58 (quoting Bark (In Re Rusty Saw Timber Sale), 167 IBLA at 48).
\textsuperscript{50} 40 C.F.R. § 1508.7.
\textsuperscript{51} 43 C.F.R. § 46.30.
\textsuperscript{52} See EA at 154 (Table 4-2: Past, Present and Reasonably Foreseeable Future Actions).
\textsuperscript{53} See id. at 154-165.
negligible to minor localized impacts.” But because the project “would minimize the potential of a catastrophic fire occurrence, [it] would improve overall wildlife habitat within the Project Area.”

While WildLands Defense states that BLM did not consider the impacts of the project when combined with “BLM’s other management actions across the project area” and “other disturbance,” it does not identify with any specificity what other projects or disturbances BLM failed to consider or how BLM’s cumulative effects analysis is in error. At most, WildLands Defense simply lists other general activities that it asserts BLM did not consider in its analysis, including “existing treatments/facilities, a plethora of foreign huge mines tearing up the landscape, ... expanding motorized use ..., geothermal energy facilities ..., expanding oil and gas leasing and development, [and] mining activity ...” We have long held that to demonstrate a deficiency in BLM’s cumulative impacts analysis, “it is not sufficient merely to note the existence of other ... projects ... without concretely identifying the adverse impacts caused by such other ... projects to which the action being scrutinized will add.” Here, WildLands Defense’s bare assertions, without support, are insufficient to show any error in BLM’s cumulative effects analysis.

WildLands Defense also argues that BLM was required to prepare an EIS because the project is “highly controversial ...” It states that BLM failed to “examine a full range of scientific viewpoints and fully and fairly address scientific controversy over impacts” of the project. In particular, WildLands Defense states

54 *Id.* at 164.
55 *Id.* at 165.
56 See SOR at 22.
57 *Id.* at 2.
59 See Klamath Siskiyou Wildlands Center, 157 IBLA 332, 340 (2002) (appellant did not show BLM had failed to adequately consider cumulative effects because it did not show there was a “likely interaction between other projects and the proposed project which may result in enhanced or modified impact that BLM did not consider”’); Wyoming Outdoor Council, 147 IBLA 105, 109 (1998); Umpqua Watersheds, Inc., 158 IBLA 62, 73 (2000) (“[Appellant] has not submitted any independent analysis and supporting evidence demonstrating cumulative impacts which BLM overlooked, or the type, extent, and magnitude of impacts which BLM failed to appreciate.”).
60 SOR at 17; see id. at 18 (“The complexity of the actions alone shows the need for an EIS.”).
61 *Id.* at 5; *id.* at 7 (“[T]he EA has not ... resolved conflicts between opposing points of view.”).
that BLM did not address "significant controversy over sage-grouse habitats and treatments . . . "  

Whether there is controversy requiring the preparation of an EIS depends on the existence of a "scientific dispute about the size, nature, or effect of a proposed action." Under NEPA, controversy does not exist because people have concerns about a project. WildLands Defense cites to numerous scientific studies in its appeal, but it does not point to any data or results from any particular study to show that there is a scientific controversy about the effects of this project, or that BLM erred in its analysis. As we have stated, "[i]t is not sufficient to simply cite scientific literature, making no effort to establish the relevance of the material to the assessment of likely impacts" from the project. WildLands Defense's mere citation to studies and its unsupported assertions of scientific controversy are insufficient to establish that BLM erred in concluding that the project would not have any significant impacts on the human environment. "[I]n assessing environmental impacts, BLM relies upon the professional opinion of its technical experts, concerning matters within the realm of their expertise . . . ." WildLands Defense's attempt to refute BLM's analysis does not meet its burden of showing, "by a preponderance of the evidence, error in the data, methodology, analysis, or conclusion of the expert."  

For the same reasons we also reject WildLands Defense's argument that BLM was required to prepare an EIS because "substantial questions' exist concerning the environmental impacts" of the project and, because of this, the effects of the project are "highly uncertain." Again, WildLands Defense does not support its assertion or demonstrate why the anticipated impacts of the project are "highly uncertain" and therefore trigger the requirement for BLM to prepare an EIS. Its conclusory statements about the uncertainty of the project's effects do not

62 Id. at 8.
63 Wallace Forest Conservation Area Advisory Committee, 192 IBLA 108, 121 (2017) (citing Birch Creek Ranch, LLC, 184 IBLA 307, 326 (2014)).
64 Id.; Arizona Zoological Society, 167 IBLA at 357 ("[T]he term 'controversial' refers to cases 'where a substantial dispute exists as to the size, nature, or effect of a major Federal action rather than to the existence of opposition to a use.'") (quoting Rucker v. Willis, 484 F.2d 158, 162 (4th Cir. 1973)).
65 Oregon Natural Resources Defense Council (On Judicial Remand), 185 IBLA 59, 125 (2014).
66 Wyoming Outdoor Council, 173 IBLA at 235.
67 Id.
68 SOR at 21; id. at 17 ("There is large-scale uncertainty, and an EIS is essential.").
demonstrate that BLM improperly relied upon an EA and FONSI in making its decision.

b. BLM Took a Hard Look at the Impacts of the Project

Wildland Defense's next argument is that BLM failed to take a "hard look" at the impacts of the project to soils, native vegetation, Greater sage-grouse and other wildlife species and their habitat, water quality and quantity, wilderness values, and other natural and human resources and values. We have explained that taking a hard look means conducting "a thorough environmental analysis before concluding that no significant environmental impacts exist[]." and preparing a document that shows "the agency's thoughtful and probing reflection of the possible impacts associated with the proposed project." And as we noted above, WildLands Defense's burden is to demonstrate that BLM failed to consider a substantial environmental question of material significance; it cannot meet this burden simply by disagreeing with BLM's decision.

First, WildLands Defense repeatedly argues that BLM failed to take a hard look at the project's environmental impacts because it did not adequately describe the environmental baseline (current conditions). It states that BLM did not properly take into account the fact that the project's treatments will take place on public lands already "greatly threatened" by "periodic severe drought," "chronic high levels" of livestock grazing, "a plethora of foreign huge mines," geothermal facilities, transmission lines, oil and gas development, roads and off-road motorized vehicle use, agriculture, other vegetation treatment projects, and "predicted climate change effects." WildLands Defense focuses many of its complaints about BLM's failure to adequately describe baseline conditions on the EA's discussion of wildlife, arguing that the EA is flawed because it does not contain "site-specific surveys" to identify areas of occupied sage-grouse habitat; a "current analysis of the degree of existing [wildlife habitat] fragmentation"; or "vital data on historic" sage-grouse leks and population levels. Without this level of detailed baseline information, WildLands

69 Western Watersheds Project, 188 IBLA at 238 (quoting Native Ecosystems Council v. U.S. Forest Service, 428 F.3d 1233, 1239 (9th Cir. 2005) and Silverton Snowmobile Club v. U.S. Forest Service, 433 F.3d 772, 781 (10th Cir. 2006)).
70 Arizona Zoological Society, 167 IBLA at 357-58.
71 See, e.g., SOR at 16 ("BLM has not provided necessary site-specific baseline data and analysis of existing environmental conditions across this landscape.").
72 Id. at 2.
73 Id. at 2, 3, 14; see id. at 22-23 ("BLM has not even conducted baseline surveys to determine what special status wildlife species occur in the area, or their population levels.").

192 IBLA 395
Defense states that BLM “cannot have taken a ‘hard look’ at conditions . . . .”\textsuperscript{74} It also complains that BLM’s EA was deficient for failing to include detailed information about current livestock grazing practices.\textsuperscript{75}

Here, we find that the record shows that BLM appropriately considered the baseline conditions in its EA. The EA describes the project area’s current conditions with respect to air quality and climate change, cultural resources, water resources, human health and safety, noxious weeds and invasive exotic plants, wilderness, livestock grazing, existing land uses, recreation, socioeconomics, soils, vegetation and forestry, visual resources, wild horses and burros, and wildlife.\textsuperscript{76} With respect to wildlife, BLM described the species that reside in the project area, including big game; sensitive and threatened and endangered species; Greater sage-grouse; and migratory birds. For Greater sage-grouse, BLM discussed the sagebrush habitat within the project area that provides areas for leks, nesting, brood-rearing, and summer and winter habitation.\textsuperscript{77}

WildLands Defense is correct that BLM did not conduct surveys or undertake detailed analysis of habitat fragmentation or other existing conditions. But NEPA does not require this level of analysis in an EA; rather, NEPA requires that the analysis in an EA be “limited to the minimum needed to determine whether there would be significant environmental effects.”\textsuperscript{78} Contrary to WildLands Defense’s assertions, there is no requirement that an agency exhaustively detail baseline conditions before reaching a determination in an EA that a proposed action will not have significant impacts on the environment. In fact, the regulations implementing NEPA do not include any requirements regarding a discussion of baseline conditions in an EA,\textsuperscript{79} and specify that for an EIS, an agency need only “succinctly” describe the affected environment.\textsuperscript{80}

\textsuperscript{74} Id. at 16; see id. at 14 (stating the EA “is plagued by a failure to provide basic site-specific biological and ecological information necessary to understand all effects of the actions”).
\textsuperscript{75} Id. at 4, 6.
\textsuperscript{76} See EA at 34·125.
\textsuperscript{77} Id. at 119.
\textsuperscript{78} 40 C.F.R. § 1508.9(a), (b); 43 C.F.R. § 46.310(a), (e).
\textsuperscript{79} See 40 C.F.R. § 1508.9(a), (b).
\textsuperscript{80} 40 C.F.R. § 1502.15 (“Verbosedescriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.”); 43 C.F.R. § 46.415(a)(4) (an EIS must include a “brief description of the affected environment”).
We conclude that BLM fulfilled its obligation under NEPA by describing the current conditions in the EA, based on the information available at the time. WildLands Defense has provided no evidence showing that BLM's experts failed to adequately assess the likely impacts of the project, given baseline conditions, or that additional information on baseline conditions would have demonstrably altered BLM's analysis of likely impacts.

In addition to its arguments about the environmental baseline, WildLands Defense also makes numerous allegations that BLM's analysis in the EA failed to meet NEPA's "hard look" standard. WildLands Defense states that BLM did not "sufficiently address" the potential impacts of the project on various resources.\(^{81}\) For example, among other arguments, WildLands Defense states that the EA failed to examine adverse outcomes and risk (including combined and cumulative effects) of all proposed treatments to soils, microbiotic crusts, watersheds, water quantity, water quality, native biota, [and] native vegetation. There is serious risk of weed invasion and dominance, including amplified by climate change. . . . This will result in very significant adverse habitat and population impacts to native biota including important, rare, sensitive and candidate species including sage-grouse and pygmy rabbit, wild land areas and many other values.\(^ {82}\)

It also argues that

BLM failed to take a hard look at significant ecological concerns, including: Treatment method impacts and scale of existing land treatment and other projects (failed past treatments, ongoing or proposed treatments), important and sensitive species habitat occupancy, alteration and fragmentation; exotic species proliferation; impacts of livestock grazing on the health of the affected lands and on the aftermath of all this disturbance; the extreme levels of disturbance to soils, vegetation, cultural sites, wild lands and Wilderness from these actions; risk associated with the use of fire and herbicide in wild land settings; the short, mid and long-term impacts to habitats and populations of many native plant and animal species.\(^ {83}\)

\(^{81}\) SOR at 4; see id. at 5, 7, 10, 11, 21.
\(^{82}\) Id. at 7.
\(^{83}\) Id. at 21.
We find, however, that the EA demonstrates that BLM considered the likely impacts to the resources and values advanced by WildLands Defense. While WildLands Defense lists what it views as numerous deficiencies in the EA, it does not support any of its arguments, or demonstrate, based on scientific information, that BLM failed to consider a substantial environmental question of material significance or that BLM otherwise did not comply with NEPA. At most, WildLands Defense’s many complaints about the EA amount to disagreement with BLM’s decision, and “[m]ere differences of opinion provide no basis for reversal.”

Finally, besides asserting that BLM did not adequately assess the potential effects of the project on the lands and resources within the project area, WildLands Defense also argues that the EA does not meet the hard look standard because it is not sufficiently detailed. WildLands Defense states that BLM did not provide any “map of specific areas where treatments would be imposed . . . and no clarity on what specific actions would be imposed where,” and that the EA improperly “provides a near-programmatic analysis.”

It is true that the EA is programmatic in nature in that it does not specifically define the location of any of the treatments that will occur. But we find no error in this approach. BLM’s analysis was based on its identification of the project area within which the treatments would occur, and its determination that treatments would occur only within a prescribed distance from existing roads and where hazardous fuels levels were present in quantities that create a moderate or high risk of wildfire. WildLands Defense fails to identify any specific error or deficiency in BLM’s analysis in the EA based on its alleged lack of detail or that BLM did not analyze a substantial environmental question of material significance.

We therefore conclude that just as WildLands Defense did not support its arguments that BLM was required to prepare an EIS because the project’s impacts

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84 See EA at 29-32 (resources and issues considered for analysis), 35-44 (air quality), 44-47 (cultural resources), 48-52 (water resources), 52-57 (human health and safety), 57-60 (Native American traditional cultural resources), 61-68 (noxious weeds and invasive exotic plants), 68-71 (wilderness), 71-77 (grazing management), 80-82 (recreation), 84-91 (soils), 91-100 (vegetation and forestry), 100-02 (visual resources), 102-11 (wild horses and burros), 111-49 (wildlife, special status species, migratory birds, and BLM sensitive species), 153-65 (cumulative impacts).
85 Arizona Zoological Society, 167 IBLA at 357.
86 SOR at 2, 8.
87 EA at 3, 15-16; see id. at APP·203·04 (“Locations for treatments are chosen based on fuel loadings, current habitat priorities, known fire history, and other values at risk, all of which may vary”).
would be significant, it also does not support its arguments that BLM failed to fulfill its obligation under NEPA to take a hard look at the project’s anticipated impacts.

c. BLM Considered a Reasonable Range of Alternatives

[2] NEPA requires that an EA include a brief discussion of appropriate alternatives. The identification of appropriate alternatives is informed by BLM’s stated purpose and need for its proposed action. We review BLM’s purpose and need for a project and identification of alternatives under a “rule of reason”: if BLM’s purpose is reasonable, we will uphold BLM’s identification of alternatives if they are reasonable in light of that purpose. Moreover, NEPA does not require that an agency consider a minimum number of alternatives in an EA, and it generally suffices for an agency to consider a no action and proposed action alternative in an EA, particularly if the proposed action will achieve environmental benefits. “[T]he fact that a party may favor an alternative other than that adopted by BLM does not render the action taken by BLM erroneous.”

We find no error in BLM’s consideration of alternatives based on its stated purpose and need for the project. BLM identified the purpose and need for action as reducing fuels, protecting wildlife, and increasing suppression effectiveness. To meet this purpose and need, BLM considered the proposed and no action alternatives in the EA. BLM also considered, but did not analyze in detail, an

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88 See 40 C.F.R. § 1508.9(b); 43 C.F.R. § 46.310(a).
89 Western Watersheds Project, 191 IBLA 351, 357 (2017) (“The purpose and need of a proposal controls the selection of alternatives that BLM should analyze in the EA, because each alternative must meet the purpose and need for the proposal.”); Roseburg Resource Co., 186 IBLA 325, 336 (2015) (“[T]he purpose and need of a project drives the identification and choice of alternatives.”).
90 Roseburg Resource Co., 186 IBLA at 334: Southern Utah Wilderness Alliance, 182 IBLA 377, 390-91 (2012); see Grunewald v. Jarvis, 776 F.3d 898, 904 (D.C. Cir. 2015) (explaining that the court defers to the agency’s reasonable definitions of objectives, and if the objectives are reasonable, the court will uphold the selection of reasonable alternatives in light of the objectives).
91 Western Watersheds Project, 188 IBLA at 241; Randy L. Witham, 187 IBLA 298, 303 (2016); Roseburg Resource Company, 186 IBLA at 336 (citing Earth Island Inst. v. United States Forest Serv., 697 F.3d 1010, 1022 (9th Cir. 2012)).
92 Southern Utah Wilderness Alliance, 152 IBLA 216, 224 (2000).
93 EA at 3: id. at 5 (“The Proposed Action would help fulfill BLM’s multiple-use mandate to help protect, maintain and enhance resources in a sustainable way.”).
94 Id. at 15-26.
alternative that would have used broadcast prescribed burning as a primary means of reducing fuels and an alternative that would have used chaining.95

WildLands Defense alleges that BLM “refus[ed] to address restoration alternatives and a range of mitigation actions . . . .”96 It asserts that BLM “ignored analysis of alternatives to reduce disturbance across this landscape and heal understories . . . , and other actions to minimize disturbance to critical sage-grouse, pygmy rabbit and other habitats, and to limit cheatgrass risk and habitat fragmentation and loss.”97 For example, WildLands Defense states that BLM should have considered other, less impactful methods for reducing hazardous fuels, such as “selective and careful hand cutting/girdling, rest and more conservative livestock use to improve understories and habitat quality.”98

But an alternative focused on the restoration of habitat, as suggested by WildLands Defense, would not meet BLM’s purpose and need to reduce hazardous fuels and decrease the severity of future wildfires. And Wildlands Defense’s argument that BLM should have considered less impactful methods for reducing hazardous fuels does not satisfy its burden to show that BLM’s consideration of alternatives was unreasonable. Further, it is unclear what WildLands Defense intends by “range of mitigation actions,” particularly in light of the numerous best management practices and mitigation measures included in BLM’s decision. It is not sufficient for WildLands Defense to allege, without support, that BLM failed to consider such measures.99

We have long held that the fact that an appellant prefers that BLM take another substantive course of action does not show that BLM violated the procedural requirements of NEPA.100 WildLands Defense does not like BLM’s decision, but its preference for an alternative action does not show that BLM failed to consider an appropriate range of alternatives.101

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95 Id. at 26.
96 SOR at 6.
97 Id. at 17; see id. at 9 (“BLM has not analyzed alternatives that minimize disturbance to understories, microbiotic crusts, watersheds.”), 12 (“There is no range of mitigation and protection actions.”).
98 Id. at 9.
99 See, e.g., id. at 15 (“BLM failed to consider an adequate range of alternatives – rather th[aln just a single-minded path of destruction.”).
100 See, e.g., San Juan Citizens Alliance, 129 IBLA 1, 14 (1994).
101 See Southern Utah Wilderness Alliance, 152 IBLA at 224.
B. BLM Complied with FLPMA

WildLands Defense contends that BLM violated FLPMA in three ways. First, WildLands Defense argues that BLM violated FLPMA because the project does not conform to the governing land use plans – the Shoshone-Eureka and Tonopah RMPs. In particular, WildLands Defense asserts that the project does not conform to provisions in the RMPs requiring BLM “to conserve, maintain and restore sensitive species,” including the sage-grouse conservation priorities and mitigation measures adopted as part of the September 2015 GRSG Amendment, which amended the RMPs. Second, WildLands Defense states that BLM violated FLPMA because in authorizing the project, BLM failed to “balance competing resource values to ensure that public lands are managed under the ‘multiple use’ mandate” and in a way “that will best meet the present and future needs of the American people.” And third, WildLands Defense asserts that BLM violated FLPMA because the project will result in “undue degradation” of the public lands.

1. The Project Conforms with the Governing RMPs

[3] FLPMA requires BLM to “manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans” BLM develops. A management action is in conformance with a land use plan where it is “specifically provided for in the plan, or if not specifically mentioned, [is] . . . clearly consistent with the terms, conditions, and decisions of the approved plan . . . .”

WildLands Defense asserts that BLM has failed to comply with this directive because the project will not “conserve, maintain and restore” Greater sage-grouse, as directed by the applicable RMPs. For example, it states that because BLM did not quantify or describe “the availability, quantity and quality of sagebrush, woodland, wet meadow/riparian habitats that multiple wildlife species (including sensitive species and raptor) depend on . . . it cannot show that it is complying with its RMP mandates” with respect to sensitive species, including sage grouse.

102 SOR at 4, 9.
103 Id. at 20.
104 Id. at 19.
105 Id. at 20.
107 43 C.F.R. § 1601.0-5(b) (definition of “Conformity or conformance”).
108 SOR at 20.
109 Id.
But WildLands Defense does not establish that the project fails to conform to the RMPs. BLM is not required by the RMPs or the GRSG Amendment to avoid every adverse effect on sage grouse or its habitat; the fact that some of the treatments to be implemented will adversely affect individual sage grouse or specific areas of its habitat – as BLM disclosed in the EA – does not show that the project fails to conform to the applicable RMPs. In addition, BLM concluded in the EA that some of the treatments would provide direct benefits to sage-grouse, and that the project, in the long-term, would “benefit most wildlife species, including migratory birds and Special Status Species as fuel loads are reduced and patchy vegetation patterns are established.” Further, as part of its decision, BLM requires numerous best management practices, monitoring, and mitigation measures that are designed to protect sage grouse. BLM explained in the EA that these measures are consistent with the GRSG Amendment, which “identifies management decisions in order to conserve, enhance and restore GRSG habitat.”

WildLands Defense’s assertions that the project does not comply with the RMPs are conclusory and unsupported. WildLands Defense does not address the EA’s extensive discussions of the project’s potential impacts on Greater sage-grouse, or the best management practices and other measures required by BLM’s decision to protect Greater sage-grouse and its habitat.

In its EA, BLM explained how the project complied with the applicable RMPs and the GRSG Amendment, and that the RMPs specifically contemplate fuel breaks as a means of protecting Greater sage-grouse and its habitat. For example, the GRSG Amendment directs BLM to “[e]stablish and maintain fuel breaks to protect GRSG and its habitat to limit fire size and mitigate fire behavior to increase suppression effectiveness,” and, “[w]hen possible, [to] establish fuel breaks next to roads or other previously disturbed areas.” The GRSG Amendment also directs BLM to “[u]se a full range of fuels management strategies and tactics within

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110 See, e.g., EA at 131 (“[Greater Sage-grouse] and their habitats have the potential to be affected by project activities.”) (sagebrush mowing/mastication treatment method); 140 (acknowledging that the use of Imazapic or other herbicides could result in “temporary short-term displacement” of sage grouse) (herbicide treatment method).
111 Id. at 135 (“Targeted piñon-juniper removal is expected to benefit Greater Sage-Grouse populations because it has the potential to enhance sagebrush ecosystems by delaying piñon-juniper encroachment into sagebrush habitat.”).
112 Id. at 129.
113 See id. at 20-21.
114 Id. at 20.
115 GRSG Amendment at 2-20; EA at 9.

192 IBLA 402
acceptable risk levels across the range of GRSG habitat consistent with land use plan direction," including “prescribed fire and chemical, biological (including targeted grazing), and mechanical treatments.” 116 This is precisely what BLM did here. We find that WildLands Defense’s disagreement with BLM’s decision does not demonstrate that BLM violated FLPMA.

Finally, we note that WildLands Defense also asserts that BLM violated FLPMA because the RMPs are “outdated” and BLM therefore does not have a “modern” land use plan. 117 But we are not authorized to assess the adequacy of BLM’s land use plans, since that duty is assigned to the Director of BLM, who issues the final decision for the Department. 118 We have explained that “[b]ecause an RMP guides and controls future management actions and establishes management policy, its approval is subject only to protest to the Director of BLM, whose decision is final for the Department.” 119 Our review is limited to whether BLM’s action conformed to the governing plans. We therefore reject this argument.

2. The Project Does Not Violate FLPMA’s Multiple-Use Mandate

[4] FLPMA directs that BLM manage public lands under the principle of multiple use. 120 “Multiple use” is defined, in part, as managing public lands and their resources “so that they are utilized in the combination that will best meet the present and future needs of the American people.” 121 FLPMA’s multiple-use mandate affords BLM significant discretion in managing public lands. 122 “[T]he

116 GRSG Amendment at 2-21 (MD Fire 22 and MD Fire 25).
117 SOR at 3 (“There is no current balancing of uses, no current inventory of public lands, and no modern day balancing of resources.”).
118 43 C.F.R. § 1610.5-2(b) (“The decision of the Director [on a land use plan] shall be the final decision of the Department of the Interior.”).
121 *Id.* § 1702(c) (2012).
122 *See Klamath-Siskiyou Wildlands Center, 182 IBLA 293, 299 (2012) (“This Board has consistently construed the relevant provisions of FLPMA as granting BLM substantial discretion in the management of Federal timber lands.”); *Alan Winter,* 61 IBLA 299, 300 (1982) (FLPMA “provides BLM with considerable discretion and latitude in deciding the most appropriate uses for the land”); *A.C.O.T.S., 61 IBLA*
essence of the multiple use mandate is simply to require a choice regarding the appropriate balance to strike between competing resource uses, recognizing that not every possible use can take place on any given area of the public lands at any one time." An appellant that alleges that BLM failed to adhere to FLPMA's multiple-use mandate "has the burden of showing that BLM did not engage in a reasoned and informed decision-making process, which demonstrated how the agency balanced competing resource values in order to best meet the present and future needs of the American people." In this case, the record shows that BLM considered and weighed competing resource uses and values. In the EA, BLM stated that the purpose and need for its action "would help to fulfill BLM's multiple-use mandate to help protect, maintain and enhance resources in a sustainable way," and BLM identified the resources and values it considered, including wildland fires, sage grouse habitat, rangeland health and productivity, piñon-juniper woodland health, cultural resources, community infrastructure, wildlife habitat, and wild horse herd management areas. BLM considered impacts to all of the resources, and included design features, best management practices, and other measures designed to reduce impacts to resources. WildLands Defense takes issue with BLM's choice to implement the fuel break project, and would have preferred BLM not to take any action that could impact sage-grouse, its habitat, and other resources. But WildLands Defense's preference does not show that BLM's weighing of the resource values was unreasonable or that its choice among competing resource uses was in error.

166, 168 (1982) (BLM has "definite latitude and discretion" in implementing FLPMA's multiple-use mandate).
123 Bristlecone Alliance, 179 IBLA 51, 58 (2010) (quoting Rainer Huck, 168 IBLA at 400); see also Forest Guardians, 168 IBLA 323, 329 (2006) ("The 'multiple-use' mandate in FLPMA requires a choice of the appropriate balance to strike between competing resource uses, recognizing that not every possible use can take place fully on any given area of the public lands at any one time, often necessitating a trade-off between competing uses."); Friends of the Bow, 139 IBLA 141, 143-44 (1997) ("Multiple use necessitates a trade-off between competing uses . . . [and] does not dictate the choice or require that any one resource, or corresponding use, take precedence.")
124 New Mexico Wilderness Alliance, 186 IBLA 183, 192-93 (2015).
125 EA at 5.
126 See Bristlecone Alliance, 179 IBLA at 58 ("[G]eneral disagreements with the balance BLM chose is not sufficient to establish that the use of . . public lands [for a particular purpose] violated FLPMA's multiple use mandate.").
3. The Project Does Not Violate FLPMA’s Direction to Prevent Unnecessary or Undue Degradation

WildLands Defense argues that BLM’s decision to implement the fuel break project violates FLPMA’s direction requiring BLM to “take any action necessary to prevent unnecessary or undue degradation of the lands.”\(^{127}\) WildLands Defense states that BLM “cannot ensure undue degradation to the public lands and wildlife that depend on them will not occur.”\(^{128}\)

[5] Neither FLPMA nor its implementing regulations define the term “unnecessary or undue degradation” as it relates to the type of project at issue in this appeal.\(^{129}\) Federal courts have opined that the broad language in FLPMA directing BLM to prevent unnecessary or undue degradation “leaves [the] BLM a great deal of discretion in deciding how to achieve” this objective.\(^{130}\) And this Board has interpreted “unnecessary or undue degradation” to generally mean the occurrence of “something more than the usual effects anticipated” from appropriately mitigated development.\(^{131}\) In these types of situations, BLM’s decision will not be found to constitute unnecessary or undue degradation so long as its conclusions have a rational basis in the record.\(^{132}\)

Here, the action at issue is BLM’s decision to establish and maintain fuel breaks. In its decision, BLM requires numerous measures to be implemented for the very purpose of reducing adverse impacts to the environment. As we have already noted, many of these measures are designed to protect the Greater sage-grouse and its habitat.\(^{133}\) Other measures are designed to protect Wilderness Study Areas; the habitat of threatened and endangered species; wetlands, floodplains and

\(^{127}\) 43 U.S.C. § 1732(b) (2012); see SOR at 9, 15, 20.

\(^{128}\) SOR at 15.

\(^{129}\) See 43 C.F.R. § 3809.5 (defining “unnecessary or undue degradation” in the context of surface management of mining claims).


\(^{131}\) Biodiversity Conservation Alliance, 174 IBLA 1, 5-6 (2008).

\(^{132}\) Western Watersheds Project, 188 IBLA 234, 235 (2016); Intrepid Potash-New Mexico, LLC, 176 IBLA 110, 123 (2008) (“[W]e hold that if a BLM decision . . . has a rational basis, BLM has satisfied its obligations under section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (20[12]).”).

\(^{133}\) See EA at 20-21.
riparian areas; and cultural resources. Additional measures are designed to prevent the spread of cheatgrass and other invasive and non-native species.

We find that the record demonstrates that BLM had a rational basis for approving the project and thus satisfied its obligation under FLPMA to prevent unnecessary and undue degradation of the public lands. The EA demonstrates that BLM put in place measures to avoid or minimize adverse impacts from the project. Although WildLands Defense makes numerous allegations that the project will result in harm, none is supported by any evidence; nor do these allegations demonstrate that BLM’s decision violates FLPMA’s requirement to avoid unnecessary or undue degradation.

C. BLM Complied with the MBTA

[6] Finally, WildLands Defense argues that BLM’s decision authorizing the project violates the MBTA. The MBTA makes it unlawful “to pursue, hunt, take, capture, kill, attempt to take, capture, or kill . . . any migratory bird . . . .” WildLands Defense argues that the project violates the statute’s prohibition on take (or death) of migratory birds because it will destroy habitat used by migratory birds during migration, nesting, and wintering periods.

But this Board and Federal courts have held that habitat destruction that may lead indirectly to bird deaths does not result in a “take” within the meaning of the MBTA. We have explained that the basis for this conclusion stems from the

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134 Id. at 20-21.
135 Id.
136 See, e.g., SOR at 2 (“T[h]is project will greatly expand habitat fragmentation, and fast forward cheatgrass and other weed invasions into sage-grouse, pinyon jay and other sensitive, rare and imperiled species[’] habitats.”), 4 (“This sprawling vegetation destruction project will increase human disturbance in many ways . . . .”), 18 (“[The project] will expand flammable fuels like cheatgrass, and reduce and destroy the resiliency of the lands that suffer chronic grazing impacts as a result.”), 19 (“The deforested, crushed, potentially herbicided tree and sage sites will also be windier, and thus dry out quicker and be more prone to rapid spread of fire.”).
137 Id. at 10.
139 SOR at 10 (the project will “harm, harass, injure, kill and otherwise ‘take’ migratory birds”).
140 National Wildlife Federation, 126 IBLA 48, 66 (1993) (“This Board has held that implementing proposals which may effectuate modification or degradation of
difference between the MBTA's prohibition on take and that same prohibition in the Endangered Species Act. We have stated:

“But the differences between a ‘taking’ under ESA and MBTA are distinct and purposeful. ESA, enacted in 1973, included ‘harass’ and ‘harm’ in the definition. Pub. L. 93-205, § 3, 87 Stat. 885. Congress amended MBTA the following year, and did not modify its prohibitions to include ‘harm.’ Pub. L. 93-300, § 1, 88 Stat. 190. It is the ‘harm’ part of the definition that makes ‘significant habitat modification or degradation’ illegal. The court cannot do what Congress, and the Department of Interior, did not do. The statute and regulations intended to preserve an endangered or threatened species differ from those adopted pursuant to international treaties.”¹⁴¹

Because habitat destruction cannot result in the prohibited take of migratory birds under the MBTA, we reject WildLands Defense’s argument to the contrary.

Moreover, WildLands Defense does not support its assertion that habitat degradation resulting from implementation of the fuel break project will result in the death of any migratory birds. WildLands Defense states that the project will include “general deforestation and sagebrush destruction . . . during sensitive wintering, migration and even nesting period[s] for migratory birds and raptors.”¹⁴² But BLM’s decision includes measures to avoid disturbance of nesting migratory birds, including “clearance surveys, disturbance buffers, and seasonal activity restrictions.”¹⁴³ WildLands Defense offers no support for its assertions that

¹⁴¹ In Re Bar First Go Round Salvage Sale, 121 IBLA, 347, 351-52 (1991); see City of Sausalito v. O’Neill, 386 F.3d 1186, 1225 (9th Cir. 2004) (“[A]n unlawful ‘taking’ under the MBTA did not occur through ‘habitat destruction,’ even that which ‘led indirectly to bird deaths.’” (quoting Seattle Audubon Society v. Evans, 952 F.2d 297, 302 (9th Cir. 1991)).

¹⁴² In Re Bar First Go Round Salvage Sale, 121 IBLA at 351-52 (quoting Seattle Audubon Society v. Robertson, No. C89-160WD, at *29 (W.D. Wash. Mar. 7, 1991), vacated on other grounds, 931 F.2d 590 (9th Cir. 1991)).

¹⁴³ EA at 133 (sagebrush mowing/mastication); see id. at 136 (“BLM would conduct treatment activities outside of migratory bird nesting seasons wherever practicable.”) (piñon-juniper treatment): 138 (“Proposed treatments would occur after surveys are completed to confirm that no active nests (nests with eggs or young) are affected or are, otherwise, buffered outside of the treatment area per BLM avoidance protocols.”) (disking treatment).
migratory birds will be killed, particularly in light of the protective measures put in place by BLM's decision.

CONCLUSION

While WildLands Defense disagrees with BLM's decision to implement the District-wide Roadside Fuel Break Hazardous Fuels Reduction Project, it has not met its burden to show any error in BLM's decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,\textsuperscript{144} we affirm BLM's November 17, 2017, decision authorizing the District-wide Roadside Fuel Break Hazardous Fuels Reduction Project.

\hspace{1cm} /s/ \\
Amy B. Sosin \\
Acting Deputy Chief Administrative Judge

I concur:

\hspace{1cm} /s/ \\
James F. Roberts \\
Acting Chief Administrative Judge

\textsuperscript{144} 43 C.F.R. § 4.1.