United States Department of the Interior

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

703 235 3750 703 235 8349 (fax)

COMMITTEE FOR IDAHO'S HIGH DESERT, WESTERN WATERSHEDS PROJECT
&
IDAHO BIRD HUNTERS

IBLA 2002-439 Decided March 27, 2003

Appeal from a decision of the Owyhee, Idaho, Field Office Manager, Bureau of Land Management, approving the Pixley Basin prescribed burn and juniper cut. ID-096-02-025

Decision affirmed.

1. Environmental Quality: Environmental Statements — National Environmental Policy Act of 1969: Environmental Statements — National Environmental Policy Act of 1969: Finding of No Significant Impact — Timber Sales and Disposals: Generally — Wildfire Management: Generally

A decision that it is not necessary to prepare an EIS before proceeding with a prescribed burn and juniper cut will be affirmed on appeal if the record demonstrates that BLM has, considering all relevant matters of environmental concern, taken a "hard look" at potential environmental impacts, and made a convincing case that no significant impact will result or that the impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. An appellant seeking to set aside or overturn a decision to proceed without preparing an EIS must demonstrate, with objective proof, that BLM failed to consider a substantial environmental question of material significance to the proposed action, or that it otherwise failed to abide by section 102(2)(C) of NEPA.

APPEARANCES: Todd C. Tucci, Esq., Boise, Idaho, for appellants; Michael A. Ferguson, Acting State Director, Idaho State Office, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Committee for Idaho's High Desert, Western Watersheds Project and Idaho Bird Hunters (appellants) have appealed the Owyhee Field Office Manager's July 22, 2002, "EA and FONSI [Environmental Assessment and Finding of No Significant Impact] for the Pixley Basin Prescribed Burn and Juniper Cut EA No. 01066." Appellants also seek a stay of BLM's decision and have filed a petition for stay with their statement of reasons (SOR).1/ The Acting State Director, Idaho, has submitted BLM's case file and a response. For the reasons discussed below, we affirm BLM's decision and deny the stay petition as moot.

The project area is in the Pixley Basin watershed, West Castle Creek allotment, and according to BLM the project area had been identified as an area in need of juniper management in 1994. According to BLM, the area meets a number of the criteria giving it priority for treatment. It consists primarily of sagebrush in the earlier stages of juniper encroachment and contains numerous aspen stands undergoing juniper encroachment. The area has high-value diverse plant communities, has younger junipers (< 4 years old), and, juniper encroachment can easily be controlled with a lower intensity prescribed fire. Selection of this project area is also consistent with livestock grazing management which calls for the Pixley Basin pasture of the West Castle Creek allotment to be grazed in the spring on the odd years and rested in even years. No fencing is needed to protect livestock grazing before and after burning as fences already exist. (EA at 1-3.)

BLM's EA described the purpose of the proposed action, which was to "maintain the existing mountain big sagebrush and mixed mountain shrub communities in a portion of the Owyhee uplands by reintroducing the natural function of fire." The proposed action, according to the EA, is needed "because the natural role of fire has been excluded, resulting in widespread juniper expansion and subsequent loss of shrub and aspen communities."

The EA relates that mountain big sage brush and mountain shrub communities develop with and are maintained by periodic wildfires. BLM relates that the:

1/ When addressing a stay request it is necessary to consider the merits of the case as disclosed by the record. See 43 CFR 4.21 We have considered the merits and find it appropriate to issue a decision rather than rule on the stay. By its nature, our decision on the merits renders the issuance of a stay moot.

Burkhardt and Tisdale's (1976) investigations in the Owyhee Uplands determined that prior to European settlement in the mid-to-late 1800s, these sites burned approximately every 10 to 30 years. Miller and Rose's (1999) studies in similar country, in south east Oregon, estimate historic fire frequency on mountain big sagebrush communities at 15 to 20 years. Historical fire frequency in aspen stands is estimated to be approximately 50 years (Jones and DeByle, 1985). These periodic wildfires helped maintain the upland shrub and riparian communities and confined western juniper to rocky outcrops and other fire resistant sites. Once the area became settled, heavy livestock grazing consumed the fine fuels and fire suppression efforts greatly reduced wildfire, allowing widespread juniper encroachment onto historically unoccupied sites (Miller and Rose 1995, Burkhardt and Tisdale 1976).

Juniper is a desirable native plant which provides many values within its natural habitats on rocky fire resistant sites. However, the lack of periodic fire has allowed juniper to expand into diverse upland shrub and riparian communities. In the continued absence of fire, these shrub communities eventually cross a threshold into fire resistant juniper monocultures, resulting in:

> Loss of biodiversity and values associated with diverse shrub communities.
>
> Accelerated soil erosion and permanent loss of site productivity due to absence of ground cover.
>
> Catastrophic stand replacing fires, which will eventually result from years of accumulated fuel buildup.

Juniper woodlands now occupy approximately 7.9 million acres of the Intermountain West. Over 90% of these woodlands are less than 100 years old (Miller et al. 2000). Consequently, thousands of acres of diverse native shrub/perennial grass communities, which provided important wildlife habitat, has been lost to uncontrolled juniper expansion. The most common, Owyhee Upland shrub communities lost to juniper expansion include: mountain big sagebrush, mountain mahogany, and aspen/choke cherry, as well as riparian communities.

As juniper dominates a site, it increasingly shades out the shrub and herbaceous species, reducing the fine fuels and making the site

> increasingly more difficult to burn under normal conditions. These shade-intolerant shrubs and herbaceous species weaken under the increasing juniper competition and are much slower to recover following fire than on sites in an earlier stage of juniper succession. The diminished herbaceous component on these later successional sites often require[s] pre-burn cutting and more intense fire conditions in order to burn the site, resulting in costlier fires, greater fire severity, and slower site recovery. Therefore, prescribed burns are most successful in areas which are in the earlier stages of juniper encroachment.

(EA 1-1).

BLM related further that the Department had completed the "Interior Columbia Basin Ecosystem Management Project" (ICBEMP) which found that, due to the exclusion of fire, unmanaged conifer encroachment is occurring throughout much of the Intermountain West and Columbia Basin. Specifically, that project found that juniper was increasing on dry grasslands and cool shrub lands, reducing the herbaceous understory and biodiversity; that conifer encroachment had increased due to decreased fire frequency; that there had been an increase in ladder and ground fuels, resulting in high severity fires; and that aspen, western larch and western white pine distribution had all decreased.

The EA explained that in response, on April 2, 2002,

> the Idaho BLM State Director issued Instruction Memorandum No. ID-2002-031 which prioritizes fuels management, restoration, and vegetation treatment projects for the next 3 to 4 years, until various ongoing land use planning efforts have been completed. The priorities in the strategy are derived from scientific findings presented in the ICEBMP, the DOI/USDA Cohesive Strategy for Protecting People and Sustaining Resources, and other National Fire Plan directives. The memorandum prioritizes management efforts to focus on 1) sagebrush steppe, 2) aspen, and 3) dry forest biomes respectively, because of their importance and risk of future losses. Priority plant communities were then identified within each of these three biomes. Lastly, protection and maintenance of intact communities was given higher priority than restoring degraded communities because maintenance is much more efficient and cost-effective than restoration.

(EA at 1-2.)

BLM then lists 6 priorities, including priorities #1 and #2:

1. Sagebrush Steppe Protection
   a. Initial stages of juniper encroachment.
   b. Dry forest species encroachment.
   c. Thin "decadent" sagebrush stands.
   d. Minimize invasive species encroachment or expansion.

2. Sagebrush Steppe Restoration
   a. Convert juniper woodlands back to sagebrush steppe.
   b. Increase diversity in crested wheatgrass seeding monocultures.

(EA at 1-2.)

The EA stated further that the Lower Snake River District conducted controlled juniper burns in the Owyhees during the 1980's and early 1990s and promoted public wood cutting in designated areas, but that staffing limitations and non-discretional priorities have precluded juniper management activities in the last eight years. It notes that Congress recently increased funding for fuels treatment projects in an effort to restore biological diversity and reduce future catastrophic wildfires. Consequently, the EA relates that this funding now provides the staff and resources to carry out prescribed burns and other fuels management treatments. (EA at 1-2, 1-3.)

Appellants argue that the loss to the Government "will be significant, and may be long-term and irreversible," reasoning "[i]f new cheatgrass or noxious weed invasion of upland and riparian areas, caused by fire disturbance results, declines or extirpations of native species and populations from public lands will ensue." (SOR at 15.) They contend that restoration may be difficult and costly and maintain that "[e]radication of weeds, which choke out native flora, is impossible to achieve in vast wild land settings once widespread invasion has occurred," and that BLM is ineffective at treating current levels of white top infestation in Pixley Basin. Id. Appellants submit that "if the already-documented weed problem expands and explodes under the proposed disturbance of fire and cross-country travel, irreversible weed invasion, soil erosion, and watershed destabilization will result" which will have "serious, irreparable impacts to the native biota." Id.

BLM counters denying that the proposed burning will result in cheatgrass and noxious weeds replacing native species. BLM relates that the EA acknowledges the presence of some white top in Goodman Gulch and Pixley Basin and suggested that it could increase in areas where it is burned. BLM does not intend to burn these areas, however, because they are either in non-ignition areas or outside the project area,

and if left untreated, white top would continue to increase with or without the proposed burn. BLM notes that the EA discusses both the risks and the benefits of the prescribed burn and proposed actions to mitigate the risk.

Addressing cheatgrass, BLM states that cheatgrass is found mainly on the drier south-facing slopes, north of the project area, and in the non-ignition areas along Pixley Creek which have undergone years of heavy livestock trailing and use. BLM reports that aside from the south slopes and heavily disturbed areas, cheatgrass is not competitive on the higher elevations, associated with frigid temperatures. In areas other than south slopes and heavily disturbed areas cheatgrass occurs sporadically and does not have the competitive ability that it does on lower elevation mesic temperatures. BLM based these conclusions on its knowledge of cheatgrass ecology and experience with 2 previous burns in the project area described in the EA at 2-7, and concludes that cheatgrass will not increase measurably after the proposed burning.

BLM concedes that there will be temporary inconveniences to the public during the burning operation and that the visual quality of the area for hiking and recreational activities will be negatively affected possibly for a period of up to five years while the area remains black. However, it emphasizes that there will be "long-term benefits of restoring fire's natural role to the landscape which outweigh any short-term inconvenience." (EA at 4-9.) For example, fire would control juniper and maintain desirable fire-dependent native biota.

BLM opines that the prescribed fire would improve big game, sage grouse, and other wildlife habitat and improve hunting and wildlife viewing opportunities. The historic viewshed of the area would be maintained. BLM states that the increase in diversity of native shrubs, forbs and grasses between the burned and unburned areas would enhance the visual quality of the area by adding color, texture, and contrast to the landscape. An abundance of wildflowers would result from the increase in forbs; and an increase in fall colors would occur from the increase in aspen.

BLM notes that in addition to the "no action" alternative, it considered hand thinning the entire project area and the use of mechanical treatment for juniper control (EA, chapter 2 at 4). It states that these alternatives were not analyzed in detail because they were found to be both cost prohibitive and ineffective methods of controlling juniper encroachment in this area.

BLM argues that

> [w]ithout fire the diverse shrublands, groves, and riparian areas of Pixley Basin, which provide important wildlife habitat and

> watershed protection, will be out competed by juniper and will eventually cross a threshold into a fire-resistant, juniper-dominated woodland which lacks biodiversity, is susceptible to accelerated erosion, and no longer provides habitat for sage grouse, big game, and other important wildlife species.

(Response at 5.) BLM reasons that if there is no prescribed burn, livestock forage would diminish and the natural and historic viewshed of the project area would be negatively impacted. Id.

BLM emphasizes the timeliness of this action, given that Pixley Basin is still in relatively good condition and would recover quickly from a moderate intensity fire. It reasons that as the juniper population increases on the site and fine fuels decrease it will become increasingly difficult to burn under manageable conditions, the impact of fire will increase, and natural recovery will be slower. BLM opines that, if there is no prescribed burn, a catastrophic wildfire could occur which would spread within the juniper woodland, leaving little shrub and herbaceous vegetation within the stand after a fire.

Appellants maintain that the actions sought to be authorized "are inconsistent with the Bruneau Management Framework Plan in express violation of the Federal Land Policy and Management Act." (SOR at 15.) According to appellants, BLM improperly failed to prepare an EIS prior to making a final decision, which they believe to be a major federal action significantly affecting the human environment. They assert that BLM adopted an unreasonably narrow purpose and need for the proposed action, failed to consider an adequate range of alternatives and failed to take a "hard look" at the environmental consequences of the proposed action. Id.

Appellants assert that BLM also violated FLPMA's consistency requirement by authorizing and undertaking actions that are inconsistent with the Bruneau MFP. In support of this allegation, they point to certain non vegetative management objectives identified in the MFP, contending that the proposed action to undertake a prescribed burn is inconsistent with those objectives. For example, appellants contend that the prescribed burn is inconsistent with Objective FP-1, which requires BLM to utilize rather than destroy trees which are cleared from land. They contend that BLM "has identified no plan to utilize the juniper trees and plants cleared, save a few as livestock barriers." (SOR at 6) Appellants argue that BLM failed to advertise for disposal by sale, or free use permit, juniper trees that are felled, in violation of objective FP-1.1. FP-1.1, appellants state, requires advertisement for disposal by sale or free use permit, any trees which might otherwise be cut, chained, burned or cleared for vegetation manipulation. (SOR at 6.)

At page 1-4 of the EA, BLM asserts it has complied with relevant planning objectives.

> Compliance and Authorities. The proposed action and Environmental Assessment (EA) are in conformance with the 1984 Bruneau Management Framework Plan (MFP). The proposed action would help achieve rangeland health standards in accordance with the 1997 Idaho Standards for Rangeland Health. The proposed action is also in accordance with the: 1) April 2002 BLM Idaho State Office Instructional Memorandum No. ID-2000-031: A strategy for prioritizing fuels management, restoration and vegetative treatment projects, 2) February 2002 DOI/USDA Cohesive Strategy for Protecting People and Sustaining Resources, and 3) The 1997 Department of Fish and Game Idaho Sage Grouse Management Plan.

Specifically, contesting the appellants' assertion that the proposed action is inconsistent with MFP objective FP-1 and FP-1.1, BLM asserts that these "MFP objectives pertain to areas delineated in the MFP as Non-commercial Woodlands (overlay FP-1). The Pixley Basin Project area lies outside of this area." Moreover, the junipers in Pixley Basin would not have market value to the public because they are small and are located in a remote area which is not easily reached. Extensive cross-country travel would be necessary to reach any larger junipers within this area, and doing so would unnecessarily adversely impact the site. (Response at 6.)

Appellants' claim that BLM's proposed action is inconsistent with objective RM-1 which requires BLM to develop range programs and management techniques to "increase vigor, density and production of desirable vegetation." Pointing to attachment 5 to its SOR, appellants note that BLM had previously determined that this objective was not being met in mountain big sagebrush communities which were burned and subsequently grazed, as those areas "exhibited a downward trend." Appellants contend that BLM seeks to implement proposed actions that will lead to the same ecological degradation that was previously identified as violating the Bruneau MFP. (SOR at 6.).

Disputing appellants' contention that the proposed action is inconsistent with RM-1, BLM asserts that fire history in Pixley Basin does not include the prescribed burning. The fires in Pixley Basin have been high-intensity wildfires which occurred in the summer when the Pixley Basin was being grazed annually. BLM notes that livestock management has been greatly modified since the fires with implementation of a rest rotation system between the Doyle Mountain pasture and Pixley pastures.

BLM notes that the allowable grazing use has been greatly reduced over the years. Prior to 1993, 5,113 allowed animal unit months (AUMs) were allocated in the spring range. Between 1993 and 1997, 4,060 AUMs were allocated in the spring range, and this is the present allocation. BLM proposes to rest the Pixley pasture for approximately 2 years following the burn to allow for revegetation and recovery. Following this rest period grazing would return to the established rest rotation system.

Appellants note that Objective W/L. 4.4 directs BLM to improve the quality of sage grouse nesting and brood rearing habitats and requires improvement of all poor and fair big sagebrush, meadow, and riparian ecological sites and management for good ecological condition. Appellants charge that BLM is proposing to undermine sage grouse habitat by the prescribed burn and is further undermining critical sage grouse habitat in the adjacent Doyle Mountain pasture. They note that the "current Western Association of Fish and Wildlife Agencies (WAFWA) guidelines for managing sage grouse habitat" stress the importance of winter habitat areas with greater than 20% canopy cover. According to appellants, the guidelines document the detrimental impacts that prescribed burning has on sage grouse habitat during drought periods, and they allege that "canopy cover in mountain big sagebrush" was not found to have provided "appropriate nesting habitat 14 years after burning." (SOR at 7.)

BLM insists that the fourth objective of the proposed burn is to ' "improve wildlife habitat for sage grouse' and other various wildlife species by 'creating and maintaining vegetative mosaics.' " It maintains that the project area consists "mainly of late summer brood sage grouse habitat." Some low sage sites were identified in the MFP as sage grouse winter range and this area was delineated, discussed in the EA, and would not be burned. (Response at 10).

BLM notes that the EA cites pertinent literature documenting the fact that late brood-rearing sage grouse habitat would benefit from burning. The 1997 Idaho Sage Grouse Management Plan at 12 recommends management of late summer brood-rearing habitat by providing "a good variety of succulent vegetation adjacent to sagebrush escape and loafing cover." BLM notes that Sather-Blair et al., 2000 at 10, recognize as well that "the availability of forbs in the late summer is the most important common denominator for good brood-rearing habitat." "A framework to assist in making sensitive species habitat assessments for BLM administered public lands in Idaho - sage grouse" Idaho BLM Draft Document May 2000 by Sather-Blair, S.P. Makela, T. Carrigan, and L. Anderson. BLM asserts that the increased forb component adjacent to unburned sagebrush would provide a good variety of succulent vegetation alongside sagebrush escape and loafing cover, as recommended in the 1997 Idaho Sage Grouse Management Plan. The Cohesive Strategy at 38, directs further

> restoration of sage grouse habitat requires reestablishment of native rangeland grasses, shrubs, and forbs. To accomplish this, fire frequency must be reduced in landscapes, that have become dominated by cheatgrass and increased where tree encroachment has replaced sagebrush grass communities.

(Response at 11). In addition to the foregoing, BLM's response answers each of appellants' claims that the proposed action was inconsistent with MFP objectives RM- 2.2, WL-3, WL-3.2(c), WL-5, WL-5.1, WS-1, W/L AQ 2.4, and W/L AQ 2.6.

BLM further denies adopting an unreasonably narrow purpose and need, arguing that appellants do not identify "why they consider the Purpose and Need narrow." (Response at 19.) BLM surmises, based on appellants' other statements, that they do not disagree with the purpose and need of maintaining big mountain sagebrush and other shrub communities but disagree with the use of fire to achieve that objective. BLM charges that appellants have been afforded the opportunity for comment to delineate other means to meet this objective but have offered none, either below or on appeal.

BLM maintains that it took a "hard look" at the environmental consequences of the proposed action and reasonable alternatives, making considerable use of scientific data and literature. Noting that appellants disagree with their analysis and refuse to acknowledge pertinent scientific literature, BLM contends that appellants fail to specifically identify how BLM failed to take a hard look at the environmental consequences.

BLM rejects appellants' claim that the environmental losses listed by appellants give rise to a likelihood of immediate and irreparable harm. BLM maintains that it has addressed all of the alleged environmental losses in the EA, and that the proposed burn will bring long-term environmental benefits.

BLM avers that the harm alleged by appellants resulting from the loss of birch trees in Pixley Basin is overstated because 80% of the birch trees in Pixley Basin occur in the non-ignition zone along Pixley Creek which is not targeted for burning. It concedes, however, that a few birch trees will be burned, noting that those impacts are documented in the EA at chapter 4, page 6. (Response at 20.)

BLM notes that the purpose of this project is to (1) maintain the mountain big sagebrush/bitterbush-bunchgrass communities in Pixley Basin by controlling juniper with the prescribed burn program; (2) improve and maintain the aspen/chokecherry, and birch stands in Pixley Basin by burning and cutting encroaching juniper; (3)

maintain watershed function, stability, and reduce accelerated erosion by maintaining and increasing shrub and diverse herbaceous plant communities, which provide cover and litter needed to protect the soil; and (4) improve wildlife habitat for sage grouse, elk, mule deer, antelope, migratory birds, small mammals, amphibians, and reptiles by creating and maintaining vegetative mosaics. (Response at 21; EA at 1-3.)

[1] BLM's decision that it is not necessary to prepare an EIS before proceeding with the proposed Pixley Basin prescribed burn and juniper cut, based on EA No. 01066, will be deemed to be in accordance with section 102(2)(C) of NEPA if the record demonstrates that BLM has, considering all relevant matters of environmental concern, taken a "hard look" at potential environmental impacts, and made a convincing case that no significant impact will result or that the impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. Cabinet Mountains Wilderness v. Peterson, 685 F.2d 678, 681-82 (D.C. Cir. 1982); Klamath Siskiyou Wildlands Center, 157 IBLA 332, 337 (2002); Nez Perce Tribal Executive Committee, 120 IBLA 34, 37-38 (1991). An appellant seeking to set aside or overturn a decision to proceed without preparing an EIS must demonstrate, with objective proof, that BLM failed to consider a substantial environmental question of material significance to the proposed action, or that it otherwise failed to abide by section 102(2)(C) of NEPA. Klamath Siskiyou Wildlands Center, 157 IBLA at 337; Southern Utah Wilderness Alliance, 127 IBLA 331, 350, 100 I.D. 370, 380 (1993); Red Thunder, 117 IBLA 167, 175, 97 I. D. 263, 267 (1990).

If BLM has complied with the procedural requirements of section 102(2)(C) by taking a hard look at all of the environmental impacts of a proposed action, BLM will be deemed to have complied with the statute regardless of whether a different substantive decision could be reached by this Board or a court. Strycker's Bay Neighborhood Council v. Karlen, 444 U.S. 223, 227-28 (1980); Natural Resources Defense Council v. Morton, 458 F.2d 827, 838 (D.C. Cir. 1972). Thus, we have held that NEPA does not direct that BLM take any particular action in any given set of circumstances, rather it mandates that whatever action BLM decides upon be initiated only after full consideration of the environmental impact of such action. Oregon Natural Resources Council, 116 IBLA 355, 361 n. 6 (1990).

BLM has complied with NEPA and FLPMA in this case. Appellants have shown no error in BLM's decision.

Appellants' assertions concerning the ineffectiveness of prescribed burn on areas involving widespread invasion do not obtain here, as the areas sought to be burned by BLM are not characterized by widespread invasion. Rather these areas are

not fire resistant, and BLM seeks to use the prescribed burn method to prevent widespread invasion that is admittedly fire resistant. Nor have appellants shown that BLM's decision violates the MFP. The record before the Board contains a copy of BLM's Final Environmental Impact Statement, Vegetative Treatment on BLM lands in Thirteen Western States, USDI, BLM, 1991 which includes vegetative treatments authorized in Idaho. Prescribed burns are among the routine management tools which BLM is authorized to employ.

That this particular action is not specifically enumerated as an action to be undertaken as part of the MFP does not render the action inconsistent with the MFP. The contemplated action, prescribed burning, is a routine tool employed by BLM in its vegetative management program, such that specific action authorizing such activity would be viewed as redundant if authorized separate and apart from those activities typically embraced within the Bureau's vegetative management program. Headwaters, 157 IBLA 139, 142, 147 (2002)(prescribed burning deemed by appellants in that case as routine, "safe" and nonobjectionable); Salmon River Concerned Citizens, 114 IBLA 344, 345 n. 2, 351 (1990)(prescribed burning routinely employed and not challenged).

We are not persuaded by appellants' characterization that the proposed action is premised on a narrow purpose and need. The problem consistently identified by the courts in cases involving a successful challenge to an unlawful purpose or need focus on the impact that the stated purpose or need has on the consideration of reasonable alternatives. The 7th Circuit Court of Appeals in Simmons v. U.S. Army Corps of Engineers, 120 F.3d 664 (7th Cir. 1997), stated:

> The broader the purpose, the wider the range of alternatives; and vice versa. The "purpose" of a project is a slippery concept, susceptible of no hard-and-fast definition. One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing "reasonable alternatives" out of consideration (even out of existence). The federal courts cannot condone an agency's frustration of Congressional will. If the agency constricts the definition of the project's purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role. Nor can the agency satisfy the Act. 42 U.S.C. § 4332(2(E).

120 F.3d at 666. See also Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 196, 198 (D.C. Cir. 1991), cert. denied, 502 U.S. 994 (1991). We do not find that the purpose and need for the contemplated action, as defined in the EA functioned to exclude truly reasonable alternatives. BLM adequately addressed competing vegetative control alternatives not involving burning, and the EA explains why the alternative control efforts are expected to be less effective given the conditions

existing on the West Castle Creek allotment. Further, appellants have failed to demonstrate that the other methods of juniper control discussed by BLM are more effective in controlling the spread of juniper, given the conditions that currently exist. See Headwaters, 157 IBLA at 149. Thus, the stated purpose and need were not violative of NEPA. See Citizens Against Burlington, Inc. v. Busey, 938 F.2d at 198-99.

We find that the record supports a conclusion that the success of BLM's prescribed burn efforts on juniper trees depend in large part on targeting areas that have not crossed the threshold of being resistant to eradication by prescribed burn efforts. Timing is critical to the success of BLM's prescribed burn efforts to increase plant species diversity and prevent wildfires.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's decision is affirmed and the petition for stay is denied as moot.

R.W. Mullen
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge