

INTERIOR BOARD OF LAND APPEALS

In re Suce Creek Timber Sale

131 IBLA 206 (November 9, 1994)

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IN RE SUCE CREEK TIMBER SALE

IBLA 93-312

Decided November 9, 1994

Appeal from a decision of the Headwaters Resource Area, Montana, Bureau of Land Management, denying a protest of the Suce Creek Timber Sale, MT-075-TS3-501.

Affirmed.

1. Timber Sales and Disposals

An EA of a timber sale which is limited to site-specific considerations and tiered to a previously approved management plan and FEIS may be reviewed for compliance with applicable statutes, regulations, and policies. However, challenges to the general management policies found in the previously approved RMP are beyond the Board's review.

2. Environmental Policy Act--Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements--Timber Sales and Disposals

It is proper for BLM to deny a protest of a proposed timber sale if, in the course of its environmental review, it has fully considered the probable site specific and cumulative environmental impacts and a reasonable range of alternatives, and has concluded that there will be no significant environmental impact not previously addressed in an applicable EIS.

APPEARANCES: Douglas L. Honnold, Esq., Sierra Club Legal Defense Fund, Inc., Bozeman, Montana, for appellants; John C. Chaffin, Esq., U.S. Department of the Interior, Office of the Field Solicitor, Billings, Montana, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

A number of individuals and groups ^{1/} have appealed a March 5, 1993, decision issued by the Headwaters Resource Area Manager, Montana, Bureau of Land Management (BLM), denying their protest of the Suce Creek Timber Sale (MT-75-TS3-501). This decision involves the sale for harvest of approximately 610,000 board feet of standing timber from approximately 83 acres of public land in sec. 20, T. 3 S., R. 10 E., Principal Meridian, Park County, Montana.

On October 30, 1992, the Headwaters Resource Area Manager issued a decision record and finding of no significant impact (DR/FONSI) for the Suce Creek Timber Sale, based upon an environmental assessment (EA) of the impact of that sale on the human environment. In his decision the Resource Area Manager noted that the Suce Creek Timber Sale was part of a "regeneration timber harvest project to implement long-term, multiple-use forest management on a parcel of public land in the Suce Creek Drainage as prescribed in the Headwaters Resource Management Plan" (Headwaters RMP). The Headwaters RMP provides the comprehensive framework for management and allocation of public land and resources in the Headwaters Resource Area. In turn, the Final Environmental Impact Statement (FEIS) prepared for the Headwaters RMP examined the effects of long-term public forest management upon wildlife and other values within the comprehensive framework of the Headwaters RMP. Under the Headwaters RMP, a 360-acre parcel containing the area of the Suce Creek Timber Sale is designated as Management Unit 9.

The stated purposes of the proposed timber harvest are to stimulate natural forest regeneration, artificially regenerate 22 acres of previously harvested silviculture land, maintain forest productivity, enhance vegetative biodiversity, provide forest products for local markets, and minimize insect and disease damage and risk (EA at 1).

On November 19, 1992, appellants filed a protest of BLM's October 30, 1992, DR/FONSI and EA. The first argument presented in their protest was that the Suce Creek Timber Sale was not a single timber sale but a "large sustained program of repeated intrusions of human beings and machinery into this area of the forest over a span of many decades" which should be evaluated as a single sale (Protest at 4).

The Area Manager's March 5, 1993, decision explained that the Headwaters RMP provides the comprehensive framework for managing and allocating

^{1/} The individuals and groups are Edwin and Peggy Bauer, Stacy and Robert Feldman, Joe Gutkoski, David Strong, J. Pennock Graham, Andrews C. Dana, Gonnie Siebel, American Wildlands, The Wilderness Society, The Greater Yellowstone Coalition, Park County Environmental Coalition, and Crazy Paradise.

resources in the Headwaters Resource Area and the EA contained a detailed discussion of the administrative relationship between the Headwaters RMP and the Suce Creek Timber Sale.

In their statement of reasons (SOR), appellants allege that BLM's decision "is confused but does concede that the [Suce Creek Timber Sale] is part of a long term program" with repeated intrusions which will damage the area's ability to support wildlife (SOR at 4, 5 (emphasis in original)). The remainder of the appellants' discussion of this argument is a verbatim repetition of the text of what was submitted in the protest. 2/

In its answer BLM acknowledges that the Suce Creek Timber Sale is one element of the long term management plan outlined in the Headwaters RMP. It notes that, although the Suce Creek Timber Sale is a specific proposed activity evaluated in a separate EA, it is tiered to the Headwaters RMP and the FEIS prepared for the Headwaters RMP. BLM also stated that, aside from the timber sale, no intrusions are planned for the unit.

[1] When considering an EA of a timber sale which is limited to site-specific considerations but is tiered to a previously approved management plan and FEIS, the Board's responsibility is to scrutinize BLM's compliance with applicable statutes, regulations, and management policies in its evaluation of the timber sale EA, and not to examine the general management plan or FEIS to which the sale is tiered. Portland Audubon Society v. Lujan, 884 F.2d 1233, 1237-39 (9th Cir. 1989), cert. denied, 494 U.S. 1026 (1990); In Re Bare Nelson Timber Sale, 126 IBLA 93, 97 (1993). Our review of the pleadings filed by appellants leads to the conclusion that the Area Manager's decision adequately responded to the concerns expressed in appellants' protest, and that there were no violations of Federal environmental standards or of the land-use planning procedures.

Appellants assert that the Suce Creek Timber Sale is not "appropriate for an area involved within Management Unit 9 of the Headwaters Resource Management Plan," and that the sale is inconsistent with many of the provisions in the Headwaters RMP (SOR at 6). Appellants also repeat the contention raised in their protest that concerned citizens were led to believe that no timber harvest would take place in the Suce Creek area, because it had not been given a "high priority forest management area" designation in the RMP (SOR at 6). The remainder of appellants' discussion of this issue is a repetition of what was presented in the protest.

2/ An appellant must affirmatively state why the decision on appeal is in error. This requirement is not satisfied when BLM has provided a comprehensive decision fully addressing the allegations contained in the protest and the appellant merely reiterates arguments addressed by that decision. When this happens it is appropriate to affirm BLM's decision. In Re Bare Nelson Timber Sale, 126 IBLA 93, 96 (1993); Oregon Natural Resources Council, 122 IBLA 65, 67 (1992); In Re Mill Creek Salvage Timber Sale, 121 IBLA 360, 362 (1991), and cases cited.

At pages 3-4 of his decision the Area Manager refers to the discussion in the EA and notes that the Headwaters RMP specifically designated 49,000 acres of the resource area (including the forest lands in Unit 9) available for the full range of forest management activities. This decision was reached after consultation with an interdisciplinary team of specialists who had evaluated the area, and in recognition of multiple-use values and goals. The Area Manager further noted that the Headwaters RMP acknowledges the potential for conflicts with other uses and the potential for negative impacts to wildlife. However, the Headwaters RMP contemplates minimizing impacts to wildlife, not complete protection of wildlife through exclusion of vegetative harvest or other multiple-use activities.

In its answer, BLM notes that the Headwaters RMP specifically provides that low priority forest management areas will be available for a full range of forest management activities, and that BLM is pursuing active forest management in both high- and low-priority public forests. BLM states that the site-specific analysis of forest conditions led to the conclusion that the timber stands found in the Suce Creek area should be given high priority for harvest because of factors such as maturity of the trees, declining vitality, and insect damage, even though the Headwaters RMP had assigned a low overall priority to the management of Unit 9 forests. It also noted that the interdisciplinary team found no significant conflicts between the timber sale and non-timber resource values.

The record supports BLM's forest management assessment of the Suce Creek area and its determination to harvest the timber in the specific unit in question.

On appeal, appellants contend that the Area Manager's response failed to address their concerns about the need for the sale, the alternatives and the impacts. They also contend that the EA is legally deficient because it fails to provide a justification or need for the Suce Creek Timber Sale, does not contain a reasonable range of alternatives, does not evaluate cumulative impacts, and is rife with summary conclusions.

Appellants' disagreements and differences of opinion do not demonstrate that statutory or regulatory directives have been violated or that BLM has in some way abused its discretion. The Area Manager fully and comprehensively responded to appellants' assertions. See Decision at 4-7. His decision contains a detailed discussion addressing all of appellants' concerns. The needs and objectives of the sale are set out in the EA at page 1 and "are supported by the Headwaters RMP and existing BLM forest management policy" (Decision at 4). Those needs and objectives, both economical and biological, are explored in detail in the EA and again in the Area Manager's decision. Seven alternatives to the proposed action were analyzed at pages 6-11, and the cumulative impacts were critically examined at pages 32-33 of the EA.

[2] To comply with the National Environmental Policy Act of 1969, a Federal agency must consider its preferred course of action and alternatives to that action. See 40 CFR 1501.2(c); Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228-29 (9th Cir. 1988), cert. denied, 489 U.S. 1066 (1989); Southern Utah Wilderness Alliance, 122 IBLA 334, 338 (1992). The alternatives considered should be feasible and are reasonably related to the purpose of the proposed action; in other words, alternatives that can be accomplished and also fulfill the purpose sought to be achieved by the action. See 40 CFR 1502.14(a); Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 551 (1978); Trout Unlimited v. Morton, 509 F.2d 1276, 1286 (9th Cir. 1974); Howard B. Keck, Jr., 124 IBLA 44, 53 (1992).

A Federal agency is also required to consider the potential cumulative impacts of a planned action together with other past, present, and reasonably foreseeable future actions. See 40 CFR 1508.7 and 1508.27(b); Fritiofson v. Alexander, 772 F.2d 1225, 1243-44 (5th Cir. 1985); G. John & Katherine M. Roush, 112 IBLA 293, 305 (1990).

The EA before us fully meets these criteria. In large measure, appellants' objections appear to ignore the Area Manager's response to the protest. Stated in a light favorable to appellants, their criticisms merely indicate disagreement with the conclusions found in the EA. However, the appellants must do more. They must present evidence supporting a finding that there was an error of law or of fact, or that BLM failed to consider a substantial environmental problem of material significance to the proposed action. Glacier-Two Medicine Alliance, 88 IBLA 133, 141 (1985). Appellants have failed to do this. They cite Natural Resources Defense Council v. Herrington, 768 F.2d 1355, 1430 (D.C. Cir. 1985), which asks whether the agency has taken a "hard look" at the problem when evaluating a FONSI and EA (*i.e.*, whether the agency has taken a searching, realistic look at potential hazards, and whether it has candidly and methodically addressed those concerns). Our study of the EA persuades us that this was what BLM did.

Appellants suggest several additional alternatives to those addressed in the EA and contend that BLM should also have considered those alternatives. BLM need not consider all alternatives that might be devised to reflect an incremental change in the overall impact. "It is sufficient that BLM set forth the many implications of either its proposed action or the no action alternative, which are at either end of the spectrum." Headwaters, Inc., 116 IBLA 129, 135 (1990).

Appellants' SOR presents additional arguments which were addressed in the Area Manager's decision. In these arguments, appellants take issue with the rationale for the sale and the anticipated impacts analyzed in the EA. Appellants contend, for example, that the sale will not promote forest health, and will not improve wildlife or diversity. BLM fully considered those arguments when evaluating the sale. Its interdisciplinary assessment

team determined that the lodgepole pine stands in the sale area have a high risk of greater than 50-percent pine beetle mortality. See Decision at 4. BLM's analysis of the anticipated impacts upon the wildlife is found at pages 22-24 of the EA. BLM determined that, when compared to the quantity of undisturbed vegetation in the Suce Creek area, the percentage loss of cover and habitat fragmentation was "not considered to be significant"

(EA at 23), that an "overall improvement of the mule deer yearlong habitat values would * * * result with recovery of the shrub-grass-forb vegetation components in the sale area," and that large predators such as mountain

lion, coyote, and bobcat would not be affected (EA at 23).

The concerns and arguments advanced on appeal were exhaustively addressed in the Area Manager's decision. Having examined that document in light of appellants' assertions that the decision is internally inconsistent and presents contradictory or indefensible arguments and erroneous rationales, we conclude that, although appellants' charges reflect a different viewpoint, they are insufficient to demonstrate that BLM's analysis was unreasonable or invalid. Powder River Basin Resource Council, 124 IBLA 83, 91 (1992).

To the extent not expressly or impliedly addressed in this decision, all other errors of fact or law alleged by appellants have been considered and are rejected. See National Labor Relations Board v. Sharples Chemicals, Inc., 209 F.2d 645, 652 (6th Cir. 1954); Glacier-Two Medicine Alliance, supra at 156 (1985).

The Area Manager did not err when he denied appellants' protest of the Suce Creek Timber Sale in his March 5, 1993, decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge