



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
Interior Board of Land Appeals
801 N. Quincy Street, Suite 300
Arlington, Virginia 22203



703-235-3750

703-235-8349 (fax)

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IBLA 2012-268)	DOI-BLM-NV-E000-2011-0501-EA
)	
WESTERN WATERSHEDS PROJECT)	Spruce Mountain Restoration Project
)	
)	Decision Affirmed;
)	Petition for Stay Denied as Moot

ORDER

Western Watersheds Project (WWP) has appealed from and petitioned for a stay of the effect of a July 20, 2012, Decision Record/Finding of No Significant Impact (DR/FONSI) of the Field Manager, Wells (Nevada) Field Office, Elko District Office, Bureau of Land Management (BLM), approving the Spruce Mountain Restoration Project (Project), located in southeastern Elko County, Nevada. The DR/FONSI relied upon an Environmental Assessment (EA) (DOI-BLM-NV-E000-2011-0501-EA), which BLM prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2006), and issued on June 12, 2012.

We need not address the petition for stay because, based on our review, we have determined that WWP has failed to show that BLM erred in issuing the DR/FONSI in reliance on the EA. Accordingly, we affirm the DR/FONSI and deny WWP's petition for stay as moot.

I. Background

The Proposed Action, which BLM developed in cooperation with the Nevada Department of Wildlife (NDOW), consists of treating up to 10,000 acres of pinyon-juniper (PJ) and cheatgrass impacted areas on the Spruce Allotment. The allotment is located within the Spruce Mountain area, about 30 miles south of Wells, Nevada, in southeastern Elko County. EA at 5.

The area encompassed by the Spruce Allotment historically has provided extensive wildlife habitat, including crucial mule deer winter range. EA at 2. Since the 1860's, the quality of that habitat has decreased as a result of various factors, including a tripling of PJ in the area. *Id.* at 1-2. That dramatic increase coincided with the introduction of heavy livestock grazing, tree utilization by the mining

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industry, and fire suppression, incident to settlement of the region. *Id.* at 1. The increase in tree dominance has led to a decrease in understory, which reduces fuel and further decreases historical fire frequency. *Id.* Studies indicate that, barring some major environmental change or management action, the reduction in understory forage and fire frequency will continue until trees dominate most of the additional sites in the area favorable to their survival. *Id.* BLM experts believe that a continuous tree canopy in this area risks catastrophic consequences from a crown fire, and that in overstocked PJ communities, the ability of understory to respond after such a fire is dramatically reduced, potentially opening the site to invasion by non-native species. *Id.* at 2. At that point, treatment and rehabilitation of these areas is anticipated to be significantly more difficult and costly. *Id.*

The decision at issue in this appeal was preceded by a March 2005 decision approving a restoration project calling for treatment of up to 16,000 acres of PJ, sagebrush, and mixed conifer communities to improve wildlife habitat within the Spruce and Valley Mountain allotments. Administrative Record (AR) 57, 60 at 1, 5. On March 7, 2007, BLM vacated that decision in order to broaden the public input and develop, in cooperation with NDOW, a proposal to utilize several integrated vegetation treatments at Spruce Mountain, in order to reduce the risk of large-scale wildfire and benefit wildlife. AR 4 at 1. To that end, BLM invited scoping comments on the forthcoming EA. *Id.* BLM explains that the process stalled due to litigation over the 2004 Fire Management Amendment to the Elko and Wells Resource Management Plan. Answer at 4.

On January 14, 2011, BLM issued another scoping notice. AR at 101; DR at 1. On July 20, 2011, BLM conducted a field tour with interested parties, including WWP, and on October 21, 2011, held a second tour with representatives of the Duckwater Shoshone Tribe. DR at 1; EA at 97. BLM considered scoping comments received from WWP and others in developing the preliminary EA. On January 23, 2012, BLM released that document for a 30-day comment period and held a public meeting. DR at 1. BLM considered comments submitted by WWP and others, modified the draft, and released what became the final EA on June 12, 2012. *Id.* BLM accepted and considered comments on the EA until July 2, 2012. WWP and one other entity timely submitted comments.

According to the EA, the Project is needed to improve species composition and diversity and the quality of wildlife habit and forage by reversing expansion of PJ woodlands. EA at 2. It is further needed to prevent large-scale wildland fire resulting from fuel buildup and conversion of fuel types and to prevent the establishment and expansion of invasion by non-native species. *Id.* The purposes of the Project are to:

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- Reduce the expansion of PJ woodlands and promote healthy forests by removing stressed and diseased trees.
- Reduce hazardous fuels to reduce the threat of a large-scale wildland fire.
- Restore and maintain healthy rangelands and wildlife habitat.
- Protect historic PJ woodlands.
- Reduce amount of invasive weeds throughout the Project area.
- Restore previous wildfire damaged areas with desired vegetation.
- Protect treatment areas from livestock grazing to allow for establishment and for treatment success on a case-by-case basis.
- Protect cultural resources within the Project area.

Id.

The EA analyzed five alternatives and described two others considered but not analyzed in detail. See EA, Chapter 2. The Proposed Action (Alternative A) calls for employing one or more treatment types appropriate for each treatment (or polygon) area in order to improve wildlife habitat and decrease hazardous fuels loading. The polygons and treatment types were selected by BLM resource specialists in coordination with NDOW wildlife biologists. *Id.* at 9-10.¹ The treatment types include: herbicide application, seed bed preparation and seeding, prescribed fire (broadcast and pile burning), mechanical (chaining and mastication), and hand thinning. *Id.* at 5-13; Table 2.1. BLM would remove some PJ trees but would give priority to removing trees that are infested with forest insects and disease. *Id.* at 10.

Chapter 3 of the EA provides an extensive description of 18 resource values in the potentially affected environment, including resources of concern to WWP. EA at 25-67.² Chapter 4 identifies the direct, indirect, and cumulative impacts of each alternative, describing the potential impacts to each resource from the various proposed treatments and mitigation measures. *Id.* at 71-143.³ The analysis discusses potential impacts of each specific treatment type on special status species and other resources. *Id.* at 111-14. To enhance the analysis of cumulative impacts, the EA delineated cumulative effects study areas (CESAs). *Id.* at 71-72. BLM assessed the

¹ No more than 10,000 acres would be treated within the Project area. EA at 5; FONSI at 1.

² See, e.g., EA at 30-31 (forestry and forest products), 46-47 (livestock grazing), 48-49 (soils), 49-59 (special status species), 58-59 (vegetation), 61-67 (wildlife).

³ See, e.g., EA at 77-83 (fire management), 83-88 (forestry and forest products), 89-92 (invasive and non-native species), 92-96 (migratory birds), 127-131 (wild horses), 131-143 (wildlife).

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cumulative impacts of the Project, given past, present, and reasonably foreseeable projects, including grazing, off-road use, historic wildfires, rights-of-way, mining exploration and activities, and habitat conversion within the CESA for special status species. *Id.* at 115-17.

In order to minimize impacts to resource values, including cultural resources, special status species, wildlife, migratory birds, forest products, vegetation, livestock, and recreation, the EA includes dozens of resource protection stipulations, measures, monitoring, and design features that would be incorporated into the projects of the Proposed Action on a site-specific and resource-specific basis. EA at 14-20; DR at 1-2.⁴ Examples include construction of protective fences, designed in consultation with NDOW to prevent wildlife entry and minimize predatory bird perching in certain treatment areas;⁵ seasonal limitations protecting mule deer and pronghorn antelope crucial winter ranges, pronghorn antelope kidding areas, greater sage-grouse strutting grounds (leks), brood rearing areas and their crucial winter habitat; suppression of prescribed fires in the vicinity of Wilderness Study Areas; maintenance of all age classes of trees in untreated stands (leave areas); and treatment designs that minimize impacts to visual resources by avoiding straight or block shapes. EA at 14-20.

As indicated, in addition to the Proposed Project (Alternative A), the EA identified other alternatives and analyzed their potential, respective impacts to resources. Alternative B would employ all treatment methods described in the Proposed Action except for prescribed fire and management of wildland fire. EA at 20. Alternative C would omit the use of chaining from the treatment methods of the Proposed Action. *Id.* Alternative D would employ all treatment methods of Alternative A except application of herbicides to control and or reduce cheatgrass and halogeton on Project sites. *Id.* A no action alternative was also included. *Id.* at 21.

Two alternatives were considered but not analyzed in detail. BLM considered an alternative that exclusively would use hand thinning treatments in the proposed treatment polygons, but determined it would not satisfy the purpose and need of the Project. EA at 21. The EA explains that seeding, following thinning of overstocked PJ, would be necessary to establish the desired understory and that other methods, such as prescribed fire, chaining, or other mechanical treatments may be needed to

⁴ Eleven different protective measures are designed to protect special status species, migratory birds, and wildlife. EA at 15-17.

⁵ Design considerations for protective fences include construction of let-down fences in big game crucial ranges and migration corridors, use of wide stays and white-topped posts, and effective deflectors for greater visibility in seasonal sage grouse ranges. EA at 18.

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enable seed bed preparation prior to seeding. *Id.* In addition, BLM experts believe that hand thinning without prescribed fire would not meet the goal of decreasing the risk of large-scale wildland fires by adequately reducing hazardous fuels within the treatment areas. *Id.*

BLM considered including as treatment methods the use of sagebrush mowing and dixie harrowing to manipulate sagebrush communities in the Project area. EA at 21. However, after considering concerns raised in interdisciplinary (ID) team and public scoping meetings about possible impacts to crucial mule deer winter range and habitat of the pygmy rabbit, a BLM sensitive species, BLM concluded these treatment methods also would not meet the purpose and need of the Project. *Id.*

On July 20, 2012, the Field Manager, Wells Field Office, signed the FONSI, determined that the Project conformed with the approved Wells Resource Management Plan (RMP), and, based on an evaluation of the context and intensity criteria of 40 C.F.R. § 1508.27, concluded that no environmental impact statement (EIS) was necessary because the proposed action was not likely to significantly impact the human environment. FONSI at 1-4; DR at 1. BLM recognized that there will be impacts to bats, pygmy rabbits, and other special status animal species, as well as other wildlife, migratory birds, cultural resources, forest products, vegetation, and livestock, but expects those impacts to be minor, lessened by utilizing treatment types that would leave specific habitat characteristics needed by a special status species, conducting surveys and delineating buffers for treatment avoidance, monitoring, targeting timing of treatments, and employing other adaptive management methods and environmental protection measures. EA at 14-20 (2.1.1), Chapter 4; DR at 2. Determining that the Project will not result in unnecessary or undue degradation to the public lands, the Field Manager signed the DR the same day, selecting the Proposed Action, including the measures discussed in Section 2.1.1 of the EA. DR at 1.⁶

WWP appealed the DR/FONSI and petitioned for a stay of the effect of approval of the Project during the pendency of its appeal.

II. WWP Has Failed to Show Error in the DR/FONSI

WWP contends that BLM's decision to approve the Project violates the environmental review requirements of section 102(2)(C) of NEPA, because BLM failed to prepare an EIS. An EIS was necessary, it asserts, because the Project is complex, full of uncertainty, and involves large-scale disturbance of the public lands over a number of years, which generally may or may not affect wildlife and plant

⁶ The Field Manager's decision was made under 43 C.F.R. § 4190.1, and is a full force and effect decision.

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species as analyzed by BLM. Statement of Reasons (SOR) at 3, 7, 12, 14, 22-24. WWP does not consider the range of alternatives adequate, and also generally alleges unspecified violations of the multiple use management and land use plan conformance requirements of section 302(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732(a) (2006), and of unidentified requirements of the Migratory Bird Treaty Act (MBTA), 16 U.S.C. §§ 703-712 (2006).

A BLM decision to proceed with a proposed action, absent preparation of an EIS, will be upheld under section 102(2)(C) of NEPA, 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 therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. *E.g.*, *Center for Native Ecosystems*, 182 IBLA 37, 50 (2012); *Santa Fe Northwest Information Council*, 174 IBLA 93, 107 (2008). An appellant seeking to overcome such a decision carries the ultimate burden to demonstrate, with objective proof, that BLM failed to consider a substantial environmental question of material significance to the proposed action, or otherwise failed to abide by section 102(2)(C) of NEPA. *Bales Ranch, Inc.*, 151 IBLA 353, 357 (2000). 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.” *Harriet Natter*, 181 IBLA 72, 84 (quoting *In re Stratton Hog Timber Sale*, 160 IBLA 329, 332 (2004)).

In assessing the adequacy of an EA, the Board will be guided by the “rule of reason,” such that the EA need only briefly discuss the likely impacts of a proposed action, thereby “provid[ing] sufficient evidence and analysis for determining whether to prepare an [EIS].” 40 C.F.R. § 1508.9. An EA, “[b]y nature, . . . is intended to be an overview of environmental concerns, not an exhaustive study of all environmental issues which the project raises.” *Bales Ranch, Inc.*, 151 IBLA at 358 (quoting *Don't Ruin Our Park v. Stone*, 802 F. Supp. 1239, 1247 (M.D. Pa. 1992)).

WWP disagrees with BLM's decision, but has failed to carry its burden in this case. It does not demonstrate any error in BLM's consideration of the context and intensity criteria of 40 C.F.R. § 1508.27, or affirmatively show that BLM failed to consider a substantial environmental question of material significance to the proposed action, or otherwise demonstrate that BLM erred in issuing the DR/FONSI. *See Powder River Basin Resource Council*, 180 IBLA 32, 48 (2010); *Mary Byrne*, 174 IBLA 223, 232 (2008).

WWP's objections regarding the FONSI/DR consist of a lengthy litany of complaints, providing little or no specificity to its allegations of legal error and little or no supporting legal argument or evidence. In these circumstances, we are unable

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to judge the validity of WWP's complaints. The allegations, by themselves, are insufficient to establish any violation of NEPA, or any other Federal statute. To the extent those arguments merit any attention, BLM has thoroughly addressed them in its Response to Petition for Stay at pages 8-21 and its Answer to appellant's SOR at 7-28. We agree with and refer appellant to BLM's analysis and cited support. We find no need to repeat the same in this order.

Having reviewed the record and pleadings and applied a rule of reason, we determine that, contrary to appellant's NEPA assertions, which virtually ignore all descriptions and analyses in the EA, BLM considered a reasonable range of alternatives and took a hard look at the direct, indirect, and cumulative impacts on the 18 resource values of the affected environment, including migratory birds and special status species, like sage grouse and pygmy rabbit, and analyzed the impact of past, present, and reasonably foreseeable actions, like the use of roads and off-highway vehicles, on all relevant resources. WWP's speculations, requests for more information, and general, unsupported allegations, unconnected to an affirmative showing that BLM failed to consider a substantial environmental question of material significance, do not satisfy its burden to demonstrate with objective proof that the DR/FONSI is premised on a clear error of law or demonstrable error of fact, or otherwise failed to abide by section 102(2)(C) of NEPA. See *Oregon Chapter Sierra Club*, 176 IBLA 336, 353 (2009) (citing *The Wilderness Workshop*, 175 IBLA 124, 133 (2008); *Bark*, 167 IBLA 48, 76 (2005).

With respect to FLPMA, WWP is correct that section 302(a) requires BLM to balance competing resource values and uses in deciding whether to approve a proposed action, see, e.g., *National Wildlife Federation v. BLM*, 140 IBLA 85, 98-101 (1997), and to manage the public lands in accordance with the land use plans by conforming all future resource management authorizations and actions to the approved RMP. See 43 U.S.C. § 1732(a) (2006); 43 C.F.R. § 1610.5-3(a); e.g., *Jenott Mining Corp.*, 134 IBLA 191, 193-94 (1995). However, here too, WWP makes no effort to explain how BLM failed to comply with those requirements in this case. SOR at 4, 27.

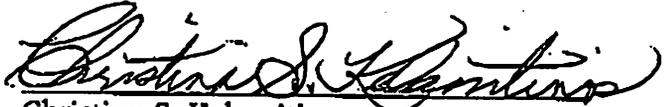
Finally, we find that WWP fails to identify any aspect of BLM's decision that violates any legal requirement under the MBTA. SOR at 4.

In essence, WWP's appeal reveals only that BLM's approval of the Project is contrary to WWP's preferences regarding the management of public lands. However, the authority to manage the public lands is committed to BLM, and it is well established that a mere disagreement with BLM's analysis or conclusions, or a preference for an alternative course of action does not suffice to establish that BLM violated any law or otherwise erred in its decision. See, e.g., *Powder River Basin Resource Council*, 180 IBLA at 48; *Mary Byrne*, 174 IBLA at 232.

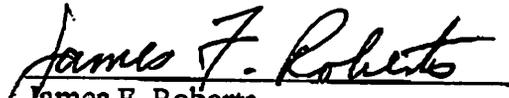
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To the extent not expressly addressed herein, all other errors of law or fact alleged by WWP, including those appearing in WWP's Notice of Supplemental Information, have been considered and rejected as contrary to the facts or law or as irrelevant or immaterial to this appeal.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the DR/FONSI is affirmed, and WWP's petition for a stay is denied as moot.


Christina S. Kalavritinos
Administrative Judge

I concur:


James F. Roberts
Administrative Judge

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APPEARANCES:

Katie Fite
Biodiversity Director
Western Watersheds Project
P.O. Box 2863
Boise, ID 83701

FAX: 208-475-4702

Kevin Tanaka, Esq.
U.S. Department of the Interior
Office of the Regional Solicitor
Pacific Southwest Region
2800 Cottage Way, Room E-1712
Sacramento, CA 95825-1890

FAX: 916-978-5694

cc: Field Manager
Wells Field Office
Bureau of Land Management
U.S. Department of the Interior
3900 East Idaho Street
Elko, NV 89801