

FRIENDS OF THE BOW  
PREDATOR PROJECT

IBLA 94! 373, 94-395, 94-396

Decided May 23, 1997

Appeals from Decision Records/Findings of No Significant Impact issued by the District Managers, Rawlins and Rock Springs Districts, Wyoming, Bureau of Land Management, adopting Animal Damage Control plans for public lands in the districts. WY! 037! EA1! 037 and WY! 040! EA93! 01.

Affirmed.

1. Animal Damage Control! ! Federal Land Policy and Management Act of 1976: Generally

A BLM decision to proceed with a Federally! administered program for controlling the depredation of livestock grazing on the public lands, by both lethal and nonlethal means, does not violate the policy directives of section 102(a)(7) and (8) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701(a)(7) and (8) (1994), to manage wildlife, range, and other resources in a harmonious manner and to protect the quality of ecological values.

2. Animal Damage Control! ! Environmental Quality: Environmental Statements! ! National Environmental Policy Act of 1969: Environmental Statements

It is proper for BLM to decide to proceed with a Federally! administered program for controlling the depredation of livestock grazing on the public lands, by both lethal and nonlethal means, when it has taken a hard look at all of the environmental impacts of such action and appropriate alternatives thereto, including all relevant matters of environmental concern, and made a convincing case that no significant impact will result therefrom.

APPEARANCES: Donald J. Duerr, Friends of the Bow, Laramie, Wyoming, for Friends of the Bow; Jerry Grubbs, Predator Project, Bozeman, Montana, for Predator Project; Joseph B. Meyer, Esq., Mary B. Guthrie, Esq., and Kristi T. Sansonetti, Esq., Office of the Attorney General, State of Wyoming, Cheyenne, Wyoming, for the State of Wyoming; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

## OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

On February 24, 1994, the District Manager, Rawlins District Office, Bureau of Land Management (BLM), issued a Decision Record/Finding of No Significant Impact (Rawlins DR/FONSI) for Environmental Assessment (EA) WY-037-EA1-037 (Rawlins EA) authorizing an Animal Damage Control (ADC) plan on public lands in the Rawlins District pursuant to the Animal Damage Control Act of 1931 (ADCA), 7 U.S.C. §§ 426-426b (1994). On March 1, 1994, the Rock Springs District Manager, BLM, issued a Decision Record/Finding of No Significant Impact (Rock Springs DR/FONSI) for EA WY-040-EA93-01 (Rock Springs EA) authorizing ADC on public lands in the Rock Springs District. Each District Manager authorized the use of both lethal and nonlethal methods of ADC, although each prohibited the use of M-44 devices, which kill animals by releasing the chemical toxicant sodium cyanide. The plans, to be administered and carried out by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service-Animal Damage Control Division (APHIS! ADC), under BLM! imposed restrictions, would prevent and correct depredation by coyotes, red foxes, and other predators of domestic sheep and cattle grazing on public lands in the districts. <sup>1/</sup> The plan for the Rawlins District covered calendar year 1994, subject to reauthorization in subsequent years, and the plan for the Rock Springs District covered the <sup>5!</sup> year period from March 1994 through April 1999.

By Order dated March 16, 1994, the Board, at the direction of the Secretary of the Interior, placed the Rawlins DR/FONSI and the Rock Springs DR/FONSI into immediate full force and effect, pursuant to 43 C.F.R. § 4.21(a)(1), pending action on any appeal or stay petition that might be filed. Thereafter, Friends of the Bow and the Predator Project filed separate appeals of the Rawlins DR/FONSI, which this Board docketed as IBLA 94-395 and IBLA 94-396, respectively. Friends of the Bow also filed an appeal of the Rock Springs DR/FONSI. The Board docketed that appeal as IBLA 94-373.

Friends of the Bow filed petitions seeking to stay any and all lethal predator control activities authorized under the Rawlins and Rock Springs DR/FONSI's. By Order dated April 29, 1994, we denied those petitions and consolidated, at BLM's request, the two Rawlins appeals. We now also consolidate those appeals with the Friends of the Bow Rock Springs

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<sup>1/</sup> The Secretary of Agriculture, acting through APHIS! ADC, is authorized and directed by § 1 of ADCA, 7 U.S.C. § 426 (1994), to conduct campaigns for the destruction or control of wild animals injurious to agriculture and livestock on national forests and other areas of the public domain. See Southern Utah Wilderness Alliance v. Thompson, 811 F. Supp. 635, 638 (D. Utah 1993). The ADC functions on public lands were transferred to APHIS! ADC from the Fish and Wildlife Service (FWS), U.S. Department of the Interior, on Dec. 19, 1985. See 51 Fed. Reg. 6290 (Feb. 21, 1986).

appeal, because of the similarity of the legal and factual issues presented by all three appeals. <sup>2/</sup>

[1] Friends of the Bow contends that, in authorizing the lethal control of coyotes, foxes, and other predators on public lands in the two districts, BLM violated two requirements of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, 43 U.S.C. §§ 1701! 1784 (1994). Friends of the Bow asserts that, by selecting the alternative permitting the killing of predators, rather than the method of controlling them only by nonlethal means, BLM violated the policy directives in section 102(a)(7) and (8) of FLPMA, 43 U.S.C. § 1701(a)(7) and (8) (1994), that it manage the public lands "on the basis of multiple use" and "in a manner that will protect \* \* \* ecological \* \* \* values." (Statement of Reasons (SOR), IBLA 94! 373, at 2-5.) <sup>3/</sup>

The term "multiple use" is defined in part as the "harmonious and coordinated management of the various resources" found on the public lands. 43 U.S.C. § 1702(c) (1994). Friends of the Bow interprets "harmonious" management to mean that BLM is precluded from permitting the killing of predatory wildlife, in order to prevent the loss of domestic livestock, since this "cannot be considered an 'harmonious' way to jointly manage the wildlife and range resources." (SOR, IBLA 94! 373, at 4.) Rather, it states, the "destruction, eradication, and suppression of one resource to benefit another is the most discordant form of management imaginable." *Id.*

Friends of the Bow has offered no support of its interpretation that multiple-use or harmonious management of the public lands means that predators must be fully protected at the expense of any and all domestic livestock that might be lost to them.

The thrust of the multiple! use mandate requires a choice of the appropriate balance to strike between competing resource uses, recognizing that not every possible use can take place fully on any given area of the public lands at any one time. Multiple use necessitates a trade! off between competing uses. *See* 43 U.S.C. § 1702(c) (1994) ("multiple use" means \* \* \* a combination of balanced and diverse resource uses"); e.g., *Charles Blackburn*, 80 IBLA 42 (1984) (allocation of forage between livestock and wildlife); *California Association of Four! Wheel Drive Clubs*, 38 IBLA 361 (1978), *aff'd*, *California Association of Four-Wheel Drive Clubs, Inc. v. Andrus*, No. 79-1797-N (S.D. Cal. Aug. 5, 1980), *aff'd*, (10th Cir. Jan. 22, 1982) (closure of desert area to off! road vehicle use). Multiple! use management, however, does not dictate the choice or require that any one

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<sup>2/</sup> By Order dated Oct. 17, 1994, we granted a motion by the State of Wyoming to appear as an amicus curiae in the two Rawlins appeals.

<sup>3/</sup> Some of the arguments raised by Friends of the Bow in its SOR's in its two appeals are identical. If necessary, when citing those arguments, we will cite only to the SOR filed in connection with the Rock Springs appeal.

resource, or corresponding use, take precedence. Although Friends of the Bow disagrees with BLM's multiple-use management choice in these cases, we find no evidence that BLM has violated FLPMA in making its choice.

Friends of the Bow contends that by adopting plans that will result in the annual killing of numerous animals, BLM has violated the policy directive of FLPMA to protect ecological values. <sup>4/</sup> "[A]ll wildlife has ecological value, and the destruction of wildlife will diminish these ecological values." (SOR, IBLA 95-373, at 3.)

Under FLPMA, BLM is not precluded from authorizing lethal control of predators on public lands. Friends of the Bow's narrow focus on protection of ecological values ignores the multi-faceted nature of FLPMA's policy directives. The Secretary of the Interior must not only manage the public lands and resources to protect the quality of ecological values, he must also manage them in a manner that "will provide food and habitat for fish and wildlife and domestic animals." 43 U.S.C. § 1701(a)(8) (1994). Further, such lands must also be managed in a manner "which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands." 43 U.S.C. § 1701(a)(12) (1994). The Secretary, acting through BLM in authorizing lethal control of predators on the public lands, is within his authority in balancing the competing interests for resource values.

There is no indication that BLM seeks to eliminate coyotes, red foxes, and other predators from the public lands in the two districts, either in the short term by eradication, or in the long term by rendering their populations nonviable. (Rawlins DR/FONSI at 1; Rock Springs DR/FONSI at 2.) Instead, the authorized ADC plans are designed and expected to ensure viable, self-sustaining populations of predators. (Rawlins EA at 42, 43, 47; Rock Springs EA at 63, 73, 80.) The Districts thus authorize lethal control directed at individual offending animals or groups of offending animals, employing measures designed and expected to minimize or eliminate the number of nontarget predators killed. (Rawlins EA at 15! 16, 17, 24, 48; Rock Springs EA at 12, 15! 16, 19! 20, 81; Rawlins DR/FONSI at 1; Rock Springs DR/FONSI at 2.) In addition, BLM restricts the areas in which such control may be practiced and the manner of its practice there. (Rawlins EA at 19, 20! 26; Rock Springs EA at 19! 21, 24! 27; Rawlins DR/FONSI at 1; Rock Springs DR/FONSI at 1, 2.) Finally, the plans approved here are designed to "minimize" predation, taking into account protection of wildlife resources, including predators. (Rawlins EA at 11; Rock Springs EA at 6.) In these circumstances, predators will continue to be a vital component of the ecosystems in the two districts, and the "quality" of their ecological value maintained. See 43 U.S.C. § 1701(a)(8) (1994).

[2] Friends of the Bow and Predator Project each contend that, in authorizing the lethal control of predators on public lands, BLM violated section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4332(2)(C) (1994).

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<sup>4/</sup> In FLPMA, Congress declared that it was the policy of the United States that public lands be managed in a manner that would protect the quality of, inter alia, ecological values. 43 U.S.C. § 1701(a)(8) (1994).

Friends of the Bow asserts that BLM improperly tiered the EA's to FWS' 1979 programmatic Final Environmental Impact Statement (FEIS) because BLM cannot tier to an environment document that it did not prepare or adopt. Friends of the Bow argues, relying on an interpretation of 40 C.F.R. § 1506.3(b) by the Council on Environmental Quality, that, when a Federal agency proposes to undertake an action substantially the same as an action previously proposed by another Federal agency, for which the latter alone had prepared an FEIS, the proposing agency, which had not cooperated in the preparation of the FEIS, may tier to it, but must first adopt it by recirculating the FEIS, and then provide for a 30! day period of public review and issuance of a Record of Decision. See SOR, IBLA 94! 373, at 5! 6. Friends of the Bow asserts that BLM failed to do so here, and thus may not authorize any ADC activity until it does so.

The 1979 FEIS addressed the potential environmental impacts of FWS' proposed program for controlling predators throughout the western United States. In its two EA's, BLM stated that it was tiering to that document. (Rawlins EA at vi; Rock Springs EA at viii.) Tiering, as Friends of the Bow recognizes, is governed by 40 C.F.R. § 1502.20, not by 40 C.F.R. § 1506.3. See SOR, IBLA 94! 373, at 6. It means that an analysis of environmental issues found in an agency's broad EIS on a program or policy is incorporated by reference by that agency into a subsequent EA or EIS "on an action included within the entire program or policy (such as a site specific action)." 40 C.F.R. § 1502.20; see also 40 C.F.R. § 1508.28; e.g., Southern Utah Wilderness Alliance, 123 IBLA 302, 305! 06 (1992). Further, agencies are "encouraged" to do so in order "to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review." 40 C.F.R. § 1502.20.

We are not aware of any restrictions on tiering by bureaus of the same Department, such as FWS and BLM, or a specific requirement that the proposing bureau "adopt," pursuant to 40 C.F.R. § 1506.3, the EIS of another bureau before it tiers to it. Moreover, as BLM points out, in two prior cases the Secretary of the Interior has approved the tiering of BLM's district! wide ADC EA's to the 1979 FEIS. In the Matter of Committee for Idaho's High Desert, Golden Eagle Audubon Society, and John Barringer, SEC 92-ID101, dated Dec. 17, 1992, and In the Matter of the Appeals of Southern Utah Wilderness Alliance, Utah Wilderness Alliance, and Utah Chapter, Sierra Club, SEC 92! UT101, dated Dec. 17, 1992. 5/ Thus, matters concerning the propriety of tiering to and the adequacy of the FEIS have been finally resolved by the Secretary. Accordingly, we must conclude that BLM did not act improperly in tiering its EA's to the 1979 FEIS.

Friends of the Bow and Predator Project each assert that the EA's fail to demonstrate that impacts to the coyote and red fox populations will be insignificant, and that accordingly, an EIS is required in each case. They contend that absent any evidence regarding resident coyote and red fox

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5/ The Secretary's action followed his assumption of jurisdiction on Feb. 18, 1992, pursuant to 43 C.F.R. § 4.5, of various ADC appeals pending before this Board.

populations in the two districts, BLM's assessment of insignificance is speculation. <sup>6/</sup>

Although BLM did not have a census of coyotes or red foxes in the districts, it had reliable information in the form of estimates of the numbers of coyotes and red foxes in the two districts based on the reported typical population density. (Rock Springs EA at 40 (0.3 to 5 coyotes per square mile) and 41 (0.3 to 2.6 red foxes per square mile).) See also Answer, IBLA 94! 373, at 14 (APHIS! ADC estimated 2 to 4 coyotes per square mile in 1992/93 in the Rock Springs District); Response, IBLA 94! 395, at 9, 10 (FWS estimated, based on "scent! post" surveys, an average of 0.71 coyotes per square mile over the 10! year period from 1972 through 1981 in the Rawlins District). <sup>7/</sup> In the Rawlins EA on page 31, BLM states that no accurate census method exists. Friends of the Bow and Predator Project have offered no evidence contradicting BLM's estimation. Moreover, BLM states that, during the 10! year period that FWS estimated the coyote population in the Rawlins District based on survey data, "intensive coyote control was being carried out." (Response, IBLA 94! 395, at 13.) It thus asserts that coyote population levels are probably higher than the current estimate because there are now more restrictions on ADC actions than there were in prior years. Id.

The numbers of coyotes and red foxes that would likely be killed under the adopted ADC plans could be projected by BLM based on the impact of such programs in prior years. Based on even a conservative estimate of one coyote per square mile, resulting in figures of 27,183 coyotes in the Rawlins District and 15,500 coyotes in the Rock Springs District, the "take" figures of 1,833 coyotes in 1992 and 3,603 coyotes in 1993 for the Rawlins District represent only small percentages of the total coyote population. See Rawlins EA at 5. <sup>8/</sup> Likewise, the "take" number of 1,250 coyotes for

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<sup>6/</sup> Friends of the Bow also contends that, even if the overall size of the coyote population does not decrease significantly as a result of the authorized program of lethal control, there may still be a significant impact to the genetic diversity of that population, which BLM was required to address in an EIS. The BLM offers un rebutted evidence that such a concern is "remote." (Letter to BLM from Frederick F. Knowlton, APHIS! ADC, dated June 9, 1994, (Attachment A to Answer, IBLA 94! 373) at 3.) The BLM need not consider a remote and highly speculative impact. See *Trout Unlimited v. Morton*, 509 F.2d 1276, 1283 (9th Cir. 1974).

<sup>7/</sup> Counsel for BLM filed a joint answer in the case of IBLA 94! 395 and 94! 396, to which were appended two documents. One was a BLM "Response" to Friends of the Bow's SOR and Supplemental (Supp.) SOR (Attachment A), and the other a BLM "Response" to Predator Projects's SOR (Attachment B). Citations to BLM's answer will be to the respective BLM "Response."

<sup>8/</sup> On appeal, BLM adjusted its numbers in Table 1! 3 on page 5 of the Rawlins EA, which reflected the total number of coyotes reported to have been killed by APHIS! ADC in 1992 and 1993 in all of Sweetwater County, to account for the fact that only one! third of the county is in the Rawlins District. (Response, IBLA 94! 395, at 9.) We have used the adjusted figures of 465 and 524, respectively, for the 1992 and 1993 "take" of coyotes in that part of Sweetwater County in the Rawlins District to arrive at the total district figures.

1992 in the Rock Springs District also represents a statistically insignificant percentage of the coyote population. See Rock Springs EA at 42. Population density for red foxes is reported as 0.3 to 2.6 red foxes per square mile in the Rock Springs EA on page 41, while the "take" of red foxes in 1992 was only 73. *Id.* at 42. In the Rawlins District only 23 red foxes were taken in 1992. (Rawlins EA at 32.)<sup>9/</sup> Friends of the Bow and Predator Project provide no evidence that the loss of such numbers of coyotes and red foxes would have a significant effect on the human environment or have any deleterious effect on the continuing viability of the coyote and red fox populations in either district.

Friends of the Bow and Predator Project contend that the Rawlins and/or Rock Springs District Managers improperly concluded that there would be no significant cumulative impact to coyote and red fox populations. Friends of the Bow argues that BLM's analysis was fatally flawed by the fact that it failed to first determine the baseline number of predators that would be lost to private hunters, trappers, and permittees, and State and county authorities, and then did not restrict the number that may also be killed by APHIS! ADC.

The cumulative impacts from undertaking a particular action, in the context of other past, present, and reasonably foreseeable future actions, must be considered in an EA. 40 C.F.R. §§ 1508.7, 1508.9, and 1508.25; Southern Utah Wilderness Alliance v. Thompson, 811 F. Supp. at 645; Colorado Environmental Coalition, 108 IBLA 10, 16 (1989). Although BLM did not have baseline information regarding the number of predators killed by private individuals and State and county authorities, its conclusion is not in error because that conclusion was based on BLM's determination that the impact of APHIS! ADC activities would themselves be negligible. See Rawlins EA at 47; Rock Springs EA at 80. It also relied on its conclusion that lethal control by APHIS! ADC would decrease as the private take of predators (by individuals) went up (and vice versa) and that any organized private lethal control of predators would only arise in the event that APHIS! ADC was precluded from employing lethal control on the public lands. Friends of the Bow and Predator Project have not shown any error in BLM's conclusion.

Friends of the Bow and Predator Project have presented no evidence that the adopted action will, either singularly or together with other reasonably foreseeable actions, have a significant impact on coyote and red fox populations. A mere difference of opinion will not suffice to establish that BLM's analysis was inadequate. Southern Utah Wilderness Alliance, 114 IBLA 326, 332 (1990).

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<sup>9/</sup> This was the reported number of red foxes killed by APHIS! ADC in Carbon County. It did not include the number killed in the other three counties in the district in which Federally! authorizd ADC activity occurred, i.e., Albany, Fremont, and Sweetwater. (Response, IBLA 94! 395, at 9.) The BLM states that, since such activity is "concentrated" in Carbon County, "take levels are most likely comparatively low" in the other counties. *Id.* at 10. Friends of the Bow and Predator Project do not dispute that representation.

Friends of the Bow also argues that the Rock Springs District Manager improperly concluded that there would be no significant impact from adoption of the preferred alternative (Alternative B) when he admitted in his DR/FONSI, on page 5, that "[s]election of any of the other alternatives \* \* \* could have significant impacts on the human environment." Friends of the Bow reasons:

If every alternative except one could have significant impacts, clearly there is a compelling case that an EIS should have been prepared in this instance. Indeed, the [preferred] action is not so different from other alternatives as to be clear of similar magnitude. The EA even characterizes Alternatives A [Present Management Plus Limited M! 44 Use] and B [Present Management ! No M! 44 Use] as having impacts which are essentially the "Same as the Proposed Action". [Rock Springs] EA at 70! 74.

(Supp. SOR, IBLA 94! 373, at 3.) Friends of the Bow, however, has made no effort to demonstrate that any of the significant impacts that BLM expects to occur in the case of adoption of any of the other alternatives are also likely to occur in the case of adoption of the preferred alternative. Rather, the EA establishes that the converse is true.

The BLM states that adoption of either the proposed action (present management with M-44 use) or Alternative A (present management plus limited M! 44 use) would, by virtue of the controversy surrounding such use, have a significant impact as a direct consequence of that use. See Rock Springs DR/FONSI at 4. Alternative B does not authorize any M! 44 use, eliminating that significant impact.

In the case of adoption of either the no lethal control (Alternative C) or no action (no APHIS! ADC predator control) alternative (Alternative D), BLM believes that it would have a significant adverse impact on the financial viability of livestock (especially sheep) operations since, absent an APHIS! ADC lethal control program, either livestock losses would increase to the point that operations were rendered unprofitable or the costs of suitably limiting those losses would render operations unprofitable. See Rock Springs EA at 77-79. In addition, adoption of either the no-lethal control or no-action alternative could lead to the increased use of lethal control by private individuals, and thus, as a result of their lack of expertise and accountability, might adversely affect predator populations. See Rock Springs EA at 75, 78! 79.

Both Friends of the Bow and Predator Project contend that BLM improperly considered the nonlethal control only alternative erroneously concluding that lethal control is necessary to control predation and that, without it, losses to predation will increase, since nonlethal methods alone are ineffective. They assert that this conclusion is not supported by data and, in any case, is contrary to other evidence which demonstrates the effectiveness of nonlethal methods, including the use of guard animals. Finally, they argue that there has been no study which addressed the question of the level of livestock losses that would be experienced with

only nonlethal control versus only lethal or nonlethal/lethal control. Rather, they claim that the studies relied upon by BLM only looked at what would happen in the absence of any control versus the use of lethal or nonlethal/lethal control.

In its EA's, BLM concluded that, absent lethal control, livestock lost to predation by both coyotes and red foxes would increase. See Rawlins EA at 7, 45, 46; Rock Springs EA at 5, 77. However, BLM also admitted that nonlethal methods of control are utilized, and useful, to reduce livestock losses to some degree. See Rawlins EA at 14; Rock Springs EA at 14. The effectiveness of nonlethal methods though is regarded as limited. See Attachment 1 to Response, IBLA 94! 395, at 4 ("While several non! lethal depredation control techniques have shown some effect in reducing depredations \* \* \* none has been totally effective in eliminating losses of livestock to predators.") Nonetheless, the full extent to which nonlethal control will reduce losses, and whether it alone may be relied upon to reduce or eliminate losses, is admittedly not definitely known since controlled studies have not been done. See Attachment A to Answer, IBLA 94! 373, at 1, 2 ("The assertion there is no reliable data regarding expected loss levels under strictly non! lethal depredation control efforts is basically correct. That research has not been done.").

There is evidence that lethal control is necessary, to some extent, to diminish losses since nonlethal control alone will not suitably reduce or eliminate livestock losses. While Friends of the Bow and Predator Project present evidence that, in particular instances, nonlethal methods have proven to be effective in controlling predation, and thus they offer the promise of effective control in all circumstances, Friends of the Bow and Predator Project have not established that nonlethal control alone is appropriate in the Rawlins and Rock Springs Districts. Moreover, BLM did not authorize the exclusive and unrestricted use of lethal control by APHIS! ADC on public lands. The BLM has announced that if it turns out that nonlethal control is successful (without significant cost) in minimizing livestock losses in whole or in part, lethal control will not be employed to that extent. See Rawlins EA at 14; Rock Springs EA at 14. However, by the same token, to the extent that nonlethal control (at a reasonable cost) is not successful, lethal control may be employed. The determination to afford APHIS! ADC the option to employ lethal control, where necessary, is proper.

Predator Project contends that, in the case of the Rawlins District, BLM failed to consider in its EA all reasonable alternatives for controlling predation on domestic livestock as required by NEPA and its implementing regulations. It asserts that BLM should have considered an alternative requiring the implementation of a full range of nonlethal methods prior to the use of lethal control and that lethal control should only be available if a documented threshold level of livestock loss is reached.

The Secretary rejected such an argument in In the Matter of the Appeals of Southern Utah Wilderness Alliance, Utah Wilderness Association, and Utah Chapter, Sierra Club, SEC 92! UT101, when he stated on page 13:

Where an EIS upon which a subsequent EA is tiered adequately considered the alternative in dispute, there is no need to discuss it again in the EA. (Oregon Natural Resources Council, 115 IBLA 179, 186 (1990).) In this case, the 1979 EIS discussed an alternative of emphasizing nonlethal control.

The Rawlins District Manager concluded that authorizing lethal control by APHIS! ADC was necessary to control predation on the public lands, from the standpoint both of reducing livestock loss and of minimizing the impact on predator populations. (Rawlins EA at 7, 43, 48; Rawlins DR/FONSI at 2, 3.) To focus only on nonlethal control could result in a greater loss of livestock and, if it encouraged operators and others to undertake lethal control on their own, might result in an unacceptable impact on predator populations, as well as nontarget species. (Rawlins EA at 7, 26, 43, 48; Rawlins DR/FONSI at 3.) Thus, an alternative that precluded lethal control by APHIS! ADC until after nonlethal control had been used was deemed by BLM not likely to achieve the twin purposes sought to be achieved by its proposed action. It is well settled that BLM need not consider an alternative in these circumstances. Utah Wilderness Association, 134 IBLA 395, 400 (1996).

We, therefore, conclude that BLM did not err in failing to consider, in the Rawlins EA, an alternative that required nonlethal control or prioritized nonlethal control.

We conclude that, considering all relevant matters of environmental concern, BLM has taken the requisite "hard look" at the environmental impacts, including the impacts to domestic livestock and predators, of undertaking single and multi! year ADC plans, employing both lethal and nonlethal control, in the Rawlins and Rock Springs Districts, and alternatives thereto, and made a convincing case that, given certain mitigation measures, there will be no significant impact requiring preparation of an EIS. Therefore, we conclude that BLM has acted in conformance with section 102(2)(C) of NEPA. See Humane Society of the United States v. Hodel, 840 F.2d 45, 62 (D.C. Cir. 1988); Southern Utah Wilderness Alliance, 114 IBLA at 332. Friends of the Bow and Predator Project have failed to carry their burden to persuade us, with the submission of objective proof, to the contrary. See Oregon Natural Resources Council, 116 IBLA 355, 360 (1990); Coy Brown, 115 IBLA 347, 357 (1990). Although they offer contrary opinions, those opinions are not sufficient to overcome the reasoned analysis of BLM's experts in matters within the realm of their expertise. See Southern Utah Wilderness Alliance v. Thompson, 811 F. Supp. at 643; King's Meadow Ranches, 126 IBLA 339, 342 (1993); Coy Brown, 115 IBLA at 357. The fact that Friends of the Bow and Predator Project would prefer that BLM undertake no lethal predator control in the districts does not establish a violation of NEPA. Oregon Natural Resources Council, 116 IBLA at 361 n.6.

Except to the extent that they have been expressly or impliedly addressed in this decision, all other errors of fact or law raised by Friends of the Bow and Predator Project have been considered and are rejected. See G. Jon Roush, 112 IBLA 293, 311 (1990); Glacier-Two Medicine Alliance, 88 IBLA 133, 156 (1985).

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 two DR/FONSI's appealed from are affirmed.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur.

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David L. Hughes  
Administrative Judge

