

INTERIOR BOARD OF LAND APPEALS

Defenders of Wildlife

152 IBLA 1 (February 17, 2000)

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DEFENDERS OF WILDLIFE

IBLA 98-66

Decided February 17, 2000

Appeal from a Decision Record/Finding of No Significant Impact of the Field Manager, Phoenix Field Office, Arizona, Bureau of Land Management, approving issuance of an electrical transmission line right-of-way grant. AZ-020-97-049.

Motion to dismiss denied; decision affirmed; stay vacated.

1. Environmental Quality: Environmental Statements-- Federal Land Policy and Management Act of 1976: Rights-of-Way--National Environmental Policy Act of 1969: Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact--Rights-of-Way: Federal Land Policy and Management Act of 1976

An EA for a proposed action properly considers the indirect effects caused by the action which, although later in time or further removed, are reasonably foreseeable. Thus, the impacts of connected actions conducted by private parties which would not occur without the supporting Federal action are appropriately considered in an EA.

2. Environmental Quality: Environmental Statements-- Federal Land Policy and Management Act of 1976: Rights-of-Way--National Environmental Policy Act of 1969: Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact--Rights-of-Way: Federal Land Policy and Management Act of 1976

A decision to issue a right-of-way for a power line to supply electricity for the reopening of an open pit mining operation on private land based on an EA and FONSI will be upheld when the record establishes a reasonable basis for the FONSI. An appeal

challenging the scope of the EA for failure to consider all the impacts of the mining operation will be denied when it appears from the record that the mining operation would proceed in the absence of approval of the right-of-way.

3. Environmental Quality: Environmental Statements--Federal Land Policy and Management Act of 1976: Rights-of-Way--National Environmental Policy Act of 1969: Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact--Rights-of-Way: Federal Land Policy and Management Act of 1976

Pursuant to section 102(2) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4332(2) (1994), and its implementing regulations (40 C.F.R. Chapter V), BLM is required to consider a reasonable range of alternatives to a proposed action, including a no-action alternative. An EA which considers a range of alternatives and gives reasons for BLM rejection of alternatives not selected will be upheld when it appears that BLM assessed alternatives in a manner that will avoid or minimize the adverse effects of the proposed action.

APPEARANCES: Edward B. Zukoski, Esq., Land and Water Fund of the Rockies, Inc., Boulder, Colorado, for appellant; John S. Guttman, Esq., and Fred R. Wagner, Esq., Washington, D.C., for intervenors Ajo Improvement Company and Phelps Dodge Ajo, Inc.; Richard R. Greenfield, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Defenders of Wildlife has appealed from an October 22, 1997, Decision Record/Finding of No Significant Impact (DR/FONSI) of the Field Manager, Phoenix, Arizona, Field Office, Bureau of Land Management (BLM), approving issuance of a right-of-way grant (AZA-29804). The right-of-way was issued to the Ajo Improvement Company (AIC) for a 230 kilovolt (kV) transmission line from Gila Bend to Ajo, Arizona.

On September 19, 1996, AIC's predecessor-in-interest filed a right-of-way application seeking to construct, operate, and maintain a 230 kV transmission line on public lands in southern Arizona. The 47.5-mile-long line would initially go 2.5 miles across private lands from the existing Gila Bend Substation, followed by 40 miles across public lands withdrawn for military purposes (the Barry M. Goldwater Air Force Range), and ending with 5 miles across other public lands in the immediate vicinity of the

town of Ajo to a new substation. It would be situated in Ts. 6-8 S., R. 5 W., and Ts. 8-12 S., R. 6 W., Gila and Salt River Meridian, Maricopa and Pima Counties, Arizona. The line would provide the necessary 45 megawatts of electrical service to the Ajo Copper Mine, which would be reopened, after 12 years, by Phelps Dodge Ajo, Inc. (PDAI) on private lands near the town of Ajo in Pima County, Arizona. The line, which would generally be strung between single wooden poles 82-feet-high and 500 feet apart, would be constructed mostly within an existing 1-mile-wide right-of-way corridor, designated by BLM pursuant to section 503 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1763 (1994), and 43 C.F.R. Subpart 2806. It would be located parallel to and between the Gila Bend/Ajo 69 kV transmission line and State Highway 85, near the Tucson- Comelia-Gila Bend Railroad.

In his October 1997 DR/FONSI, the Field Manager approved the proposed action, thus authorizing issuance of a right-of-way grant for the Gila Bend/Ajo 230 kV transmission line, pursuant to Title V of FLPMA, as amended, 43 U.S.C. §§ 1761-1771 (1994). Approval was based on an April 1997 Environmental Assessment (EA), which considered the environmental consequences of adopting the proposed action (Alternative A) and alternatives thereto, including the no-action alternative. The analysis was undertaken pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4332(2)(C) (1994). In his FONSI, the Field Manager specifically found, relying on the EA, that BLM was not required by section 102(2)(C) of NEPA to prepare an environmental impact statement (EIS), since no significant environmental impact would likely result from approving the proposed action.

This appeal was subsequently brought from the Field Manager's October 1997 DR/FONSI. By Order dated December 12, 1997, we granted appellant's request for a stay of the effect of the BLM decision pending a review of the merits of the appeal by the Board.

As a preliminary matter, we note that BLM has moved to dismiss the appeal on the basis that appellant lacks standing, under 43 C.F.R. § 4.410(a), to appeal from the Field Manager's October 1997 DR/FONSI. With respect to the requirement that appellant participate as a party to the case before BLM, the sufficiency of the comments provided by appellant's counsel in a letter to BLM is challenged. Regarding the requirement that appellant has been adversely affected by the BLM decision, BLM contends that appellant is very vague about the impacts to appellant's members and focuses instead on the asserted injury to the public interest of the town of Ajo. Further, BLM charges that appellant lacks standing because it is representing the interests and concerns of its members and not the interest of anyone arguably adversely affected by the project.

Appellant opposes that motion. Appellant contends that it has members whose use of the public lands involved would be adversely affected by construction of the power line and that this interest is sufficient to

confer standing. Additionally, appellant argues that its informational interest in the impacts of the project is sufficient to sustain standing.

The Board has held that allegations of injury to environmental informational interests do not establish that an appellant is adversely affected within the meaning of 43 C.F.R. § 4.410(a). Powder River Basin Resource Council, 124 IBLA 83, 89 (1992). In reaching this conclusion, we found that "standing on this basis cannot be squared with the rule, adopted by this Board, that a mere general interest in a problem, absent colorable allegations of adverse effect, is insufficient to confer standing. Donald Pay, 85 IBLA 283, 285-86 (1985)." 124 IBLA at 89. We find, however, that this is not dispositive of the issue of appellant's standing in this case.

Appellant has made a colorable allegation that its legally cognizable interests will be "adversely affected" by BLM's decision. 43 C.F.R. § 4.410(a). It asserts that the use and enjoyment by its staff and members (local and national) of both the public lands crossed by the new transmission line and of the town of Ajo and its environs will be negatively impacted by the decision to construct and operate the line as well as by the reopening of PDAI's open pit mining/milling operation. (Notice of Appeal and Request for Stay (NA) at 1 n.1; Response to BLM Motion to Dismiss at 5 n.4.) It has also presented, in its NA and statement of reasons (SOR), what it anticipates will be the adverse consequences of constructing/operating the line and reopening the mine which will impact its staff and members. Finally, appellant has provided the affidavit of one of its employee-members, attesting to the anticipated adverse impact on his recreational use of the public lands crossed by the line. (Ex. 2 (Affidavit of Craig L. Miller, dated Jan. 6, 1998, attached to Response to BLM Motion to Dismiss).)

Further, appellant qualifies as a party to the case. It submitted comments during the environmental review process and thus actively participated in BLM's decisionmaking process. (Letter to BLM from Edward B. Zukoski, Esq., attorney for appellant, dated Jan. 10, 1997; BLM Meeting Minutes, dated Jan. 21, 1997, at 1.) 43 C.F.R. § 4.410(a); Animal Protection Institute of America, 118 IBLA 63, 66 (1991).

We conclude that appellant has standing to appeal from the Field Manager's October 1997 DR/FONSI, since it satisfies the two prongs of the test for standing established by 43 C.F.R. § 4.410(a). Accordingly, the BLM motion to dismiss the appeal is denied.

Appellant's challenge to the propriety of the FONSI in this case focuses on the failure to consider indirect and cumulative impacts and the asserted inadequacy of the analysis of alternatives. Appellant asserts that BLM must analyze the indirect environmental effects which the Federal action will have, including those on non-Federal lands. (NA at 7.) Since the purpose of the transmission line is to support reopening of the PDAI open pit copper mine near Ajo, appellant contends BLM is required to analyze the impacts of reopening the mine as either indirect or cumulative

impacts of the power line project. (SOR at 17-19.)^{1/} With respect to alternatives to the transmission line right-of-way, appellant contends BLM should have conducted a more complete analysis of alternatives including on-site power generation, use of a smaller capacity line, and use of alternative routes for the right-of-way. (NA at 9-14.) Further, appellant contends that in considering alternatives BLM failed to carefully analyze the costs of on-site power generation as well as the costs of using power generated elsewhere and conveyed over the transmission line. (SOR at 9.)

In its answer, BLM contends that indirect impacts are limited to effects which are caused by the proposed action and notes that the mine is expected to reopen regardless of the BLM decision. (Respondent's Answer at 34; Respondent's Reply at 13.) Further, BLM asserts that consideration of the cumulative effects of reasonably foreseeable future actions does not require analysis of the impacts of a future event which will occur regardless of the BLM decision at issue. (Respondent's Reply at 14.) In addition, BLM argues that it considered a range of reasonable alternatives as required. (Respondent's Answer at 26-30; Respondent's Reply at 15-21.)

Intervenors PDAI and AIC assert that the Ajo mine will be reopened regardless of BLM action on this powerline right-of-way application and, hence, full analysis of the impacts of mine operation is not required. (AIC/PDAI Response to Request for Stay at 5-6.) Thus, mining operations are not an indirect effect of the right-of-way decision. *Id.* at 6-7; AIC/PDAI Answer at 3-4. Further, intervenors also assert that BLM considered a range of reasonable alternatives, noting that BLM properly eliminated certain alternatives which were impractical or entailed undesirable impacts from detailed consideration. (AIC/PDAI Answer at 13-14.)

Thus, the threshold issue in the case before us is the proper scope of BLM's environmental analysis and whether it was inadequate for failure to consider the effects of reopening and operating the Ajo mine as indirect and cumulative impacts of granting the right-of-way.

^{1/} Appellant notes that the mine is expected to initially produce 38,000 tons of processed ore per day, over a period of more than 10 years, in the case of the existing "New Comelia" mine pit. (NA at 18 (citing Ex. 4 attached to NA (Article, The Arizona Daily Star, dated May 8, 1997)); *see* Ex. L attached to BLM Answer (Letter to BLM from Phelps Dodge Morenci, Inc., dated Feb. 14, 1997).) It further states that "[o]perating giant rock-crushers, trains, trucks, blasting dynamite, and housing and feeding up to 800 workers[] will have impacts 24 hours a day, 365 days a year on Ajo and its environs." (NA at 17; *see* Ex. L attached to BLM Answer.) Appellant argues that BLM did not consider the resulting impacts on air and groundwater resources, vegetation, wildlife, visual and audio resources, public health and safety, recreational use of nearby Federal lands, and the socioeconomic character of the local community of Ajo, from activity associated with reopening the mine, including mining, transporting, and smelting the copper ore. Appellant asserts that these impacts are likely to be significant, thus requiring preparation of an EIS. (SOR at 25.)

Section 102(2)(C) of NEPA requires BLM to consider the potential environmental impacts of a proposed action in an EIS prior to authorizing "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C) (1994); Sierra Club v. Marsh, 769 F.2d 868, 870 (1st Cir. 1985). In order to determine whether to prepare an EIS, BLM prepares an EA. 40 C.F.R. § 1501.4. Thereafter, when BLM decides, in a DR/FONSI, to proceed with a proposed action without preparation of an EIS, that decision will be held to comply with section 102(2)(C) of NEPA where 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 therefrom or that any such impact 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); Nez Perce Tribal Executive Committee, 120 IBLA 34, 37! 38 (1991). An appellant seeking to overcome the decision must carry its burden of demonstrating, with objective proof, that BLM failed to adequately consider a substantial environmental question of material significance to the proposed action or otherwise failed to abide by section 102(2)(C) of NEPA. Southern Utah Wilderness Alliance, 127 IBLA 331, 350, 100 I.D. 370, 380 (1993); Red Thunder, Inc., 117 IBLA 167, 175, 97 I.D. 263, 267 (1990); Sierra Club, Inc., 92 IBLA 290, 303 (1986).

An EA is required under NEPA to analyze the environmental impacts of a proposed action and connected actions. 40 C.F.R. § 1508.25(a)(1); Save the Yaak Committee v. Block, 840 F.2d 714, 719-20 (9th Cir. 1988); Southern Utah Wilderness Alliance, 122 IBLA 165, 168 (1992). Actions are deemed connected "if they: (i) Automatically trigger other actions * * * [;] (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously[; or] (iii) Are interdependent parts of a larger action and depend on the larger action for their justification." 40 C.F.R. § 1508.25(a)(1). Thus, BLM is precluded from segmenting a project into separate actions which might have an insignificant impact individually but a significant environmental impact collectively. Thomas v. Peterson, 753 F.2d 754, 758 (9th Cir. 1985); Southern Utah Wilderness Alliance, 122 IBLA at 168.

[1] Although consideration of impacts of connected actions in defining the scope of an EA generally applies to Federal connected actions related to the proposal, environmental effects to be considered in an EA include indirect effects. 40 C.F.R. § 1508.8(b). Indirect effects are defined as those

which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. [They] may include * * * effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

40 C.F.R. § 1508.8(b) (emphasis added). Appellant notes that the courts have required consideration of the impact of connected actions conducted

by private parties in some cases. Such cases include, e.g., a planned development of an industrial complex on a private island made possible by permits authorizing construction of a dock and a causeway and road connecting the island to the mainland. Sierra Club v. Marsh, 769 F.2d at 877-79. Generally, the courts have required a showing that the private development is the likely result of the Federal action and that there is a "functional interdependence" of the Federal and private actions. See Alpine Lakes Protection Society v. U.S. Forest Service, 838 F. Supp. 478, 482 (W.D. Wash. 1993) (granting road access across Federal lands for access to private lands for purposes of logging). Thus, approval of a Federal permit to fill 11 acres of wetlands to facilitate construction of a golf course did not require consideration of the effects of an entire private resort complex which could be built without the golf course. Sylvester v. U.S. Army Corps of Engineers, 884 F.2d 394, 400-401 (9th Cir. 1989). A "reasonably close causal relationship" between the Federal action and the effects at issue is critical, and where the "causal chain" is unduly lengthened, NEPA does not apply. James Shaw, 130 IBLA 105, 114 (1994), citing Metropolitan Edison Co. v. People Against Nuclear Energy, 460 U.S. 766, 774-75 (1983).

[2] We find no evidence that construction and operation of the Gila Bend/Ajo 230 kV transmission line itself will itself cause the reopening of the Ajo Copper Mine. The record shows that there are alternatives to the proposed transmission line for the provision of electricity, including refurbishing an existing electrical generating facility at the minesite, which PDAI can and will pursue. (EA at 2-7 to 2-8; Addendum to EA, dated Sept. 5, 1997, at 5; Ex. B attached to BLM Reply at 2-3.) While BLM and PDAI report that the refurbishment alternative would be more costly to PDAI than the proposed transmission line (EA at 2-7 and Addendum to EA at 3), we find no evidence that it could not be undertaken, from a practical standpoint. Indeed, intervenors assert that "PDAI will reopen the mine regardless of * * * whether the proposed transmission line is ever built," even though the alternatives are "not as friendly to the environment * * * [and] more costly." (Response to Stay Request at 3.) This was recognized by BLM at the time it prepared its EA: "The future mine operation was [considered] as a reasonably foreseeable future project that would occur irrespective of the proposed action. * * * [Absent approval of that action,] AIC would pursue other power options for operations at the PDAI Mine." (Addendum to EA at 5.)

The fact that construction/operation of the transmission line at issue here is not likely to stimulate, induce, or otherwise cause mine operations, within the meaning of 40 C.F.R. § 1508.8(b), and that the two activities are not connected in the sense that mine operations cannot or will not proceed without construction/operation of the line, within the meaning of 40 C.F.R. § 1508.25(a)(1), distinguish this case from the cases cited by appellant. See Sierra Club v. Marsh, 769 F.2d at 872, 878-79 (building causeway and road to undeveloped island and erecting related port facilities will likely stimulate industrial development on island); Port of Astoria, Oregon v. Hodel, 595 F.2d 467, 473, 477 (9th Cir. 1979)

(contract to supply electricity, by means of new transmission line, to allow construction of aluminum processing plant dependent on the power source); Sierra Club v. Hodel, 544 F.2d 1036, 1037-38, 1044 (9th Cir. 1976) (similar); City of Davis v. Coleman, 521 F.2d 661, 674-77 (9th Cir. 1975) (building highway interchange is an "essential catalyst" of planned nearby industrial development); Mullin v. Skinner, 756 F. Supp. 904, 921-23 (E.D. N.C. 1990) (building improved bridge to island will likely spur residential and commercial development on island).

Further, the factual context of the transmission line at issue here is materially different from the lines involved in Port of Astoria, Oregon v. Hodel and Sierra Club v. Hodel, relied upon by appellant. (SOR at 18-19.) In the cited cases the courts held that since the lines were indispensable factual prerequisites for construction/operation of the proposed private facilities, the Federal agency was required to consider the impacts of those facilities in the environmental review of the impacts of the lines. See 595 F.2d at 477; 544 F.2d at 1044; see also National Forest Preservation Group v. Butz, 485 F.2d 408, 411-12 (9th Cir. 1973). The instant case is more akin to James Shaw in which we held that BLM was not required to consider the indirect effects of development of a private subdivision in an EA concerning a proposal to build an access road across public lands to the proposed subdivision since the development would very likely proceed even if the road right-of-way were not granted. 130 IBLA at 114-15.

As appellant notes, NEPA also mandates consideration in an EA of the cumulative impact of proposed actions. 40 C.F.R. § 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 C.F.R. § 1508.7. As appellant notes, this regulation invokes consideration of the effects of the proposed action when added to the impact of reasonably foreseeable future actions of others, including private parties such as PDAI. It has been held that the obligation to examine the incremental impact of the Federal action when added to the past, present, and reasonably foreseeable future actions of others does not require that the impact of the actions of other parties be weighed in assessing the significance of the Federal agency's actions, but rather that the marginal impact of the Federal agency's actions be weighed. Landmark West! v. United States Postal Service, 840 F. Supp. 994, 1010-11 (S.D.N.Y. 1993), *aff'd*, 41 F.3d 1500 (2d Cir. 1994). In this respect, appellant has failed to show error in the BLM analysis. We, therefore, conclude that BLM did not, by

failing to fully consider the environmental impacts of the mine reopening in its EA, improperly limit the scope of its environmental analysis, in violation of 40 C.F.R. § 1508.25.

Appellant also challenges the adequacy of BLM's consideration of a range of alternatives to the proposed transmission line which would have a lesser impact on the environment. Particularly, appellant contends BLM should have conducted a more complete analysis of alternatives such as on-site generation of power and that BLM should have developed detailed data for comparison purposes. Appellant argues that the mere fact that PDAI would actually undertake to secure electricity by means other than the proposed 230 kV transmission line, in order to go forward with its proposed mining operation, renders these other means reasonable alternatives which BLM was required, by section 102(2)(E) of NEPA, to consider in its EA. (Response to BLM Motion to Dismiss at 11.)

[3] Under section 102(2)(E) of NEPA, BLM is required to consider a reasonable range of alternatives which includes the no-action alternative. Southern Utah Wilderness Alliance, 122 IBLA 334, 338-40 (1992). Thus, BLM is required by section 102(2)(E) of NEPA, as amended, 42 U.S.C. § 4332(2)(E) (1994), to consider "appropriate alternatives" to the proposed action, as well as their environmental consequences. See 40 C.F.R. §§ 1501.2(c) and 1508.9(b); City of Aurora v. Hunt, 749 F.2d 1457, 1466 (10th Cir. 1984); Howard B. Keck, Jr., 124 IBLA 44, 53 (1992), aff'd, Keck v. Hastey, Civ. No. S92! 1670! WBS! PAN (E.D. Cal. Oct. 4, 1993). Such alternatives should include reasonable alternatives to a proposed action, which will accomplish the intended purpose, are technically and economically feasible, and yet have a lesser impact. 40 C.F.R. § 1500.2(e); Headwaters, Inc. v. BLM, 914 F.2d 1174, 1180-81 (9th Cir. 1990); City of Aurora v. Hunt, 749 F.2d at 1466-67; Howard B. Keck, Jr., 124 IBLA at 53.

Appellant has not established that BLM failed to consider reasonable alternatives to the proposed action. The EA reflects that BLM considered the use of on-site generation of power for the mining operation but rejected it because of the substantially greater costs, water requirements, and air emissions involved with this alternative. (EA at 2-7; Letter to BLM from Phelps Dodge Morenci, Inc., dated May 23, 1997.) This alternative was eliminated from further consideration for these reasons and appellant has not shown that this was unreasonable. The alternative of building the new transmission line on the same right-of-way as the existing 69 kV transmission line was considered and rejected because it would require taller structures that would conflict with ground clearance requirements for military aircraft and because construction and maintenance of the new line in such close proximity would require temporarily deenergizing both lines, causing power outages in Ajo. (EA at 2-8.) Alternative routes for the proposed 230 kV transmission line were also considered and rejected because of greater impacts resulting from failure to follow the designated utility corridor and greater costs. Id. Statutory and regulatory authority provides for designation of right-of-way corridors in order to minimize the adverse environmental impacts resulting from the proliferation of separate

rights-of-way. Section 503, FLPMA, 43 U.S.C. § 1763 (1994); 43 C.F.R. § 2806.1(a); see Paul Herman, 146 IBLA 80, 104 (1998) (deviation from a right-of-way corridor may be authorized when a good reason is shown.) Thus, BLM consideration of alternatives to the proposed action was consistent with the regulatory policy to "[u]se the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment." 40 C.F.R. § 1500.2(e); see Great Basin Mine Watch, 148 IBLA 1, 7-8 (1999); National Wildlife Federation, 145 IBLA 348, 375 (1998).

Appellant also asserts that BLM failed, in its EA, to adequately address the impact of construction activities on the Federally-listed endangered Sonoran pronghorn antelope (Antilocapra americana sonoriensis), whose habitat would be crossed by the transmission line, thus violating section 102(2)(C) of NEPA. (SOR at 1-2.) We find no violation. BLM considered the impact in the EA and in a September 10, 1997, Revised Biological Evaluation, concluding that, while there might be an effect on the antelope, any and all activity associated with construction, operation, and maintenance of the transmission line would not, given adopted project design features and mitigation measures, adversely affect the antelope. (EA at 3-9, 4-7; Revised Biological Evaluation, dated Sept. 10, 1997, at 4-6.) In particular, BLM has provided that no construction activities will occur while antelope are close enough to be disturbed thereby, as determined by a PDAI wildlife biologist who will be present each day at the site of such activities. (DR/FONSI at 1.) The Fish and Wildlife Service (FWS), which was informally consulted by BLM pursuant to section 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1536 (1994), and 50 C.F.R. §§ 402.12(k) and 402.13(a), concurred in BLM's conclusion. (Letter to BLM from FWS, dated Sept. 12, 1997, at 2.) Appellant has failed to demonstrate any error in BLM's assessment of the anticipated impacts of right-of-way activity on the antelope, in terms of its underlying facts or analysis, or in BLM's ultimate conclusion of no adverse effect.

Appellant has simply not carried its burden to demonstrate, with objective proof, that BLM failed to adequately consider a substantial environmental problem of material significance to the proposed action or otherwise failed to abide by section 102(2)(C) of NEPA. Southern Utah Wilderness Alliance, 127 IBLA at 350, 100 I.D. at 380; Red Thunder, Inc., 117 IBLA at 175, 97 I.D. at 267; Sierra Club, Inc., 92 IBLA at 303. The fact that appellant may have a differing opinion about likely environmental impacts or prefers that BLM take another course of action does not show that BLM violated the procedural requirements of NEPA. San Juan Citizens Alliance, 129 IBLA 1, 14 (1994).

To the extent that they have not been expressly or impliedly addressed in this decision, all other grounds of error asserted by appellant are rejected on the ground that they are not supported by the record or the law.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed and the stay previously entered is vacated.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge