WILDLANDS DEFENSE ET AL.

IBLA 2015-160 Decided July 5, 2018

Appeal from a decision of the Field Manager, Four Rivers Field Office (Idaho), Bureau of Land Management (BLM), approving the removal of an unauthorized development of soaking pools known as the Skinny Dipper Hot Springs. DOI-BLM-ID-2013-0025-EA.

Affirmed.


In evaluating the adequacy of an EA, we are guided by a rule of reason. A party challenging a BLM decision analyzed in an EA has the burden of demonstrating with objective evidence that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Conclusory allegations, unsupported by evidence showing error, and mere difference of opinion between the appellant and BLM do not provide a basis for reversal.


FLPMA's multiple-use mandate 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. BLM complies with this mandate when it engages in a reasoned and informed decision-making process, which demonstrates how it balanced competing resource values to
best meet the present and future needs of the American people.


In situations where FLPMA's directive to prevent unnecessary or undue degradation of the public lands has not been defined in the implementing regulations with respect to the type of action at issue, 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.

APPEARANCES: Katie Fite and Brian Ertz, Boise, Idaho, for Wildlands Defense; Brian E. Bothwell, Boise, Idaho, pro se; Antonio Bommarito, Boise, Idaho, for Growing Change; Scott W. Hulbert, Esq, Office of the Field Solicitor, U.S. Department of the Interior, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HAUGRUD

Wildlands Defense, Growing Change, and Brian E. Bothwell (Appellants), have appealed a decision dated April 24, 2015, issued by the Field Manager of the Four Rivers Field Office (Idaho) (Four Rivers FO), Bureau of Land Management (BLM). In its decision, BLM approved removal of the unauthorized development of soaking pools known as the Skinny Dipper Hot Springs (Hot Springs), as analyzed in an Environmental Assessment (EA) and accompanying Finding of No Significant Impact (FONSI). Appellants argue that BLM has failed to comply with the National Environmental Policy Act of 1969 (NEPA) and the Federal Land Policy and Management Act of 1976 (FLPMA). We conclude that Appellants have not demonstrated that BLM has violated either statute.

SUMMARY

Appellants first allege that BLM's EA is deficient in numerous respects, and that BLM's decision requires the preparation of an Environmental Impact Statement. A party challenging the adequacy of an EA has the burden of demonstrating with objective evidence that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Here, BLM's range of alternatives reflected its purpose and need to close and remove unauthorized soaking pools on public land that

1 DOI-BLM-ID-2013-0025-EA.
have been the cause of serious health, safety, and environmental concerns. The EA addresses all relevant environmental issues and supports BLM’s conclusion that closing and removing the soaking pools would not cause significant impacts on the environment, including those caused by the displacement of users to other sites. Appellants raise the specter that BLM’s action will create significant impacts, but they provide no evidence to support their claim or rebut BLM’s assessments. Because Appellants’ arguments are conclusory and unsupported, and constitute a mere difference of opinion, Appellants do not meet their burden to show error in BLM’s compliance with NEPA.

Appellants also have shown no violation of FLPMA. BLM is required under FLPMA to balance competing resource uses pursuant to the statute’s multiple use mandate, and to prevent unnecessary or undue degradation of public lands. BLM must also act consistently with the governing resource management plan (RMP), in this instance the Cascade RMP. Although Appellants assert that BLM violated each of these duties, the record reflects that BLM properly considered competing resource uses, acted consistently with the provisions of the Cascade RMP, and issued a decision that helps to prevent degradation of public lands. Because Appellants offer only unsubstantiated arguments that fail to show a violation of either FLPMA or NEPA, we affirm BLM’s decision.

BACKGROUND

A. Skinny Dipper Hot Springs

The Hot Springs consist of a group of four soaking pools that users have created over time by making impoundments of the spring-fed stream at the site using rock, soil, and concrete. The four pools increase in size as one moves downslope, with the upper pool accommodating only one or two persons and the largest approximately forty. The pools have been a popular soaking destination in Idaho for over two decades. The Hot Springs are located approximately 40 miles from Boise, Idaho, on the north side of the Banks-Lowman Highway, approximately 4 miles east of State Highway 55. Users access

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4 EA at 1. The Board has received the administrative record (AR) in paper copy and in a digital disc. The digital version includes Bates-stamped documents but has at least one inadvertent omission (i.e., page 2 of BLM’s Decision Record). This opinion in general cites to the page number of the referenced document, but footnotes citing to the “AR” refer to the Bates number of the digital version. The final EA is found in the AR at 159-181.

5 Id. at 8.

6 Id. at 1.

7 Id. at 1-2.
the Hot Springs via a steep, unauthorized trail. The water from the Hot Springs ultimately drains into the South Fork of the Payette River.

Because the natural water temperature is too hot for comfortable use, users constructed a plumbing system out of PVC piping that mixes hot and cold water. BLM never issued a permit or other authorization to any entity or individual to build permanent structures on these public lands.

Historically, use of the Hot Springs has occurred both day and night on a year-round basis. BLM estimates that daily use before 2012 ranged from 15-30 visitors daily with an estimated annual visitation of around 8,000-10,000 people. The Hot Springs received its moniker because swimsuit use is considered optional by users but, from BLM's observational data, only about half of users choose the no-swimsuit option.

The Hot Springs have been the site of "unsafe and often illegal activities," as documented in the 86 calls the Boise County Sheriff's Office received and responded to between May 2007 and March 2013. The calls have involved medical emergencies, two deaths, and numerous illegal activities, including complaints of sexual assault, shooting, under-aged drinking, illegal drug use, theft, and vandalism. The table below summarizes the dangerous or criminal behavior at the Hot Springs relayed to BLM from the Sheriff's Office:

<table>
<thead>
<tr>
<th>Law Enforcement Incidents (May 2007 – March 2013)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type of Activity</strong></td>
</tr>
<tr>
<td>Controlled Substance</td>
</tr>
<tr>
<td>Theft</td>
</tr>
<tr>
<td>Assault – Including Firearms</td>
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<tr>
<td>Vehicle Incidents</td>
</tr>
<tr>
<td>Medical – Includes Falls and Death</td>
</tr>
</tbody>
</table>

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8 Id. at 2.
9 Id.
10 Id. at 1.
11 Id.
12 Id. at 8.
13 Id.
14 Id.
15 Id.
16 Id. at 1.
17 Id.
In addition to these issues, in 2012 a human-caused fire originated at the Hot Springs. Also in 2012, the State's Central District Health Department (one of Idaho's seven public health districts), contacted BLM with concerns about sewage disposal at the Hot Springs. The state agency "noticed the large volume of users at this site both day and night without a convenient port-a-potty or vault privy to use." BLM found a makeshift toilet inside a burned-out tree approximately 300 feet east of the Hot Springs.

On May 25, 2012, BLM's Boise District Office enacted a temporary nighttime closure of the Hot Springs to try to reduce the number of law enforcement incidents and health and safety concerns. BLM attempted to enforce the closure, issuing 44 citations for closure violations between May 2012 and March 2013. Even with this enforcement, BLM found that law enforcement incidents continued to occur. The temporary nighttime closure ended in March 2013. The area around the Hot Springs was also closed to all human use for three months during the spring of 2013 due to public safety concerns of rock fall and landslide potential from the effects of the fire the previous summer.

B. BLM's Decision to Close Skinny Dipper Hot Springs

In 2013, having determined that the unauthorized pool development was creating serious health and safety issues, BLM proposed to remove the development and close the surrounding area for a period of five years to allow for rehabilitation of the site.

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18 Id. at 10.
19 Id. at 1; see also AR at 361-362 (e-mail dated Apr. 19, 2012, from Senior Environmental Health Specialist Fortunati to BLM expressing sanitation concerns based on site visit).
20 EA at 1.
21 Id.
22 Id.
23 Id.
24 Id.
25 Id.
26 Id. at 8.
As one of its initial steps in the decision-making process, BLM conducted two site inspections on March 1 and 14, 2013. During the site inspections, the inspection team assessed several possible actions but concluded that they were not feasible. In particular, the team determined that complete removal of all manmade materials could not be safely done because of the steep, rocky terrain; that helicopter removal of the piping and concrete could not be done safely; that the geology and topography of the site would not allow the construction of a vault toilet; and that the distance from the main road would make pumping a portable toilet unfeasible.

In June 2013, BLM began preparation of an EA to assist in its decision-making. To determine the issues of most concern to the public, BLM initiated public scoping in June 2013 by contacting known users of the Skinny Dipper Hot Springs. BLM then held a series of meetings on the proposed removal and closure, beginning with a meeting on July 8, 2013, with citizens who had expressed concern with the proposal. BLM next briefed staff of the Boise County Commission on July 16, 2013. BLM then hosted two public scoping meetings, the first in Boise on July 17, 2013, and the second in Crouch, Idaho, on July 18, 2013. BLM also consulted with the Shoshone-Paiute Tribes and conferred with the Bureau of Reclamation, Boise County Sheriff, and Boise County Commissioners.

BLM received a total of 39 comments through its scoping efforts. The comments consisted of opinion statements and possible alternative actions for BLM to consider. The Shoshone-Paiute Tribes supported the removal of the PVC piping and soaking pools. The alternatives submitted by proponents of the Hot Springs included: issuing a permit to authorize the development; creating a fee area; increasing law enforcement; providing a toilet and dumpster; reinstating the night time closure; establishing a fee parking area; installing lights in the parking area; placing “boots” on vehicles parked at night; increasing closure fines; making trail improvements; and improving the piping system by removal of unused piping, replacement of white piping with black piping, and simplifying the plumbing system.

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27 Id. at 4.
28 Id.
29 Id. at 2.
30 Id.
31 Id.
32 Id.
33 Id. at 16.
34 Id. at 3.
35 Id.
36 Id. at 17
37 Id. at 5, Table 2.

193 IBLA 64
BLM considered the suggested alternatives and determined that none of them, other than the suggestion to issue a permit, would accomplish the identified need to end the trespass. Each non-permit suggestion instead assumed BLM would continue to condone the use of the unauthorized pool and trail development, albeit with conditions or restrictions, and not bring the use into regulatory compliance. Because the non-permit alternatives did not meet the purpose and need of ending the unauthorized development of the Hot Springs, BLM did not analyze those alternatives in detail.

With respect to the permit proposal, BLM noted that it had not received an application for a permit or even a detailed proposal that would explain how a potential permittee would address the environmental, water rights, health, and safety issues associated with ongoing use of the trail and hot springs. Accordingly, BLM did not analyze permitting the trespass as a detailed alternative.

BLM analyzed two alternatives in detail in its EA: (1) a no action alternative that would continue the present use and management of the area; and (2) the proposed action. The proposed action included the following components:

- Drain and render inoperable the unauthorized soaking pools.
- Dismantle and remove surface piping in the same location. All accessible water pipes that are cemented into the bedrock would be removed or plugged.
- Remove the seat and accumulated human waste from the tree-snag latrine.
- Remove and rehabilitate the access trail that leads from the Banks-Loman Highway to the hot springs. The trail would be re-contoured and re-vegetated with forb and grass species known to grow on the site. Fire-killed trees would be felled across the rehabilitated trail to discourage use and to stabilize the site during re-vegetation. Waterbars would be constructed across the slope to divert water away from the rehabilitated trail.
- Close the area for five years after completion to facilitate trail and hot springs rehabilitation.
The EA assessed the direct, indirect and cumulative impacts of each alternative on a variety of resources, including vegetation, water quality, wildlife, fisheries, and recreation.\(^{43}\) On April 24, 2015, after completion of the EA, BLM’s Four Rivers Field Manager issued a FONSI\(^{44}\) and a Final Decision Record approving implementation of the Proposed Action.\(^{45}\) In his decision, the Field Manager explained that the unauthorized use has created “an environment where unsafe and often illegal activities occur during both day and night,”\(^{46}\) and that the governing Cascade RMP sets out a policy to “identify, abate, and prevent unauthorized use of public lands.”\(^{47}\) The Field Manager concluded that implementing the proposed action would implement BLM policy both by providing for public health and safety and by abating an unauthorized use of public lands.\(^{48}\)

On May 28, 2015, Appellants filed a Notice of Appeal, Statement of Reasons, and Petition for Stay. On July 6, 2015, the Board denied Appellants’ Petition for Stay. In doing so, the Board concluded that Appellants had standing to maintain their appeal but had not carried their burden to demonstrate that the public interest favored granting a stay.\(^{49}\)

DISCUSSION

Appellants raise a potpourri of overlapping arguments in their challenge to BLM’s decision. They allege that BLM violated NEPA and FLPMA in a variety of ways, most fundamentally by ignoring or not understanding the adverse environmental and socio-economic impacts that Appellants believe will occur with the closing of Skinny Dipper Hot Springs.

In analyzing these allegations, the Board will affirm a BLM decision made in the exercise of its discretionary authority when that decision has a rational basis that is supported by facts in the record.\(^{50}\) An appellant has the burden to show that BLM committed an error of law or a material error in its factual analysis, or that BLM’s

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\(^{43}\) *Id.* at 5-15.

\(^{44}\) AR at 196-97.

\(^{45}\) Decision Record (Apr. 24, 2015).

\(^{46}\) *Id.* at 2.

\(^{47}\) *Id.* (quoting BLM Cascade RMP at 44 (July 1, 1988)(The identically worded proposed plan is available at https://eplanning.blm.gov/epl-front-office/projects/lup/35606/41979/44480/Cascade_PRMP_FEIS_1988_Part_I.pdf.)).

\(^{48}\) *Id.* at 2-3 (citing the Cascade RMP and BLM’s unauthorized use regulations, 43 C.F.R. § 2920.1-2).

\(^{49}\) Order Denying Petition for Stay at 2-4 (addressing standing) and 5-6 (addressing public interest criterion).

\(^{50}\) *Hawkwood Energy Agent Corp.*, 189 IBLA 164, 167 (2017).
decision is not supported by a record showing that BLM gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made.\textsuperscript{51} This burden is not satisfied by mere expressions of disagreement with BLM's analysis and conclusions.\textsuperscript{52}

Although Appellants vociferously disagree with BLM's decision, they offer no evidence that BLM's factual assessments are wrong, that BLM has ignored relevant factors, or that BLM's reasoning is without rational basis. Accordingly, for the reasons discussed below, we find that Appellants have not met their burden of proof to establish any error in BLM's decision.

A. \textit{Appellants Have Not Demonstrated that BLM Violated NEPA}

Throughout their statement of reasons, Appellants assert numerous violations of NEPA. Piecing the various contentions together, Appellants' arguments can be sorted into five major contentions: (1) BLM used an overly narrow, and inadequately justified, purpose and need statement that unlawfully constrained the alternatives considered; (2) BLM failed to analyze a reasonable range of alternatives; (3) BLM failed to take a hard look at the direct, indirect, and cumulative effects of the proposed action, in part because of inadequate baseline information; (4) BLM's FONSI was not supported by the EA and other evidence before the agency; and (5) BLM erred procedurally in developing its EA. After setting out the standard of review, each of these allegations will be addressed \textit{seriatim}. We conclude that BLM complied with its NEPA obligations.

1. \textit{Standard of Review Governing Challenges to Environmental Assessments under NEPA}

NEPA requires federal agencies to prepare an environmental impact statement (EIS) evaluating the potential environmental impacts of major Federal actions significantly affecting the quality of the human environment.\textsuperscript{53} Agencies may prepare an EA to determine whether an EIS is required or to aid the agency's decision-making when an EIS is not necessary.\textsuperscript{54} An EA is a "concise public document" that includes a brief discussion of the need for the proposed action, alternatives to the action, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted during the preparation of the EA.\textsuperscript{55} The level of detail and depth of impact analysis in an EA is appropriately limited to the minimum needed to determine

\begin{itemize}
  \item \textsuperscript{51} \textit{Id.}
  \item \textsuperscript{52} \textit{Id.} at 168.
  \item \textsuperscript{53} 42 U.S.C. § 4332(2)(C) (2012).
  \item \textsuperscript{54} 40 C.F.R. § 1508.9(a); 43 C.F.R. § 46.300.
  \item \textsuperscript{55} 40 C.F.R. § 1508.9(a), (b); 43 C.F.R. § 46.310(a).
\end{itemize}
whether there would be significant environmental impacts from the proposed action.\textsuperscript{56} An EA “is intended to be an overview of environmental concerns, not an exhaustive study of all environmental issues which the project raises.”\textsuperscript{57} An EA may lead to the preparation of an EIS or conclude with a FONSI.\textsuperscript{58}

[1] The Board is guided by a “rule of reason” in assessing an EA’s adequacy.\textsuperscript{59} The Board will find an EA adequate if 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.\textsuperscript{60}

An appellant challenging the adequacy of an EA has the burden of demonstrating with objective evidence that the assessment is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action.\textsuperscript{61} It is “not enough to speculate and assert a desire for more information without connecting those allegations to an affirmative showing that BLM failed to consider a substantial environmental question of material significance.”\textsuperscript{62} The 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[.]”\textsuperscript{63} Mere differences of opinion between the appellant and BLM do not provide a basis for reversal.\textsuperscript{64}

\begin{itemize}
\item \textsuperscript{56} 43 C.F.R. § 46.310(e).
\item \textsuperscript{57} Duna Vista Resorts, 187 IBLA 43, 47 (2016) (citing, \textit{inter alia}, 40 C.F.R. § 1508.9; 43 C.F.R. § 46.310(a)(4); Bales Ranch, Inc., 151 IBLA 353, 358 (2000)).
\item \textsuperscript{58} 40 C.F.R. § 1508.13; 43 C.F.R. § 46.325.
\item \textsuperscript{59} Western Watersheds Project, 188 IBLA 234, 239 (2016) (hereinafter Western Watersheds Project I); Center for Biological Diversity, 189 IBLA 117, 129 (2016); Southern Utah Wilderness Alliance, 185 IBLA 150, 156 (2014); Bales Ranch, Inc., 151 IBLA at 358.
\item \textsuperscript{60} Western Watersheds Project I, 188 IBLA at 238; Center for Biological Diversity, 189 IBLA at 129; Center for Native Ecosystems, 182 IBLA 37, 50 (2012); Wyoming Outdoor Council, 173 IBLA 226, 235 (2007).
\item \textsuperscript{61} Center for Biological Diversity, 189 IBLA at 129; Western Watersheds Project I, 188 IBLA at 239; Wildlands Defense, 188 IBLA 68, 70-71 (2016); Bales Ranch, Inc., 151 IBLA at 357.
\item \textsuperscript{62} Faulkner v. BLM, 164 IBLA 204, 209 (2004).
\item \textsuperscript{63} Arizona Zoological Society, 167 IBLA 347, 357-58 (2006) (quoting Bark (In Re Rusty Saw Timber Sale), 167 IBLA 48, 76 (2005); In re Stratton Hog Timber Sale, 160 IBLA 329, 332 (2004)).
\item \textsuperscript{64} Bark, 167 IBLA at 76.
\end{itemize}
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 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.

2. BLM Properly Defined the Purpose and Need for its Proposed Action

Appellants first contest BLM’s statement of the purpose and need for the proposed action. BLM defined the purpose and need in terms of addressing the unauthorized development and use of the soaking pools:

The purpose of this proposal is to address the unauthorized development of soaking pools at the Skinny Dipper Hot Springs as per 43 CFR 2920.1-2. This proposal is needed because the trespass has created an environment where unsafe and often illegal activities occur at day and night. The high volume of users, day and night, has raised concerns of human waste accumulation and disease. [67]

Appellants assert that this purpose is arbitrary because it focuses on the wrong need and contradicts previous BLM statements that the use of the pools was lawful. While BLM states that the need is to address the ongoing trespass, Appellants believe the "need is to address the concerns of waste accumulation and disease." Moreover, Appellants assert that elimination of the trespass cannot be a legitimate purpose because BLM had previously recognized the use as a legitimate one that conformed to the governing Cascade RMP. In a subsequent argument, Appellants state that BLM's decision errs by finding the use to be a "trespass" rather than a legitimate "casual use."

The Board has recognized that agencies enjoy "considerable discretion" to define the purpose and need of a project. We review BLM's exercise of this discretion under a

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[65] *Western Watersheds Project*, 188 IBLA 250, 258 (2016) (hereinafter *Western Watersheds Project II*).


[67] EA at 1.

[68] Statement of Reasons (SOR) at 10.

[69] *Id.* at 10-11.

[70] *Id.* at 21.

Appellants have not met their burden of demonstrating that BLM acted unreasonably in finding that the pool development at the Hot Springs was an unauthorized use whose elimination should be an objective of the project.

As an initial matter, the record fully supports BLM's finding that the use is unauthorized and therefore an ongoing trespass. As noted by Appellants, BLM's regulations distinguish between "casual use" and trespass. Casual use "means any short term non-commercial activity which does not cause appreciable damage or disturbance to the public lands, their resources or improvements, and which is not prohibited by closure of the lands to such activities." No BLM authorization is needed for casual use of public lands. However, any use or development of the public lands that is made without BLM authorization, other than casual use, is a trespass.

The record is replete with evidence that the developed use of the Hot Springs far exceeds casual use as defined by the regulations. The activity, although non-commercial, is not "short term" and has caused appreciable damage and disturbance to the public lands. The EA documents that the pools have been constructed to be permanent features and highlights the natural resource damage caused by use of an unauthorized trail to reach unauthorized pools, including erosion along the trail and the accumulation of human waste near the soaking pools. Appellants have cited no legal authority or facts that would support the contention that the Hot Springs development meets the criteria of "casual use." Accordingly, BLM reasonably concluded that the developed use of the soaking pools constitutes a longstanding and ongoing trespass.

Appellants argue that BLM's determination that the development constitutes a trespass is inconsistent with BLM's prior position, pointing out that BLM had acquiesced for many years in the use of the pools and arguing that BLM's 2012 EA for the temporary nighttime closure of the Hot Springs stated that the use conformed with the Cascade

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72 Roseburg Resources Company, 186 IBLA 325, 334 (2015) (citing Cascadia Wildlands, 184 IBLA 385, 408 (2014)).
73 43 C.F.R. § 2920.0-5(k).
74 Id. § 2920.1-1(d).
75 Id. § 2920.1-2(a); see also Id. § 2808.10(a) ("Trespass is using, occupying, or developing the public lands or their resources without a required authorization or in a way that is beyond the scope and terms and conditions of your authorization.").
76 See EA at 8 (estimating that development of the pools took place in the early 1990s and has been maintained by users since that time).
77 Id. at 1 (documenting sanitation concerns) and 11 (describing that stabilization and revegetation of the trail would eliminate ongoing erosion).
Appellants misinterpret the Nighttime Closure EA. The conformance determination in the Nighttime Closure EA was assessing whether the nighttime closure conformed with the RMP, not whether the pool development did, and properly concluded that the closure conformed with the plan. In fact, the Nighttime Closure EA states that the development is unauthorized and, emphasizing the public health and safety concerns with the ongoing use of the Hot Springs, states that there is a need to take corrective action.

Nevertheless, Appellants are correct that BLM acquiesced in the use of the pools for many years, thereby giving the impression that the use was authorized and lawful. But the Board has recognized that BLM’s past acquiescence to a trespass “does not require that it continue to do so indefinitely in the future . . . ” In this instance BLM’s acquiescence, most of which occurred before there were documented health and safety concerns, does not prevent BLM from now seeking to end the trespass. Especially given the failure of the nighttime closure to address fully the health and safety concerns, BLM reasonably concluded that ending the trespass should be an objective of the project consistent with the guidelines of the Cascade RMP. Appellants have thus shown no error in BLM’s statement of the purpose and need for the project.


Nighttime Closure EA at 4 (quoting the Cascade RMP and other plans to substantiate BLM’s statement that “[t]he proposed action [a temporary nighttime closure] would be in conformance with the following management plans.”).

See id. at 3 (“Due to concerns about public health and safety, local law enforcement and citizens have requested the Bureau of Land Management (BLM) find a solution to the current situation.”); and 6 (“Bio-hazardous materials (discarded hypodermic needles, human feces) are commonly found in the area” and “[t]he area surrounding the hot springs is littered with debris and trash (glass bottles, plastic cups, cigarette butts, cans, food, candles, etc.), unauthorized structures (cement walls, PVC piping), and damaged/removed vegetation.” (Emphasis added.)).


The project’s consistency with the Cascade RMP is discussed infra in addressing Appellants’ allegations that BLM has violated FLPMA.
3. **BLM Analyzed an Appropriate Range of Alternatives.**

Related to its claim that BLM used an improper, overly narrow purpose and need statement, Appellants assert that the EA did not assess a reasonable range of alternatives.\(^{83}\) Appellants allege that “BLM summarily rejects each publically [sic] proposed alternative, including those that directly address concerns associated with waste accumulation and disease, on the grounds that each alternative ‘[d]oes not address the [unauthorized] development and therefore does not meet the purpose and need.’”\(^{84}\)

In its EA, BLM examined two alternatives in detail, the proposed action and no action. Rather than “summarily reject” other proposed alternatives, it examined them to see if they met the stated purpose and need of addressing the unauthorized use. Table 2 of the EA lists each alternative presented by the public and addresses whether the proposal meets the purpose and need of the project.\(^{85}\) BLM found that only one proposed alternative, suggesting that BLM issue a permit for the soaking pools, met the purpose and need.\(^{86}\) However, BLM could not analyze that proposal in detail because it lacked any specific plans on how the site would be managed, and Appellants do not assert that BLM improperly reached that conclusion. Each of the other proposed alternatives, although focusing on a health or safety issue (e.g., the suggestion to provide a toilet and dumpster), did not address how to end the unauthorized use and thus was not brought forward for detailed consideration.

BLM also identified alternatives on its own which were deemed unsuitable for detailed study because they were not feasible or did not meet the purpose and need. These included using a helicopter to remove concrete and plumbing materials; removing completely all manmade materials and returning the site to a completely natural state; issuing a permit for the unauthorized activity; and providing on-site sanitation facilities.\(^{87}\) For the reasons summarized in the EA, these alternatives were not analyzed in detail because they were determined to be unsafe, unfeasible or insufficiently detailed.\(^{88}\) In the end, BLM found that only the proposed action addressed both the unauthorized use and the health and safety concerns set forth in the purpose and need statement.

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\(^{83}\) SOR at 10, 16.
\(^{84}\) Id. at 10 (quoting EA at 5 Table 2).
\(^{85}\) EA at 5.
\(^{86}\) Id.
\(^{87}\) Id. at 4.
\(^{88}\) Id.
As discussed earlier, BLM properly made elimination of the unauthorized development an integral part of the purpose and need of its proposed action. Given that purpose, we find that BLM acted reasonably in not considering in detail alternatives that failed to address how to end the unauthorized use. Although an EA is required to include a brief discussion of appropriate alternatives, only those alternatives that accomplish the stated goal of the project need be considered. An agency may reject alternatives that do not accomplish the purpose and need of the project. In this instance, Appellants do not dispute that the non-permit options raised in public comments fail to meet the stated purpose and need; accordingly, they have not shown that BLM acted unreasonably in failing to consider those alternatives in detail. Nor have Appellants demonstrated that BLM otherwise needed to consider more than two alternatives in detail. Because NEPA does not establish a minimum number of alternatives that must be considered in an EA, it generally suffices for an agency to consider only a no action and preferred action alternative in an EA.

Apart from the publicly suggested alternatives, Appellants complain that BLM generally failed to analyze mitigation alternatives or incorporate mitigation measures into its EA and decision-making process. But there is no requirement to consider mitigation in an environmental assessment unless the agency is relying on mitigation to justify a FONSI. While BLM incorporated features into its proposed action that would reduce impacts (e.g., recontouring and revegetating the access trail), its FONSI was not predicated on the adoption of mitigation measures but rather on its finding that its proposed action would not significantly affect the quality of the human environment. Accordingly, there was no requirement to discuss separately mitigation alternatives or measures in the EA.

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89 See 40 C.F.R. § 1508.9(b); Pueblo of San Felipe, 191 IBLA 53, 73 (2017); Southern Utah Wilderness Alliance, 182 IBLA 377, 390-91 (2012).
90 Pueblo of San Felipe, 191 IBLA at 74; see also City of Carmel–By–The-Sea v. U.S. Dept of Transp., 123 F.3d 1142, 1155 (9th Cir. 1997) ("The stated goal of a project necessarily dictates the range of reasonable alternatives."); Roseburg Resources Company, 186 IBLA at 336; Cascadia Wildlands, 184 IBLA at 409; Powder River Basin Resources Council, 183 IBLA at 248.
91 Pueblo of San Felipe, 191 IBLA at 74.
92 Id. at 73; see also Roseburg Resources Company, 186 IBLA at 336 (citing Earth Island Inst. v. United States Forest Serv., 697 F.3d 1010, 1022 (9th Cir. 2012)).
93 SOR at 16-17.
94 See 40 C.F.R. § 1508.9 (describing requirements for EAs); Western Watersheds Project, 191 IBLA 351, 364–65 (2017)(EA did not need to address mitigation where BLM was not relying on mitigation measures to reduce significant impacts to insignificance or sought to rely on a “mitigated FONSI” to avoid preparing an EIS); see also Akiak Native Community v. U.S. Postal Serv., 213 F.3d 1140, 1147 (9th Cir. 2000).
4. **BLM Took a “Hard Look” at the Environmental Impacts of Its Proposed Action**

Appellants allege that the impacts analysis in the EA suffers from numerous defects: failure to account for and assess the environmental and socio-economic harm caused by “displaced users” shifting their activity to other geothermal springs; improper reliance on biased statistics to create a picture of problems and lawlessness; failure to address cumulative impacts caused by livestock, particularly sheep, grazing in the area; and failure to include detailed baseline information on hydrologic and watershed conditions by which to assess the impacts of closure.  

We find these allegations, made without any evidentiary support, to be without merit.

a. **BLM appropriately considered displacement effects**

Appellants argue that BLM ignored the displacement effects that would be created by closing the Skinny Dipper Hot Springs pools because users would move to other hot spring sites. Appellants claim both the environmental and socio-economic impacts of displacement were ignored. Appellants assert that BLM’s failure to properly analyze displacement resulted in numerous NEPA errors, including the failure to fully analyze direct, indirect, and cumulative impacts and to recognize that significant impacts would occur from the proposed action.

Contrary to Appellants’ unsupported allegations, the record establishes that BLM properly analyzed the displacement effects of its proposed action. The EA contains an entire section devoted to recreation where the issue is addressed. In describing the current level of use, BLM estimated that the daily number of users of the Skinny Dipper Hot Springs ranged from 15-30 per day, or an annual total of eight to ten thousand users. Appellants do not dispute this estimate. BLM also discussed the availability of other hot springs, finding that there are about 16 developed hot springs in west-central Idaho, including five developed sites along the South Fork Payette River. BLM stated that the visitor experience at these alternative sites ranged “from undeveloped sites to highly developed commercial operations.” Nonetheless, BLM acknowledged that very
few hot springs offered the exact type of experience as the one found at Skinny Dipper Hot Springs, i.e., “an undeveloped setting, where fees are not charged, and one is not required to wear clothing.”

After describing the alternative sites, BLM assessed the displacement issue directly, both in terms of potential environmental impact on other sites and the socio-economic impact on users:

The majority of current visitors to Skinny Dipper Hot Springs would likely seek a similar experience and would be required to travel a longer distance for this experience. This displaced use would increase the amount of use at other sites and likely adversely impact the experience of other hot springs users. There are likely to be a small portion of current Skinny Dipper Hot Springs users that would continue to try to use [the] hot springs and attempt to rebuild pools for soaking.

BLM also discussed displacement in its cumulative effects analysis under both the no-action and proposed action alternatives. BLM recognized that displacement would likely occur to some extent under either alternative. If Skinny Dipper Hot Springs remained open, BLM concluded that some current and new users may opt to use other hot springs to avoid illegal and unsafe activities. If it were closed, BLM recognized that the cumulative impacts of closing the Hot Springs on the user experience would be “moderate to major” in the short term but in the long-term would be “minor to negligible” as users found and began using other hot springs. BLM's EA thus assessed, albeit largely qualitatively, both the environmental impacts of displacement as well as the psychological and socio-economic impacts on users.

BLM was justified in concluding that the environmental impacts of displacement on other sites would not be significant given its finding that there were more than a dozen alternative sites over which to absorb a total potential influx of 15-30 users per day. While the short-term impacts to the users themselves were found to be moderate to major, these are estimates of the socio-economic or psychological impacts on the users, not an assessment of environmental damage to the sites. Because socio-economic impacts, by themselves, do not require the preparation of an EIS, BLM committed no error in relying on an EA for its decision in this case.

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103 Id.
104 Id. at 9.
105 Id.
106 Id. at 10.
107 See 43 C.F.R. § 1508.14 ("[E]conomic or social effects are not intended by themselves to require preparation of an environmental impact statement."); Coalition of Concerned
b. **BLM did not rely on biased data**

Appellants criticize BLM’s reliance on law enforcement data from 2007 through 2013 because most of that period occurred before BLM instituted a nighttime closure of the Springs in 2012.\(^{108}\) They argue that this results in BLM using “bias[ed] statistics . . . to create a picture of problems and lawlessness in the EA towards a period of night-time closures. BLM fails to include more recent closure statistics.”\(^{109}\) They also criticize BLM’s reliance on the letter from the State health department concerning the lack of sanitary facilities, stating that because the State does not retain records beyond 3 years, its concerns regarding sanitation cannot “be considered a significant health issue if the state agency does not even care enough about claimed public health problems to retain all relevant records.”\(^{110}\)

Although Appellants criticize the data relied upon by BLM in reaching its decision, they do not refute the documented evidence of unsafe and sometimes illegal activities occurring at the site. Nor do Appellants refute the fact that state health workers expressed concerns about potential public health impacts from the lack of sanitary facilities at the Hot Springs or that BLM documented the validity of these concerns in its site visit showing the tree-snag latrine. Moreover, Appellants are simply incorrect in asserting that BLM failed “to include more recent closure statistics.” As part of its consideration of health and safety concerns, BLM prepared an analysis of law enforcement information and documented nine incidents occurring after the nighttime closure that started on May 25, 2012.\(^{111}\) These incidents included an arrest, two break-ins, two reports of gunshots, and a fall of approximately 50 feet.\(^{112}\) The EA also explains that BLM rangers issued 44 closure violations between May 2012 and March

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\(^{108}\) **Citizens v. Federal Transit Administration**, 843 F.3d 886, 905 (10th Cir. 2016) ("[S]ocioeconomic impacts, standing alone, do not constitute significant environmental impacts cognizable under NEPA."); **Jarita Mesa Livestock Grazing Ass’n v. United States Forest Service**, 2017 U.S. Dist. LEXIS 169713 at *48 (D.N.M. Oct. 13, 2017) ("Just as non-environmental socioeconomic impacts do not require an agency to prepare an EIS, an EA does not need to discuss non-environmental socioeconomic impacts." (citations omitted)).

\(^{109}\) Id. at 16.

\(^{110}\) Id.

\(^{111}\) Id. at 4.

\(^{112}\) Undated Incident Log Analysis, AR at 363-65.
2013, and that the 2012 closure "has reduced nighttime use, but violations are still occurring."  

In sum, while Appellants disagree with BLM’s decision, their unsupported and inaccurate criticism of BLM’s data does not demonstrate that BLM erred in concluding that activities at the Hot Springs pose a risk to public health and safety.

c. **BLM properly assessed cumulative impacts**

Appellants allege that BLM improperly ignored the cumulative impacts created by grazing in the Payette watershed. Appellants’ contention appears to be that BLM should focus its attention on reducing the alleged adverse effects of grazing rather than addressing the impacts caused by the ongoing trespass at the Skinny Dipper Hot Springs. As with their other contentions, Appellants provide no evidence in support of their allegations.

We find that BLM properly addressed grazing in its cumulative impacts analysis. In effect, BLM incorporated its assessment of grazing impacts into the description of the environmental baseline. In its analysis of cumulative effects on vegetation, BLM discussed as part of its no-action alternative the effect of ongoing grazing on upland and riparian vegetation (noting varying effects based on the duration and season of grazing), and the potential for the establishment or proliferation of weeds by transport of seeds by sheep. Although this discussion is not extensive, it shows that BLM assessed the impacts of grazing as part of the environmental baseline and appropriately concluded that the impacts of the proposed action would not be significant measured against this baseline. This approach complies with NEPA. Numerous judicial decisions have recognized that an agency may aggregate the cumulative effects of past projects into an environmental baseline against which the incremental impact of a proposed project is measured.

d. **BLM properly assessed baseline conditions**

Appellants repeatedly fault BLM for having an inadequate assessment of baseline conditions by which to judge the impact of its proposed action. Among other

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113 EA at 1.
114 See, e.g., SOR at 18.
115 EA at 12.
116 See, e.g., Cascadia Wildlands v. BIA, 801 F.3d 1105, 1111 (9th Cir. 2015) (citing Ecology Ctr. v. Castaneda, 574 F.3d 652, 666-67 (9th Cir. 2009); League of Wilderness Defenders v. U.S. Forest Serv., 549 F.3d 1211, 1216-18 (9th Cir. 2008)).
117 SOR at 14, 15, 16, 17-18, and 20-21.
deficiencies, Appellants assert that BLM should have provided “detailed ground and surface perennial water flow information,” as well as more information on vegetation in the riparian area of the pools, so that it could properly assess the impacts of closing the area and removing the pools. Appellants place particular emphasis on the possibility of the downstream sedimentation being caused by removing the impoundments and the potential loss of riparian vegetation that had been created by virtue of the altered flow regime.

In analyzing whether BLM provided an adequate baseline analysis, it is important to recognize that NEPA does not require agencies to employ any “particular analytic protocol” when determining the environmental impact of an action. BLM is not required “to conduct any particular test or to use any particular method” so long as the evidence provided to support its conclusions, along with other materials in the record, ensure that the agency made no clear error of judgment that would render its action arbitrary and capricious. In making its assessments, BLM is entitled to rely upon the professional opinion of its technical experts on matters within the realm of their expertise.

BLM in this instance conducted site visits by resource specialists, and consulted with other knowledgeable individuals, to arrive at its assessment of the baseline conditions and the impact that its proposed action would have on those conditions. Although the EA may not have addressed each topic in the detail Appellants would prefer, BLM examined all impacted resources in sufficient detail to ensure that no significant environmental impacts would arise from removal of the pools.

The EA divides its analysis into three major resource areas: recreation; vegetation and watershed; and wildlife and fisheries. It separately discusses special status plants and water quality. In each instance, BLM provides a description of the baseline conditions that supports its conclusion that the proposed action will not significantly affect the environment. For example, with respect to downstream sedimentation, the EA

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118 See SOR at 16 and 20.
120 League of Wilderness Defenders v. U.S. Forest Serv., 549 F.3d at 1218 (quoting in part Lands Council v. McNair, 537 F.3d 981, 993 (9th Cir. 2008) (en banc)).
121 Western Watersheds Project II, 188 IBLA at 258.
122 EA at 4 (noting two site visits in 2013) and 16 (listing EA preparers and consulted parties).
123 Id. at 7-16.
124 Id. at 7.
describes the location of the pools in relation to the South Fork of the Payette River along with the topography of the site,\textsuperscript{125} and separately describes why removal of the pools will not impact downstream water quality:

There would be no effect to water resources from this proposal because the removal of man-made structures that restrict surface flow would not introduce measurable sediment to the stream that would in turn reach the Payette River. Any sediment from the removal of the man-made structures would be captured in the vegetated canyon below the soaking pools long before reaching the Payette River. There would not be any surface digging that would introduce sediment into the system.\textsuperscript{126}

These conclusions are supported by BLM’s underlying record which shows that resource experts investigated the site and examined its important physical characteristics, such as the estimated flow rate of the spring and the ordinary high water mark of the small stream without impoundments. More specifically, BLM estimated a flow rate of approximately only 0.2 cubic feet per second,\textsuperscript{127} and it outlined the ordinary high water mark of the discharging stream, as well as the topography of the site, as part of its surveyed engineering plans for the removal of the pools.\textsuperscript{128} The notes accompanying the engineering plans provide further explanation as to why sedimentation would not be an issue, noting the observed lack of soil within the work area and stream channel:

Removed material shall be relocated above the ordinary high-water level. Work will commence on the upstream pools and proceed downstream so that Pool 6 [shown on the engineering diagram] will serve as a sediment trap. It is anticipated that sediment generated by demolishing the embankments will be minimal due to low flows in the stream and exposed rock throughout the channel. Severe flooding in 1997 washed away nearly all soil within the work area (see photos on sheet 4).\textsuperscript{129}

BLM thus had more than adequate baseline information to support its conclusion that its proposed action would not cause significant impacts from displaced sedimentation.

\textsuperscript{125} Id. at 8.
\textsuperscript{126} Id. at 7.
\textsuperscript{127} Undated Water Quality Assessment, AR at 445 (notes prepared by BLM natural resource specialist Allen Tarter).
\textsuperscript{128} Engineering Project Plans (Jan. 21, 2015), AR at 182-85.
\textsuperscript{129} Id., AR at 183.
The record also shows that BLM took a hard look at impacts on vegetation and had sufficient baseline information to reasonably conclude that vegetation would not be significantly impacted. BLM analyzed the vegetation both in the “disturbed area” created by use of the access trail and pools, and in the vicinity outside of this disturbed area. BLM looked at the extent and types of riparian vegetation along with upland vegetation. BLM found that riparian vegetation primarily existed outside the disturbed area and included willow, dogwood, cattail, rush and sedge species. It found that the springs support a total of approximately 0.33 miles of riparian vegetation. Within the disturbed area, BLM found the vegetation to be “characterized by native and nonnative grasses and forbs that are able to withstand disturbance.” If the trespass were allowed to continue, these disturbed areas would remain susceptible to noxious weeds over the long term and would remain susceptible to fire.

BLM found that the removal of the pools would damage or destroy some of the vegetation in the disturbed area but noted that the impacted acreage would be minimal (less than 0.1 acres). BLM also concluded that its proposed action would facilitate the return of native vegetation over the long term by eliminating the disturbance area caused by users of the access trail and developed pools. The return of native vegetation would be enhanced by the planned re-contouring and revegetation of the access trail with forb and grass species known to grow on the site.

BLM also examined whether special status plants or their habitat existed within the area. BLM’s field office botanist assessed the site and “determined that no sensitive plant species are known to occur within the confines of the project area and detailed photographs of the site revealed that no habitat for [the giant helleborine (Epipactis gigantean), a BLM special status plant] exists within the proposed project site.” BLM also examined potential habitat downstream from the project area and found that it would not be impacted by either the direct work of the project or by displaced sedimentation.

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130 EA at 10-11.
131 Id. at 10.
132 Id.
133 Id.
134 Id.
135 Id. at 11.
136 Id.
137 Id.
138 Id. at 6.
139 Id. at 7.
140 Id.
Although Appellants do not raise fish and wildlife impacts as a separate concern, BLM also properly set forth the baseline conditions for these resources and the potential impact the proposed action would have. As part of this work, the Assistant Field Manager documented a separate assessment of the project on the endangered Bull Trout, explaining why the project would have no effect on the species or its habitat:

Bull trout will not be adversely affected by the proposed action based on: 1) the area disturbed by the action is very small (< 0.1 acres) and vegetation should recover and stabilize the spring within one to two years; 2) existing vegetation below the proposed project should capture the majority of sediment until vegetation cover stabilizes banks; and 3) the 0.11 [mile] segment of the spring flow along the Banks-Lowman Highway is very low gradient that would trap any remaining sediments prior to flowing into the South Fork Payette River.\(^{141}\)

The record thus establishes that BLM adequately assessed the baseline characteristics of the area, including its hydrology, vegetation, and other natural resources, and took a hard look at the potential effects of its proposed action on these resources under both the action and no-action alternatives. Appellants have failed to provide any evidence that would refute or even challenge BLM's factual conclusions; rather, they raise only unsupported concerns over the depth of BLM's analysis without any evidence that it is incorrect. Speculation "without connecting those allegations to an affirmative showing that BLM failed to consider a substantial environmental question of material significance" is not sufficient to show any error by BLM.\(^{142}\)

5. **BLM Appropriately Made a Finding of No Significant Impact**

Primarily based on their allegations of unassessed impacts addressed above, Appellants assert that BLM improperly found that the proposed action would not have a significant impact on the human environment and issued a FONSI.\(^{143}\) As already discussed, BLM's EA fully supports the conclusion that the closure of the Hot Springs would not have significant environmental effects.

But Appellants raise two points that have not yet been directly addressed. First, they claim that BLM's 2012 Nighttime Closure EA shows potentially significant impacts "of even just its then-proposed night-time closure."\(^{144}\) Appellants quote the Nighttime

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\(^{141}\) Skinny Dipper Hot Springs No Effect Determination (Mar. 27, 2015), AR at 447.

\(^{142}\) Faulkner v. BLM, 164 IBLA at 209 (quoting In re Stratton Hog Timber Sale, 160 IBLA at 332).

\(^{143}\) SOR at 11-12.

\(^{144}\) Id. at 12.
Closure EA’s description of the effects of the closure on nighttime recreational users, which the EA summarizes as having “a long-term, adverse effect on these users.”

Appellants infer that a total closure must, by BLM’s own reckoning, have a significant effect that warrants preparation of an EIS.

Appellants have not caught BLM in an irreconcilable conflict between its EAs that makes preparation of an EIS an ineluctable conclusion. Consistent with the Nighttime Closure EA, BLM acknowledged in its 2015 EA that users seeking the exact type of experience provided by Skinny Dipper Hot Springs (i.e., primitive, without a fee, and clothing optional) would experience moderate to major impacts short and long-term. The 2015 EA also anticipated moderate to major impacts to other users in the short-term that would diminish to minor or negligible over the long-term. There is thus no unexplained inconsistency in BLM’s assessments. As explained earlier, BLM is summarizing in these EA passages the socio-economic and psychological impacts to users, not impacts to the environment. These socio-economic impacts do not require preparation of an EIS.

Appellants also contend that the effects of the action are “highly controversial” and thus warrant the preparation of an EIS. The 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 [the proposed action].’ Appellants have presented no evidence of any scientific dispute over BLM’s findings and conclusions concerning the effects of the proposed closure and thus have not shown that controversy over the proposal exists.

6. **BLM Committed No Procedural Error in Preparing the EA**

Appellants allege that BLM did not follow proper procedures in preparing the EA. First, Appellants imply that BLM violated NEPA by having a predetermined outcome, stating that the “EA reads like BLM had its mind completely made up in advance . . . .” This assertion, made without any substantiation, is without merit. Agencies can have a

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145 Id. at 13.
146 EA at 10.
147 Id.
148 See footnote 107 and cited references.
149 SOR at 12.
150 See Arizona Zoological Society, 167 IBLA at 356-57(quotting Rucker v. Willis, 484 F.2d 158, 162 (4th Cir. 1973)); see also Birch Creek Ranch, 184 IBLA 307, 326 (2014).
151 SOR at 17.
preferred alternative when they conduct a NEPA analysis, and agency officials do not have to be subjectively impartial. "Predetermination occurs only when an agency irreversibly and irretrievably commits itself to a plan of action . . . before the agency has completed its environmental analysis . . ." Here, although BLM certainly proposed to end the unauthorized use and close the area for 5 years, it did not make an irreversible or irretrievable commitment to do so until the NEPA analysis had been completed. Accordingly, Appellants' unsubstantiated claim of predetermination is without merit.

Appellants also fault BLM for not issuing a draft EA, but BLM is not required to do so. When preparing an EA, BLM must provide for public notification and involvement "to the extent practicable, . . . but the methods for providing public notification and opportunities for public involvement are at the discretion of [BLM]." Here, BLM involved the public before completion of the EA through an extensive scoping process that included notifying and meeting with known concerned individuals, two public meetings in different locations, Tribal consultation, briefing of the impacted County's Commission, and review of written comments. The information acquired through this scoping process was described and considered in the EA. BLM's extensive scoping efforts were sufficient to meet BLM's NEPA obligation to provide notification to and involvement of the public in its decision making.

152 See 40 C.F.R. § 1502.14(e).
154 Forest Guardians v. U.S. Fish & Wildlife Serv., 611 F.3d 692, 714 (10th Cir. 2010) (emphasis omitted).
155 SOR at 15.
156 43 C.F.R. § 46.305(b). See Birch Creek Ranch, 184 IBLA at 321 ("Neither NEPA nor CEQ regulations explicitly require a Federal agency to allow public comment on every EA.").
157 BLM v. Western Watersheds Project and Wild Utah Project, 191 IBLA 144, 222 (2017) (quoting 43 C.F.R. § 46.305(a)).
158 Cf. Bering Strait Citizens for Responsible Res. Dev. v. United States Army Corps of Eng'rs, 524 F.3d 938, 953 (9th Cir. 2008) (agency met public involvement obligations, without publishing draft EA, by seeking comment on applicant's project, providing environmental information about the proposal, holding a public hearing, and documenting its consideration of the comments); Alliance to Protect Nantucket Sound, Inc. v. U.S. Department of Army, 398 F.3d 105, 115 (1st Cir. 2005) (agency met NEPA responsibility by issuing a public notice of permit application, providing a public comment period, carrying out two public hearings, noting and responding to public comments in the EA and conferring with Federal and state environmental agencies). See generally Lynn Canal Conservation, Inc., 169 IBLA 1, 7 (2006) (explaining NEPA public participation
B. Appellants Have Not Demonstrated that BLM Violated FLPMA

Appellants charge that BLM’s decision violates FLPMA in three ways: (1) failing to follow the statute’s multiple use mandate by not properly balancing competing resource values; (2) acting inconsistently with the governing management direction in the Cascade RMP that recognizes recreation as an important use in the Payette River watershed; and (3) failing to prevent unnecessary or undue degradation of public lands as required by the statute. We find no merit in Appellants’ theory that FLPMA prevents BLM from eliminating a trespass on public lands that is creating adverse health, safety, and environmental impacts.

[2] FLPMA’s multiple use mandate requires BLM to balance competing resource uses, which “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.” BLM complies with this mandate when it engages in a reasoned and informed decision-making process, which demonstrates how it balanced competing resource values in order to best meet the present and future needs of the American people. Here BLM did precisely that.

BLM recognized in its EA the positive recreational benefits of the Skinny Dipper Hot Springs as well as other hot springs in the area. BLM balanced those positive
aspects with the well-documented health, safety and environmental concerns caused by the use of the pools and access trail. The Field Manager explicitly acknowledged both the beneficial and negative effects of his action in his FONSI, noting the loss of recreational opportunity as an adverse effect that was balanced against the beneficial effects of reducing public health and safety concerns (among other benefits). Appellants have made no demonstration that BLM’s weighing of the resource values was unreasonable.

Appellants have also not shown that BLM’s action is inconsistent with the Cascade RMP. As BLM noted in its EA, the Cascade RMP states that it is “BLM policy to identify, abate, and prevent unauthorized use of public lands.” Moreover, the plan recognizes that “some areas may be subject to special restrictions to protect resources or eliminate or reduce conflicts among users.” Given the public health and safety concerns identified by BLM, where the “unauthorized use has created an environment where unsafe and often illegal activities occur during both day and night,” BLM reasonably concluded that elimination of the trespass conformed to the Cascade RMP.

Finally, Appellants have not demonstrated that BLM’s action violated FLPMA’s directive “to prevent unnecessary or undue degradation of the lands.” BLM’s regulations define that phrase only for certain types of activities, principally surface management of mining claims. In situations such as presented here, where that phrase has not been defined, 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.

Appellants believe closing the pool development will lead to undue degradation because of erosion, sediment transport and other negative impacts from removing the

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167 Id. at 1 (health and safety issues), 11-12 (negative vegetation impacts), and 13 (negative fisheries/wildlife impacts from continued use).
168 FONSI at 1.
169 See Witham, 187 IBLA at 302; New Mexico Wilderness Alliance, 186 IBLA at 192-93 (“An appellant . . . has the burden of showing 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.”).
170 EA at 2 (quoting Cascade RMP at 44).
171 Cascade RMP at 58.
172 Decision Record at 2-3.
174 See Western Watersheds Project I, 188 IBLA at 247.
175 Id.

193 IBLA 85
pool impoundments and the intensified use at proximate hot springs. In making these allegations, Appellants merely repeat their NEPA claims that the closure would result in significant adverse impacts both on and off site. As previously addressed, the record establishes that BLM took a hard look at all environmental issues and reasonably concluded there would be no significant adverse impacts from its action and many positive benefits. BLM thus had a rational basis for its decision, and Appellants have not demonstrated any violation of FLPMA's directives.

CONCLUSION

BLM's action in this case addressed the well-documented health, safety and environmental concerns arising from the use of the unauthorized Hot Springs development. Appellants have provided no evidence or arguments that demonstrate BLM erred in deciding to end the trespass and rehabilitate the site.

Accordingly, for the reasons discussed above and pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, the decision appealed from is affirmed.

K. Jack Haugrud
Administrative Judge

I concur:

James F. Roberts
Acting Chief Administrative Judge

176 SOR at 19-21.
177 43 C.F.R. § 4.1.