INTERIOR BOARD OF LAND APPEALS

In re Stratton Hog Timber Sale

160 IBLA 329 (January 23, 2004)

Title page added by:
ibiadecisions.com

IN RE STRATTON HOG TIMBER SALE

IBLA 2001-222 Decided January 23, 2004

Appeal from a decision of the Grants Pass Field Manager, Medford, Oregon, District Office, Bureau of Land Management, denying a protest against the Stratton Hog timber sale. OR-TS00-06.

Decision affirmed.

1. Environmental Quality: Environmental Statements

   An environmental assessment may be tiered to another NEPA document which has considered particular impacts of a broader Federal action and need not restate the analysis of those impacts, but the issue must necessarily have been addressed adequately in the first document. In challenging an EA, appellant must establish by objective proof that the determination was premised on a clear error of law or a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. In cases where the BLM decision appealed from is a denial of a protest, appellant must affirmatively point out error in the decision from which it directly appeals.

APPEARANCES: Jay Lininger, Ashland, Oregon, for Klamath Siskiyou Wildlands Center; Linda Boody, Field Office Manager, Grants Pass Resource Area, Bureau of Land Management, Medford, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Klamath-Siskiyou Wildlands Center (KSWC) appeals from a February 6, 2001, decision of the Grants Pass Field Manager, Medford, Oregon, District Office, Bureau of Land Management (BLM), which denied KSWC's protest against the Stratton Hog

timber sale. This Board previously denied KSWC's request for a stay and BLM's motion to dismiss. (Orders dated May 14 and Aug. 20, 2001.)

BLM prepared a 1998 Environmental Assessment (EA), OR110-98-17, for the Stratton Hog Forest Management Project, and a Decision Record/Finding of No Significant Impact (FONSI) for the sale on September 25, 1998. (Stratton Hog Timber Sale Record Documents (R. Docs.) 15 and 13.) The EA was tiered to the Final Environmental Impact Statement and Record of Decision dated June 1995 for the Medford District Resource Management Plan, October 1994 (Medford FEIS and RMP), and the Final EIS for the 1994 "Record of Decision for Standards and Guidelines for Management of Habitat for Late Successional and Old Growth Forest Related Species Within the Range of the Northern Spotted Owl," widely known as the Northwest Forest Plan (NFP).

Subsequent to BLM's decision, however, a Federal court issued a decision which held unlawful and set aside certain of BLM's policy memoranda issued to address the performance of species surveys for purposes of issuing decisions on timber sales in compliance with and tiered to the NFP. Oregon Natural Resources Council Action v. United States Forest Service (ONRC v. USFS), 59 F. Supp. 2d 1085 (W.D. Wash. 1999). On December 17, 1999, the Court issued an order approving settlement of those issues, conditioned on BLM's agreement to conduct supplemental surveys prior to moving forward with timber sales subject to the order.

Though the Stratton Hog sale was not at issue in ONRC v. USFS, the Oregon State Office, BLM, issued Instruction Memorandum OR-2000-36, requiring additional species surveys in compliance with the Court's order. Thus, BLM prepared an August 10, 2000, Supplemental Information Report (SIR) documenting "agency compliance with the current requirements of the Survey and Manage Program." (R. Doc. 10 at 1.) As a result of its additional surveys, BLM modified the Stratton Hog project by reducing acreage subject to the sale. Id. at 4. Specifically, BLM excluded 43 acres for which surveys were not completed and adopted buffers for three mollusk species (Prophysaon coeruleum, Prophysaon dubium, and Helminthoglypta hertlieni), which resulted in a decrease of 142 harvest acres. Id. at 3-4.

BLM published two notices of sale on August 31, 2000, and September 7, 2000. (R. Docs. 7 and 8). KSWC filed a protest of the sale on September 9, 2000. (R. Doc. 6). BLM responded to and denied the protest on February 6, 2001. (R. Doc. 4.) KSWC filed a Notice of Appeal and Request for Stay with BLM on March 12, 2001. KSWC filed its Statement of Reasons (SOR) on April 16, 2001, raising nine enumerated arguments. BLM submitted an Answer on May 11, 2001.

[1] Before addressing the merits, we set forth the governing law applicable to this appeal. Section 102(2)(C) of the National Environmental Policy Act of 1969

(NEPA), 42 U.S.C. § 4332(2)(C) (2000), requires Federal agencies to prepare an EIS for a major Federal action significantly affecting the quality of the human environment. The agency must consider its preferred course of action and alternatives to that action and take a "hard look" at the environmental consequences. 42 U.S.C. § 4332(2)(E) (2000); 40 CFR 1501.2(c). If the agency chooses to, it may prepare an EA for a proposed action and go forward if it makes a "finding of no significant impact," subject to agency rules and those of the Council on Environmental Quality (CEQ) at 40 CFR Subpart 1500. If a significant impact is anticipated, an EIS is prepared.

It is well-settled that an EA or EIS may be tiered to another NEPA document which has considered particular impacts of a broader Federal action. Tiering is defined in the CEQ regulations as "coverage of general matters in broader [EISs] * * * with subsequent narrower statements or environmental analyses * * * incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared." 40 CFR 1508.28. An EA which is tiered to a final EIS need not restate the cumulative impacts analysis or a no action alternative that was already considered in the document to which the EA is tiered. Blue Mountains Biodiversity Project, 139 IBLA 258, 267 (1997); Oregon Natural Resources Council, 115 IBLA 179, 186 (1990); In re Long Missouri Timber Sale, 106 IBLA 83, 87 (1988), reconsideration denied (1989); In re Upper Floras Timber Sale, 86 IBLA 296, 311 (1985); see also Southern Utah Wilderness Alliance, 158 IBLA 212 (2003). In Kern v. BLM, No. 99-35254 (9th Cir. Mar. 22, 2002), the Ninth Circuit Court of Appeals concluded that a NEPA document may only be tiered under the CEQ regulations to a document which has itself been issued as a document under NEPA. It also held that an environmental impact, consideration of which is eschewed in an EA, must necessarily have been addressed adequately in a document to which the EA is tiered.

In Fredric L. Fleetwood, 159 IBLA 375, 382 (2003), the Board explained the standard of review applicable to an appeal from a BLM decision to undertake an action which was analyzed in an EA and for which a FONSI has been issued. Such a decision

> will be affirmed when the record demonstrates that BLM has considered the 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. Southern Utah Wilderness Alliance, 158 IBLA 212, 219 (2003); see Cabinet Mountains Wilderness v. Peterson, 685 F.2d 678, 681-82 (D.C. Cir. 1982); Maryland-National Capitol Park & Planning Commission v. U.S. Postal Service, 487 F.2d 1029 (D.C. Cir. 1973);

> Wyoming Outdoor Council, 158 IBLA 155, 160 (2003). * * * As a general rule, the Board will affirm a FONSI with respect to a proposed action if the record establishes that a careful review of environmental problems has been made, all relevant environmental concerns have been identified, and the final determination is reasonable. Umpqua Watersheds, Inc., 158 IBLA 62, 67, 84 (2002); Utah Wilderness Association, 80 IBLA 64, 78, 91 I.D. 165, 173-74 (1984). The record should therefore establish that the FONSI and decision to proceed were based on reasoned decisionmaking. However, the ultimate burden of proof is on the challenging party to demonstrate either an error of law or fact and that burden must be satisfied by objective evidence; mere differences of opinion provide no basis for reversal. Larry Thompson, 151 IBLA 208, 217 (1999); Red Thunder, Inc., 117 IBLA 167, 175, 97 I.D. 263, 267 (1990).

Thus, in challenging an EA, the appellant must establish that BLM did not adequately consider matters of environmental concern. The appellant must show by objective proof that the determination was premised on a clear error of law or a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. Differences in viewpoint do not suffice to establish that BLM's analysis is inadequate and provide no basis for reversal. Rural Information Network, 149 IBLA 336, 342 (1999), citing The Ecology Center, 147 IBLA 66 (1998). It is simply not enough to pick apart a record with alleged errors and disagreements, without connecting those allegations to an affirmative showing that BLM failed to consider a substantial environmental question of material significance.

In cases where the BLM decision appealed from is a denial of a protest, the Board has set forth the obligation of the appellant to establish error in the actual BLM protest decision. An appellant must affirmatively point out error in the decision from which it appeals. Watts v. United States, 148 IBLA 213, 217 (1999).

> We have repeatedly stated that an appellant is required to point out affirmatively why the decision under appeal is in error. Andre C. Capella, 94 IBLA 181 (1986); United States v. De Fisher, 92 IBLA 226 (1986); United States v. Reavely, 53 IBLA 320 (1981); United States v. Coppridge, 17 IBLA 323 (1974); United States v. Whittaker, 12 IBLA 279 (1973). In Shell Offshore, Inc., 116 IBLA 246, 250 (1990), we held that this requirement is not satisfied if the appellant "has merely reiterated the arguments considered by the [decisionmaker below], as if there were no decision * * * addressing those points."

In re Mill Creek Salvage Timber Sale, 121 IBLA 360, 362 (1991). The Board stated there that summary dismissal was appropriate where BLM "provided a comprehensive decision fully addressing each of the allegations contained in the protest and appellant has not attempted to show any error in the decision." Id.

We consider EAs for timber sales with these background principles in mind. We turn to KSWC's nine arguments in its SOR.

Issues 1 and 2. KSWC's first and second arguments assert that BLM violated the "survey and manage" prescriptions required by the NFP for particular species including the red tree vole. KSWC notes that BLM's implementation of the NFP with respect to certain species was rejected by decision and order of the Federal court in ONRC v. USFS, which post-dated the EA in this case. [1/] Acknowledging that BLM prepared the August 10, 2000, SIR effectively to comply with Judge Dwyer's analysis, as adopted by the Oregon State Office, BLM, KSWC nonetheless argues that, to the extent BLM wished to submit information of the kind found in the SIR, it was obligated to have done so solely within the context of the EA. KSWC thus argues that the appearance of the SIR after preparation of the EA (and after Judge Dwyer's order) violates NEPA. (SOR at 1-2.) KSWC argues as well that the supplemental information provided by the surveys conducted as a result of compliance with ONRC v. USFS requires BLM to prepare a supplemental EA and issue a new decision. (SOR at 2-4.)

KSWC does not assert that BLM's surveys in the SIR violate the requirements of the NFP as clarified by Judge Dwyer. Thus, KSWC's argument is that BLM was required to comply with the "survey and manage" prescriptions of the NFP in the EA, and that, because it did not do so, but rather supplemented the EA with information required as a result of the Federal court ruling prior to issuing any final decision to proceed, it nonetheless violated NEPA.

We reject KSWC's contention. KSWC's argument is belied by the terms of Judge Dwyer's December 17, 1999, order approving settlement in that case. There, Judge Dwyer signed a stipulated order of dismissal entered into by way of settlement between the plaintiffs and defendants, BLM and the Forest Service (FS), in ONRC v. USFS. (Dec. 17, 1999, Stipulation for Order Dismissing Action; Order Thereon.) BLM and the FS agreed to prepare "amendments to improve the [NFP] survey and manage requirements based on a range of alternatives evaluated in a supplemental environmental impact statement" to be finalized in 2000. (Stipulation at p. 2.) The stipulated settlement provided a mechanism to resolve the survey and manage issues regarding relevant species, which settlement would allow sales to be awarded

[1/] Judge Dwyer invalidated a Nov. 4, 1996, document entitled "Interim Guidance for Survey and Manage Component 2 Species: Red Tree Vole."

following completion of field surveys within the ensuing several months. The stipulated settlement committed BLM to apply the terms of the agreement to all sold and un-awarded timber sales subject to appeal. See Stipulation Exhibit A. With respect to committed timber sales, paragraph 3 specified that: "Defendants will document survey results and management actions (including whether species locations will be managed as known sites) for each land management action identified in Exhibit A in a Supplemental Information Report (SIR) that will become part of the project decision record." (Stipulation at 4.)

This plain language clarifies that the Stipulation entered into among the parties anticipated SIRs to supplement NEPA documentation, not to doom it for failure to contain such information in the first place. While the Stratton Hog timber sale was not subject to the order in that case, KSWC fails to address BLM's policy adoption of the SIR procedure approved by Judge Dwyer for other timber sales, or to assert whether or why it would be invalid for BLM to do so in the context of the Stratton Hog timber sale record, pending amendment of the NFP FEIS.

Moreover, KSWC's implication that BLM could not proceed with action pursuant to the NFP, without reissuing EAs or NEPA documents after supplementing the record, ignores Board precedent permitting the Board in any event to accept documentation to supplement a record and then, if necessary, to review it as an exercise of the Board's de novo review authority. In re Lick Gulch, 72 IBLA 261, 273 n.6, 90 I.D. 189, 196 n.6 (1983); Melluzzo Stone Company, 154 IBLA 23, 26 (2000). The Board has authority to review information submitted on appeal to demonstrate the sufficiency of BLM's NEPA analysis; that information may supplement an otherwise perceived deficiency in that analysis. Vulcan Power Co., 143 IBLA 10, 23-24 (1998) (discretionary review authority of the Board to supplement record on appeal).

KSWC is correct that CEQ regulations compel an agency to prepare a supplemental NEPA document where the agency "makes substantial changes in the proposed action that are relevant to environmental concerns" or if "there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 CFR 1502.9(c)(1). In Legal and Safety Employer Research Inc., 154 IBLA 167, 178 (2001), we held that where differences are de minimis or minor, they do not necessitate preparation of supplemental NEPA documentation. In William E. Love, 151 IBLA 309 (2000), we pointed out that 40 CFR 1502.9(c) does not require supplemental NEPA documentation if the proposed action as amended was considered in the original document. Id. at 321, citing "Forty Most Asked Questions Concerning CEQ's [NEPA] Regulations," 46 FR 18026 (Mar. 23, 1981); State of California v. Block, 690 F.2d 753, 761 (9th Cir. 1982).

KSWC fails to support its assertion that BLM's adoption of the SIR presents a violation of that regulation or this precedent. KSWC's argument relies on the assumption that the SIR is not adequate to constitute an appropriate NEPA "supplement" under 40 CFR 1502.9, a premise that is not proven or argued. [2] Indeed, KSWC complains that the original EA contained no mitigation measures for the red tree vole but that the SIR did (SOR at 3), thus implicitly conceding that a purpose of the SIR was to comply with NEPA.

In any event, KSWC's identification of a "substantial change" allegedly requiring something further by way of a supplemental EA or an EIS is that, as a result of the SIR, BLM cancelled "one-fifth of the entire timber sale" and "reduced the timber sale's acreage by 20 % from what BLM approved in the [Decision Record]." (SOR at 3.) KSWC fails to explain how a 20 percent reduction in the scope of the project and thereby a reduction in the scope of potential impacts should compel another NEPA document. See William E. Love, 151 IBLA at 321. It is incumbent upon KSWC to show that BLM did not adequately consider matters of environmental concern in conducting the requisite surveys to comply with Judge Dwyer's order and a 2000 supplemental EIS and in reducing the scope of the project. KSWC may not invoke the term "substantial change" as a technical defense to an action with which it clearly disagrees in order to show a violation of NEPA.

Issue 3. KSWC's third argument raises the question of whether BLM has properly presented a cumulative impacts analysis in the EA. In its protest letter and SOR, KSWC asserts disagreements with BLM's conclusions; as KSWC's views are not substantiated in a way which permits the Board to make a finding that BLM erred as a matter of fact, we attempt here to rephrase the argument in terms that we can review.

KSWC claims that the EA did not adequately present a cumulative impacts analysis regarding the effects of the Stratton Hog timber sale in conjunction with other sales anticipated in the watershed and tiered to the NFP and Medford RMP. BLM responds by citing the cumulative impacts analysis in the EA. (R. Doc. 15 at 43-44, and the information provided regarding the acreage and types of forest to be logged in Table 1.) Likewise, BLM cites the fact that the EA is tiered to the NFP and the RMP and alleges that it need not consider cumulative impacts in detail. KSWC responds that it is not enough to cite those documents and that BLM should have found cumulative impacts to be so significant as to rise to the level of requiring another EIS.

---

[2] KSWC argues that the SIR is not a NEPA document at its SOR at 1-2, but acknowledges elsewhere that the SIR conducted NEPA consistency review and mitigation measures. (SOR at 3.)

KSWC is correct that it is not enough to cite to documents to which an EA is tiered as a justification for failure to consider cumulative impacts analysis in a site-specific EA. Those documents must have addressed the impacts in question. Kern v. BLM, No. 99-35254 (9th Cir. Mar. 22, 2002).

In this case, however, the EA did present a cumulative impacts analysis, albeit a brief one. (EA at 43-44.) Thus, it would be incumbent upon KSWC here, in order to demonstrate that an EIS is required beyond the EISs prepared for the NFP and the Medford RMP, to show that the cumulative impacts analysis in the EA disclosed or should have disclosed cumulative effects beyond those anticipated in those EISs to which the EA is tiered. KSWC has not made such a showing. KSWC correctly cites general NEPA principles (SOR at 4), but presents no specifics on how the cumulative impacts analysis is either wrong (SOR at 3) or addresses impacts not anticipated in documents to which the EA is tiered. We agree with BLM's general comment that KSWC's SOR reflects a general dissatisfaction with the conclusions in the NFP rather than a concern that the EA has or should have identified impacts which exceeded those anticipated from logging considered in the NFP and RMP. (SOR at 4-5.)

Issue 4. KSWC's general disagreement with the approach taken in the NFP is reflected in its fourth argument. There, KSWC objects to the EA's and BLM's analysis of the impacts on "late successional" forest. (SOR at 5-7.) KSWC's concern appears to be that the EA identified impacts on forests using a classification system identified in the NFP. KSWC acknowledges that the classification derives from the NFP (SOR at 7), but alleges that the NFP, Appendix J-2 to the FEIS for the NFP, also identifies alternative classification systems employed by scientist McKelvey. Id. at 6-7. According to KSWC, McKelvey's rating system better analyzes spotted owl habitat than the NFP's classification system of "late successional" forest, which is based on size and age class of trees rather than species associations. KSWC thus apparently asks the Board to conclude that the EA's analysis of impacts on late successional forest as defined in the NFP is wrong.

Even accepting as true KSWC's contentions, KSWC has merely shown that it would have reached different analysis of relevant factors were it authorized to administer the NFP. This falls short of exhibiting a violation of NEPA. Rather, KSWC reveals a difference of opinion with BLM biologists, which does not alone meet its burden of showing a violation of NEPA. Bill Armstrong, 131 IBLA 349, 351 (1994). This is particularly true when an appellant's difference of opinion is with a document, the NFP, which is not the subject of review by the Board.

Issues 5 and 6. In its fifth and sixth arguments, KSWC contends that the Board should reverse BLM because it did not consider sufficient alternatives which would focus on fuel hazard reduction and fire control. KSWC's interest in fire management is a thinly disguised request that BLM be compelled to abandon altogether the

purpose of conducting a timber sale. Thus, KSWC contends that BLM should be ordered to consider "area-wide surface fuel reduction and prescribed burning in lieu of commercial thinning" to "permit better comparison of impacts on the fire and fuels resource." (SOR at 8, Issue 5.) KSWC states that BLM "shuns obvious fuel reduction methods (prescribed burning) in order to push commercial logging as the only available action to address the risk." (SOR at 9, Issue 6.) Elsewhere, KSWC argues that "[c]ommercial logging removes the least flammable portions of trees" and increases risk of fire. Id. In short, KSWC requests the Board to order BLM to cancel the timber sale and substitute a goal of fire suppression or fuel hazard reduction.

Such decisionmaking is not the province of the Board. BLM and FS prepared considerable NEPA analysis and documentation in the NFP and RMP to determine the appropriate management of lands in the Pacific Northwest to accomplish a variety of land management directives and goals. The NFP expressed the dual goals as "the need for forest habitat and the need for forest products." (NFP FEIS Summary at S-4.) The point of the NFP was to establish management directives to effectuate both goals, including meeting the "need for a sustainable supply of timber and other forest products that will help maintain the stability of local and regional economies." Id. The EA is the NEPA documentation for one particular timber sale. KSWC's presumption that it is and should be a goal of the Board to repudiate timber sales in favor of other purposes misreads the NFP.

KSWC's suggestion that NEPA compels such an outcome misperceives that statute as well. Section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), requires every Federal agency to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228-29 (9th Cir. 1988), cert. denied, 489 U.S. 1066 (1989). CEQ regulations expressly identify the requirement to consider alternatives within an EA. 40 CFR 1508.9(b); see also 516 DM 3.4(A). A goal of alternatives analysis is to "[u]se the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects * * *." 40 CFR 1500.2(e). An agency must consider alternatives that accomplish the intended purpose of the proposed action, be technically and economically feasible, and have a lesser impact than the proposed project. Bales Ranch; 151 IBLA 353, 363 (2000), citing, inter alia, Headwaters, Inc. v. BLM, 914 F.2d 1174, 1180-81 (9th Cir. 1990). "Under this requirement all reasonable alternatives must be considered (North Slope Borough v. Andrus, 486 F.Supp. 326, 330 (D.D.C. 1979)) and obvious alternatives may not be ignored (California v. Bergland, 483 F.Supp. 465, 488 (E.D. Cal. 1980))." State of Wyoming Game & Fish Commission, 91 IBLA 364, 369 (1986). A "rule of reason" approach applies to both the range of alternatives and the extent to which each alternative must be addressed. Southern Utah Wilderness Alliance, 152 IBLA 216, 223-24 (2000).

To reverse BLM's FONSI for failure to consider alternatives, we must determine on the record that the alternatives proposed by KSWC have lesser impacts than the proposed action and would accomplish the intended purpose of the proposed action. [3/] KSWC presents no such option. Rather, KSWC asks the Board to set aside BLM's purpose of authorizing commercial logging and to substitute fuel hazard reduction as the stated project purpose. Nothing in NEPA or any authority compels this outcome.

Issues 7 and 8. In its arguments 7 and 8, KSWC bypasses the BLM protest decision. These arguments, presented in four parts, are the same as those presented by KSWC in its protest arguments 5 and 8. (R. Doc. 6 at 7.) [4/] BLM responded to each argument in its protest decision, and in considerable detail with respect to the three-part issue 8. (R. Doc. 4 at 4, 6-8.) KSWC's failure to acknowledge this response or demonstrate error in the BLM decision challenged defeats its arguments. In re Mill Creek Salvage Timber Sale, 121 IBLA at 362.

Issue 9. KSWC's argument 9 appears to be a direct challenge to decisions or actions of the National Marine Fisheries Service (NMFS). (SOR at 10-11.) Cross-referencing this argument with its protest argument 7, it appears that KSWC challenged a January 21, 1999, Biological Opinion (BO) prepared by NMFS. (R. Doc. 6, Protest at 5, Issue 7.) In its response, BLM pointed out that this BO had been superseded by a letter of concurrence issued by NMFS on September 25, 2000. (R. Doc. 4, Protest Decision at 6; R. Doc. 5, Sept. 25, 2000, NMFS Concurrence.) In its SOR, KWSC alleges that NMFS provided a "rubber stamp concurrence" with BLM's

---

[3/] The EA states the purpose of the proposal to "contribut[e] to the Medford District's timber harvest/forest products commitment, thus helping meet the demand for wood products both regionally and nationally and support local and regional economies"; and management of the forest land in a manner that will provide for and promote a wide variety of non-commodity outputs and conditions including wildlife habitats, sustainable forest conditions, and recreation opportunities. (EA at 3.)

[4/] KSWC's entire Argument 7 is as follows:

> The FWS and BLM have no idea how many "take" permits have been issued for projects that may harm, harass, or kill northern spotted owls. Even with effective monitoring at the local level, the absence of a streamlined process for tracking owl take nullifies the FWS' duty to prevent programmatic timber harvest on federal lands from jeopardizing the bird's continuing existence.

Id. at 10. To the extent KSWC challenges actions of the FWS, it would be incumbent upon KSWC to allege a specific decision within the jurisdiction of the Board.

findings and that it "does not reflect that [NMFS] carefully scrutinized the project record or the watershed analysis." (SOR at 11, Issue 9.)

To the extent KSWC alleges that the NMFS erred in complying with its own statutory obligations, we presume those obligations derive from the Endangered Species Act, 16 U.S.C. §§ 1531-44 (2000). We cannot review an NMFS BO. The Department of the Interior has no authority to conduct administrative proceedings for purposes of considering challenges to decisions of a sister agency; likewise, the Secretary has not delegated authority to this Board to review the merits of biological opinions. See, e.g., F. Duane Blake v. BLM, 158 IBLA 280, 282 (2002). Thus, to the extent KSWC asks the Board to review and reject actions by NMFS, we have no jurisdiction to do so. [5/]

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

Lisa Hemmer
Administrative Judge

I concur:

David L. Hughes
Administrative Judge

[5/] The Board may review a final decision to determine whether BLM adequately complied with NEPA in evaluating impacts on endangered and threatened species. Wyoming Outdoor Council, 159 IBLA 388, 403 (2003). KSWC has not articulated in its appeal a particular decision to review or a statutory violation to consider; we will not construct a serviceable appeal for our own consideration on behalf of an appellant.