

INTERIOR BOARD OF LAND APPEALS

Klamath Siskiyou Wildlands Center, et al.

157 IBLA 322 (October 29, 2002)

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KLAMATH SISKIYOU WILDLANDS CENTER ET AL.

IBLA 2002-292

Decided October 29, 2002

Appeal from a decision of the Field Manager, Glendale (Oregon) Field Area, Bureau of Land Management denying appellants' protest of the Mr. Wilson Timber Sale. EA OR-110-01-30.

Affirmed; petition for stay denied as moot.

1. National Environmental Policy Act of 1969: Generally--Timber Sales and Disposals: Generally

Review of a challenge to a timber sale on the ground of consistency with the aquatic conservation strategy is guided by principles generally relevant to review of environmental compliance. The record must provide a rational rational basis for a finding of consistency. One challenging such a finding must demonstrate either an error of law or fact or that the analysis failed to consider a significant impact of the timber sale. This showing must be satisfied by objective evidence and a mere difference of opinion with BLM specialists will not suffice.

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

Upon review of the cumulative impacts analysis in an EA for a timber sale which is tiered to a broader programmatic EIS for timber management in the area, the finding of no significant impact based on the EA may be upheld when there is no showing that BLM failed to consider significant impacts different in nature than those analyzed in the EIS.

APPEARANCES: Jay Lininger, Ashland, Oregon, for appellants; Lynda L. Boody, Field Manager, Glendale Resource Area, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This appeal has been brought by the Klamath Siskiyou Wildlands Center, Siskiyou Regional Education Project, Umpqua Watersheds, Inc., and Oregon

Natural Resources Council from a March 29, 2002, decision of the Field Manager, Glendale (Oregon) Field Area, Bureau of Land Management (BLM). This BLM decision denied appellants' protest of the Mr. Wilson Timber Sale.

The timber sale was approved by a BLM decision record (DR) signed October 26, 2001. The various timber harvest units comprising the sale include regeneration harvest and overstory removal units which will leave at least 6 to 10 large conifers and 2 large hardwoods per acre, as well as snags and down logs. The silvicultural objective for overstory removal units is to release the seedlings in the understory for increased stand growth. (Silvicultural Prescription, Administrative Record (AR), 1/ Tab 15, at unnumbered p. 1.) In the overstory removal units, the existing young conifers will be retained. (DR at 1.) The objective for regeneration harvest units is to harvest the overstory and plant conifer seedlings. (AR, Tab 15, at unnumbered p. 2.) The timber sale also involves commercial thin units where the existing stand will be thinned to release the residual trees. (DR at 1.) The objective in these units is to increase tree diameter growth and overall stand growth by reducing stand density through thinning. (AR, Tab 15, at unnumbered p. 2.) The timber sale encompasses a total of 213 acres of late-successional forest (timber more than 80 years old) harvest. Id. at 8. The DR includes a finding of no significant impact (FONSI) which means preparation of an EIS would not be required under the National Environmental Policy Act (NEPA). 42 U.S.C. § 4332(2)(C) (1994). This finding was based on review of the environmental assessment (EA), EA OR-110-01-30.

In response to emerging environmental issues related to timber harvests in old growth forests in this area of the Pacific Northwest, including impacts to watersheds and protected species habitat, BLM, together with the Forest Service, U.S. Department of Agriculture, prepared a Final Supplemental Environmental Impact Statement on Management of Habitat for Late - Successional and Old-Growth Forest Related Species Within the range of the Northern Spotted Owl dated February 1994 (FSEIS) which analyzed alternatives for the comprehensive management of timber and other natural resources on all Federal lands in California, Oregon, and Washington, within the geographic range of the Northern spotted owl. On April 13, 1994, the Secretaries of Interior and Agriculture, based on the FSEIS, issued a ROD which adopted Alternative 9. See ROD at 4. That alternative incorporated Standards and Guidelines for timber harvesting and related activity. See ROD at 4; ROD, Attachment A. Included in the Standards and Guidelines is the Aquatic Conservation Strategy (ACS) "developed to restore and maintain the ecological health of watersheds and aquatic ecosystems contained within them on public lands." (ROD, Attachment A at B-9.) These documents are collectively referred to as the NFP.

1/ The documents specific to this timber sale and this protest and appeal have been placed in a binder, indexed, and marked with tabs. The record also includes other separate documents, wider in geographic scope, which are pertinent to this timber sale.

The Mr. Wilson Timber Sale is situated within the watersheds of Wilson Creek and Walker Creek, which are tributaries of the West Fork Cow Creek. (AR, Tab 17, at 1-4.) The West Fork Cow Creek watershed is a tier 1 key watershed. (Medford District Resource Management Plan (RMP) at 23.) Key watersheds, defined as "[a] system of large refugia comprising watersheds that are crucial to at-risk fish species and stock and provide high quality water," constitute a specific component of the ACS. (NFP at B-12.) Tier 1 key watersheds "contribute directly to conservation of at-risk anadromous salmonids, bull trout, and resident fish species." Id. at B-18. Under the NFP, timber harvest cannot occur in key watersheds prior to completion of a watershed analysis. (NFP at B-20.) Accordingly, BLM prepared a watershed analysis of the West Fork Cow Creek watershed including the Wilson Creek and Walker Creek subwatersheds. (Glendale Resource Area Ecosystem Analysis Team, U.S. Department of the Interior, West Fork Cow Creek Ecosystem Analysis (May 27, 1997) (WA)). The WA developed by an interdisciplinary team of specialists includes a study of current conditions, identification of key issues, and recommendations. The record for this timber sale also includes an "Aquatic Conservation Strategy Consistency Analysis and Endangered Species Act, Section 7 Consultation Report Analysis on Listed and Proposed Fish Species and Proposed or Designated Critical Habitat" (ACSCA). (AR at Tab 17.)

The ACSCA contains BLM's detailed evaluation of the timber sale's consistency with the ACS objectives, the watershed analysis, and the Biological Opinion (BO) issued by the National Marine Fisheries Service (NMFS). The BLM analysis in the ACSCA addressed the effects on both the sixth field subwatersheds and the fifth field West Fork Cow Creek watershed. Consistency with the ACS was evaluated in part by analyzing how the timber sale impacts the matrix of indicators established by NMFS for each of the objectives set out in the ACS. See NFP at B-11.

When analyzing the off-channel habitat indicator for ACS objectives, BLM considered the role of riparian reserves. Riparian reserves are lands along streams where activities are regulated to protect ACS objectives. (NFP at B-12.) Widths of these reserves are designed to provide a high level of fish habitat and riparian protection. Id. at B-13. Riparian reserves established for the Mr. Wilson sale have a width of at least one potential tree length (170 feet) on either side of intermittent streams and non-fishery perennial streams. (EA at 17.) On fish-bearing streams, the width would be 340 feet (two potential tree lengths). Id. These riparian reserve buffers are consistent with the Standards and Guidelines for Key Watersheds. (NFP at C-30 to C-31.) No timber harvest would be allowed within riparian reserves and trees within one tree length of a reserve would be directionally felled away from the reserve. (EA at 17.) BLM found the Wilson Creek sixth field subwatershed to be properly functioning in view of the mature riparian reserve vegetation with potential for creating large woody debris (LWD) in the stream. (ACSCA at 1-8 to 1-9.) The Walker Creek sixth field subwatershed was found to be not properly functioning as past logging has removed most large conifers which are a source of LWD which may in turn generate side channels or other off channel habitat. Id. at 1-9. In both the fifth field (West Cow Creek watershed)

and sixth field subwatersheds, BLM found the timber sale is expected to maintain this indicator since existing off-channel areas would be protected as part of riparian reserves and no harvest or road-related activities are expected to influence off-channel habitat. Id.

When studying the refugia indicator for ACS objectives, BLM found the Wilson and Walker Creek sixth field subwatersheds not properly functioning since they have been substantially logged and roaded and few riparian reserves are intact. Id. Analyzing the effect on the watershed, BLM found the timber sale would maintain the sixth field subwatersheds in light of establishment of riparian reserves and road renovation, drainage improvement, and road decommissioning which should reduce stream sedimentation. Id. This effect supported a finding that in the fifth field watershed the timber sale would also maintain the status of this indicator. Id. at 1-10.

Examining the riparian reserves indicator for ACS objectives, BLM found that the Wilson Creek sixth field subwatershed was functioning at risk as riparian reserves have been "moderately impacted by road location and timber harvest" and that the Walker Creek sixth field subwatershed was not properly functioning because riparian reserves were "highly impacted by road location, timber harvest and a windstorm that blew down 160 acres." Id. The effect of the timber sale would be to maintain the riparian reserves indicator in the fifth and sixth field watersheds, since there would be no harvest of riparian reserves and forest vegetation recovery will result in 92 percent and 70 percent of riparian reserves in the Wilson and Walker Creek subwatersheds reaching late-successional condition (>80 years old) in 40 to 50 years. Id.

In assessing the disturbance history indicator for ACS objectives, BLM found the Wilson Creek and Walker Creek sixth field subwatersheds functioning at risk and functioning not properly, respectively, in view of road density and the extent of compacted areas. Id. at 1-11. Analyzing the effect of the timber sale including the harvest of approximately 0.5 percent and 1.3 percent of the respective subwatersheds, BLM found that peak water flows would not measurably increase for a number of reasons including the fact that more than 90 percent of the forested acres in each sixth field subwatershed are more than 30 years of age and, thus, hydrologically recovered from past natural or human disturbance. Other factors cited by BLM in support of its conclusion included the fact that road density would not increase, that some harvest units were deferred to minimize potential for increased flows, that drainage improvements (including outsloping and adding water dips on 22 miles of road) would decrease flows from roadside ditches into streams, that riparian reserves would buffer increases in water yield from harvest units, and that soil depth is adequate to allow precipitation to percolate into the ground during storm events for slow release. Id. In further support of its finding, BLM stated that all potential harvest units were field inspected for signs of current or potential slope instability and problem areas were dropped from consideration. Id. at 1-12. Thus, BLM found that the timber sale would maintain the disturbance history indicator in both the sixth field and fifth field watersheds in that the amount of acreage harvested would be

minimal, noting that there would be some short term ground disturbance and loss of canopy closure, but finding that site conditions would be maintained in the long term. Id. at 1-12.

Another indicator considered by BLM in analyzing consistency with ACS objectives is road density and location. Both sixth field subwatersheds were found to be not properly functioning because of road densities of 3.8 and 4.6 miles per square mile and the common existence of valley-bottom roads in the Walker Creek subwatershed. Id. In the BLM analysis, the timber sale would maintain this indicator in the sixth field subwatersheds and the fifth field watershed. Although 1.3 miles of road would be decommissioned, it was not found to measurably affect road density at the watershed level. Id.

In studying other relevant indicators for consistency with ACS objectives, BLM found the sixth field subwatersheds not properly functioning with respect to the "increase in drainage network" indicator because the road densities of 3.8 and 4.6 per square mile have resulted in a 29 percent increase in drainage density due to roadside ditches that drain into channels. Id. at 1-14. When analyzing the effect of the timber sale, BLM found it would maintain the status of the sixth field subwatersheds in that no new permanent road would be built and road renovation, including outslipping of drainage and installing drainage culverts, would route water out of ditches and help restore subsurface flow on hillsides rather than ditch flow into streams. Id. In considering the temperature indicator for ACS consistency, BLM found the sixth field subwatersheds properly functioning in that maximum summer water temperatures are below the threshold established by the State of Oregon for Water Quality Limited streams. The effect of the timber sale was determined to maintain this indicator in the fifth and sixth field watersheds because there would be no timber harvest, site preparation, or road construction in riparian reserves. Id. When reviewing the physical barriers indicator for ACS consistency, BLM determined the sixth field subwatersheds were functioning at risk due to a culvert and three other known human-caused barriers which are obstacles to fish passage. Id. Noting that these barriers would not be altered by the timber sale, BLM found that the effect would be to maintain this indicator in the fifth and sixth field watersheds. Id. at 1-15.

Relevant indicators studied by BLM in evaluating ACS consistency also included sediment/turbidity. The sixth field subwatersheds were determined to be not properly functioning. The effect of the timber sale was found to maintain this indicator since a brief temporary increase in turbidity may be occasioned by replacement of five stream culverts, but the effects are expected to be negligible as project design features such as limiting drainage improvements and log hauling to the dry season should confine any impacts to the immediate area of the disturbance. Id. at 1-16. The sixth field subwatersheds were found by BLM to be functioning at risk for another ACS indicator, LWD, when it surveyed for the presence of large pieces of wood in the stream. Id. at 1-17. The effect of the timber sale was judged to maintain this indicator in the fifth and sixth field watersheds. Id.

The sixth field subwatersheds were found to be functioning at risk for pool frequency, another indicator for ACS consistency, since pools were, on average, somewhat farther apart on the streams than is desired. Id. The timber sale is anticipated to maintain this indicator in the fifth and sixth field watersheds and the BLM hydrologist concluded that peak flows would be maintained. Id. The pool quality indicator of ACS compliance for which the sixth field subwatersheds are functioning at risk and not properly functioning, respectively, is expected to be maintained as a result of the timber sale in view of the preservation of the riparian reserves. Id. at 1-18. Another indicator evaluated by BLM in determining consistency with ACS objectives is the change in peak/base flows. This indicator is considered to be at risk from activities related to timber harvest, but BLM found the timber sale would maintain this indicator since many stands selected for overstory removal contain well-stocked conifer understories which would minimize hydrologic changes and road renovation and maintenance would reduce runoff into streams. Id. at 1-22 to 1-23.

Appellants contend BLM has violated the ACS in that peak flows would increase as a result of compaction associated with road construction, tree felling, and yarding of logs as well as from reduction of canopy closure that would otherwise intercept precipitation. Appellants question the effectiveness of the mitigation measures required by BLM. Referring to the BLM finding that peak flows would not measurably increase and stream channel conditions would be maintained because, among other factors, more than 90 percent of the forested acres in each subwatershed are greater than 30 years of age and, hence, hydrologically recovered from past natural or human disturbance, appellants contend that the BLM hydrologic model is flawed. When appellants cited research conducted in British Columbia in support of their protest regarding the hydrologic recovery model, BLM explained that it is not appropriate to use this study as a "reference when rainfall amounts, soils, topography and forest are much different." (BLM Letter of March 29, 2002, Responding to Protest; AR, Tab 3 at 3.) This has not been refuted by appellants on appeal.

Appellants also challenge the lack of site specific data and analysis of soil characteristics to support the finding that soil depth in harvest units is adequate to allow precipitation to percolate into the soil during storm events for slow release. (Statement of Reasons (SOR) at 12.) In its answer, BLM explains that this contention was addressed in its response to the protest when it explained that the dominant soil types for each harvest unit were described in the silvicultural prescription (AR, Tab 15) and verified on the ground by an interdisciplinary team including a soil specialist. (AR, Tab 3 at 4.) Reference to the silvicultural prescription verifies that soils were analyzed for individual harvest units ranging in size from one acre to as much as 34 acres. (AR, Tab 15.)

In disputing ACS compliance, appellants assert that road density will increase before it decreases, arguing that this creates a risk of increased run-off during intense rain events and that the significance of environmental impacts cannot be avoided by terming an action temporary. In its answer, BLM explains, as it did previously in responding to the protest,

that there is a distinction between analyzing the impact of a temporary road and ignoring temporary impacts. (BLM Answer at 4.) Thus, BLM reiterates that the purpose of using temporary roads during a single dry season and closing and revegetating them during the dry season is to avoid any impact. *Id.* Hence, we find appellants have not shown this to be either improper environmental analysis or a violation of the ACS.

Appellants also contend that preservation of the riparian reserves relied upon by BLM to buffer the streams from impacts may not suffice to preclude sediment and turbidity problems originating from disturbances occurring outside the reserve. (SOR at 11.) When addressing this issue in response to appellants' protest, BLM noted that it found in the ACSCA that the effects of the timber sale would "maintain" existing conditions because there is no harvesting in riparian reserves and there would be planting within the riparian reserve in unit 13. (ACSCA; AR, Tab 17 at 10.) In responding to the protest, BLM also indicated that all riparian reserves adjacent to harvest units were examined by the project hydrologist who concluded that they would adequately filter any sediment before it reaches any stream. (AR, Tab 3 at 3.) This is supported by reference to the EA and the ACSCA in which BLM states on-the-ground examinations determined that there were no cases in this project where unstable slopes or other factors required enlarging the riparian reserves to meet ACS objectives. (EA, Tab 14, at 17; ACSCA, Tab 17 at 1-12.) The record also indicates that log hauling, road renovation and maintenance, and drainage improvements would be limited to the haul (dry) season and that, if roads are deemed too wet during a haul season, no hauling would be allowed until approved by BLM. *Id.* at 18. Appellants have not presented evidence to the contrary.

[1] As a general rule, when the BLM decision is based on consideration of all relevant factors and the record indicates that individuals knowledgeable in their fields contributed input to the decision, BLM is entitled to rely on their expertise. A mere difference of opinion will not overcome the reasoned opinions of the Secretary's technical staff. Larry Thompson, 151 IBLA 208, 218 (1999); Bill Armstrong, 131 IBLA 349, 351 (1994). On appeal of a BLM timber sale decision asserted to be inconsistent with the ACS, we are guided by principals generally applicable to review of BLM decisions for environmental compliance. The record must establish a rational basis for the finding of ACS consistency. Thus, one challenging such a finding must demonstrate either an error of law or fact or that the analysis failed to consider a substantial environmental problem of material significance to the proposed action. Owen Severance, 118 IBLA 381, 392 (1991); Glacier-Two Medicine Alliance, 88 IBLA 133, 141 (1985). The ultimate burden of proof is on the challenging party and such burden must be satisfied by objective evidence rather than differences of opinion. Owen Severance, *supra* at 392. As related above, the record indicates that an interdisciplinary team of BLM specialists conducted a thorough analysis of the timber sale's consistency with the ACS. Although appellants disagree with the opinions of BLM officials and the conclusion drawn therefrom, they have not shown that BLM failed to consider relevant evidence or that their conclusions are not supported by the record. Accordingly, we

find appellants have failed to show the timber sale to be inconsistent with the ACS.

Regarding cumulative impacts, appellants assert that small areas of impact can pose a high risk of watershed-scale degradation when added to the impacts of many projects implemented over a longer time period. (SOR at 10.) They dispute the BLM finding that selection of small isolated logging units would preclude peak flow increases, asserting BLM has improperly failed to consider the cumulative impacts to the West Fork and Middle Fork Cow Creek watersheds when coupled with other Federal and private timber harvests. (SOR at 9-10.) Appellants contend that implementation of best management practices (BMP's) will not be sufficient to avoid significant cumulative effects of multiple actions occurring in the watershed. Id. at 10. With respect to the riparian reserves required by BLM as a mitigation measure, appellants argue that these restraints are not employed on timber harvests on private lands. Id. at 11.

In addressing cumulative effects, the BLM answer refers to its response to appellants' protest (AR, Tab 3) in which BLM cited the finding in the ACSCA, at 16, that impacts to Wilson and Walker Creeks would be negligible and would not impede recovery of their historic sediment regimes. Further, BLM refers to the finding in the EA, at 43-46, that there would be no substantial cumulative adverse effects to coho salmon or steelhead. In the referenced response to appellants' protest, BLM notes that cumulative effects including those of private land activities were addressed in the EIS for the Medford Resource Management Plan (RMP) at chapter 4, the EA at 43-45, and the EIS for the NFP.

As appellant notes, NEPA mandates consideration in an EA of the cumulative impact of proposed actions. 40 CFR 1508.25(c). Cumulative impact is defined as:

[T]he impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 CFR 1508.7. The EA for the Mr. Wilson Timber Sale references the discussion of cumulative effects in the Medford District RMP/EIS and in the West Cow Creek WA. (AR, Tab 14 at 43.) In addition, the EA addresses the cumulative effects of the Mr. Wilson Timber Sale together with other "recent and future actions in the watershed" including the Key Elk, Bear Pen, and Willy Slide Timber Sales, road improvements and drainage improvements on the Lower Walker Creek road, replacement of a culvert which had posed a barrier to fish movement, and "extensive regeneration timber harvest on private lands." Id. Regarding cumulative impacts, BLM found "[f]orest practices (e.g. road construction and maintenance, tractor logging and less riparian protection than on federal lands) on private lands would continue to counter the beneficial effects generated by Best Management Practices (BMPs), PDFs and maturing Riparian Reserves on

federally-managed lands." Id. With respect to certain species including the Del Norte salamander, 2/ Red tree vole, 3/ and mollusk, BLM found their dispersal capability would be reduced by the cumulative effects of timber harvest within the watershed as fragmentation of late-successional habitat continues. Id. at 45. Further, BLM found that the cumulative effects of timber harvest on both private and public lands in the Wilson and Walker Creek project area may lead to substantially reduced populations. Id. at 44.

The EIS for the Medford District RMP (referred to in the EA) analyzed the environmental impacts of proposed timber harvests in the Medford District for the next 10 years based on the probable sale quantity, i.e., an estimate of the average annual timber sale volume likely to be offered from lands allocated to planned, sustainable harvest. (RMP/EIS at 4-5.) For analysis of cumulative effects, BLM assumed most private forest lands would be intensively managed with final harvest on commercial economic rotations averaging 60 years. Id. The EIS for the RMP noted that forest management activities can accelerate soil erosion by creating more exposed or compacted soil. Id. at 4-14. Increases in magnitude and frequency of peak flows could occur in small watersheds as a result of timber harvest and soil compaction, BLM acknowledged. Id. at 4-17. Similarly, the RMP/EIS noted that although riparian reserves and BMP's would reduce potential erosion, surface disturbing activities including existing and new haul and skid roads could result in increased turbidity and sediment levels. Id. at 4-18. Potential for cumulative impacts to water quality will be significantly reduced by application of the ACS. Id. at 4-22.

Regarding impacts to species associated with old growth forest habitat, effects would relate to the amount, condition, and fragmentation of available habitat. Id. at 4-53. Under the RMP, old growth habitat would be restricted to riparian reserves, connectivity/diversity blocks, administratively withdrawn lands, and protection buffers for several species in the northern portion 4/ of the timber harvest lands. Id. at 4-5. Maintenance of canopy closure and avoidance of surface disturbance on sites occupied by the Del Norte salamander should mitigate most adverse impacts. Id. at 4-81.

[2] A close look at the record, as seen above, discloses that BLM has considered the cumulative impacts of the Mr. Wilson Timber Sale, not only in the context of the analysis in the Medford District RMP/EIS, but also in

2/ At least 60-80 percent canopy closure would be retained over occupied sites to mitigate effects. Although cable and tractor yarding would be allowed, disturbance would be limited to no more than 15 percent of the talus patch. (AR, Tab 14 at 24.)

3/ The EA discloses that surveys for Red tree voles have been conducted. Nests would be protected with an approximate 10-acre no-cut buffer in all harvest units. (AR, Tab 14 at 25.)

4/ The West Cow Creek watershed is located in the northern part of the Medford District.

the context of cumulative impacts to the West Fork Cow Creek watershed and the Walker Creek and Wilson Creek subwatersheds from other timber harvest activities. See EA at 43-45. Thus, contrary to appellants' contention, BLM considered cumulative impacts at the site-specific level. This Board has held that when the cumulative impacts of a timber harvest are discussed in a programmatic EIS for timber management in a BLM district, BLM may tier the EA to the EIS such that the cumulative impacts of the entire program need not be reiterated. In re North Murphy Timber Sale, 146 IBLA 305 (1998); 5/ In re Crane Prairie Timber Sale, 109 IBLA 188 (1989); In re Letz Boogie Timber Sale, 102 IBLA 137 (1988); In re Humpy Mountain Timber Sale, 88 IBLA 7 (1985); Ventling v. Bergland, 479 F. Supp. 174, 180 (D.S.D.), aff'd mem., 615 F.2d 1365 (8th Cir. 1979). As we held in the North Murphy case, when appellants challenge the adequacy of the analysis of environmental impacts in an EA which has been tiered to an EIS, the issue is whether appellants have shown significant impacts which are different in nature from those analyzed in the EIS. 146 IBLA at 315; see Blue Mountains Biodiversity Project, 139 IBLA 258, 266 (1997). We find appellants have failed to make this showing.

Appellants also argue that the timber sale would destroy or adversely modify critical habitat of the threatened Northern Spotted owl and that inclusion of any old growth habitat in matrix (timber harvest) lands does not support the recovery of the Spotted owl which needs "all" remaining habitat. (SOR at 16.) Although appellants assert BLM reliance on the biological opinion of the U.S. Fish and Wildlife Service (USFWS) is arbitrary and capricious, they provide no substantive basis for disputing the reasonableness of the USFWS analysis and, hence, this challenge is rejected. Appellants decry both the NFP and the Medford RMP, but they make no showing that this timber sale is inconsistent with either of those documents or their respective EIS's.

Therefore, 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 and the motion to stay the BLM decision is denied.

C. Randall Grant, Jr.
Administrative Judge

I concur:

James F. Roberts
Administrative Judge

5/ Rev'd on other grounds, Oregon Natural Resources Council v. United States Forest Service, No. C98-942WD (W.D. Wash. Aug. 2, 1999), slip op. at 11-12.