

NATIONAL WILDLIFE FEDERATION  
BIODIVERSITY CONSERVATION ALLIANCE  
WYOMING OUTDOOR COUNCIL  
WYOMING WILDLIFE FEDERATION

IBLA 2004-133, 2004-289, 2005-109

Decided September 29, 2006

Appeal from decisions of the Acting Deputy State Director, Wyoming State Office, Bureau of Land Management, affirming the Decision Record/Finding of No Significant Impact approving the Brown Cow Pod Environmental Assessment, WY-030-04-EA-067; the Decision Record/Finding of No Significant Impact approving the Red Rim Pod Environmental Assessment, WY-030-04-EA-055; and the Decision Record/Finding of No Significant Impact approving the Jolly Roger Pod Environmental Assessment, WY-030-04-EA-390. SDR No. WY-2004-05; SDR No. WY-2004-22; and SDR No. WY-2005-09.

Affirmed.

1. National Environmental Policy Act of 1969: Finding of No Significant Impact

When an agency issues a Decision Record and Finding of No Significant Impact based on an Environmental Assessment, that decision will be deemed to comply with the National Environmental Policy Act if the record demonstrates that the agency has considered all relevant matters of environmental concern, taken a hard look at potential environmental impacts, and made a convincing case that any potentially significant impact will be reduced to insignificance by imposing appropriate mitigation measures.

2. Administrative Practice--Administrative Review:  
Generally--Appeals: Generally

When the Board has previously considered and rejected the same arguments urged in the present appeal, and an appellant does not file supplemental briefing to address the impact of that earlier decision, appellant has not shown that the arguments expressly considered and rejected in the previous decision remain viable in these cases. In such circumstances, the Board properly concludes that the earlier decision is dispositive.

3. Federal Land Policy and Management Act of 1976: Generally--  
Federal Land Policy and Management Act of 1976: Land Use  
National Environmental Policy Act of 1969: Generally

Nothing in the Federal Land Policy and Management Act or the National Environmental Policy Act, or their implementing regulations, requires the Board to conclude that BLM cannot revise its method of calculating the number of wells remaining to be drilled under a Reasonably Foreseeable Development (RFD) scenario, or that the degree of short- and long-term surface disturbance resulting from oil and gas activities is an improper reference point in ascertaining the present status of the RFD scenario.

APPEARANCES: Thomas D. Lustig, Esq., and Michael A. Saul, Esq., for the National Wildlife Federation, Biodiversity Conservation Alliance, Wyoming Outdoor Council, and Wyoming Wildlife Federation; Craig Carver, Esq., and Christopher M. Kamper, Esq., Denver, Colorado, for Merit Energy Company; Jack D. Palma II, Esq., P.C., and Jenifer E. Scoggin, Esq., Cheyenne, Wyoming, Sandra Snodgrass, Esq., Denver, Colorado, and Natalie Eades, Esq., Houston, Texas, for Anardarko E&P Company and Warren Resources, Inc.; Lyle K. Rising, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE PRICE

The National Wildlife Federation, Biodiversity Conservation Alliance, Wyoming Outdoor Council, and the Wyoming Wildlife Federation (collectively, NWF) have appealed decisions of the Deputy State Director or Acting Deputy State Director, Wyoming State Office, Bureau of Land Management (BLM), affirming on State

Director Review (SDR) Decision Records and Findings of No Significant Impact (DR/FONSI) issued by the Rawlins (Wyoming) Field Office (RFO) approving three coalbed methane (CBM) exploratory drilling Pods (plans of development and/or operational segments). Merit Energy Company (Merit) appears in IBLA 2004-133 as owner and operator of the Brown Cow Pod. Anardarko E&P Company LP (Anardarko) and Warren Resources, Inc. (Warren) appear as the parties who proposed the exploratory drilling for the Red Rim and Jolly Roger Pods.

The Brown Cow, Red Rim, and Jolly Roger Pods represent three of nine exploratory CBM projects within the Atlantic Rim CBM Project (ARP) area in southwestern Wyoming in Carbon County. The activities in the ARP area are governed by the 1990 Great Divide Resource Management Plan (Great Divide RMP) and its underlying environmental impact statement (EIS) (collectively, the RMP/EIS). See Notice of Intent to Prepare an [EIS] and Conduct Scoping for the [ARP], Carbon County, Wyoming; and to Amend the Great Divide [RMP], 66 FR 33975, 33976 (June 26, 2001). The ARP area encompasses 310,335 acres of Federal, State, and private lands, in which up to 3,880 CBM wells with related facilities and improvements could be drilled. Id. An RMP amendment and accompanying EIS are proposed because the development pursuant to the ARP is likely to exceed the reasonably foreseeable development analyzed in the 1990 RMP/EIS. Id. at 33975-76. Exploratory drilling has been authorized to gather information “to define the coal structures in the area, to determine if the coal can be dewatered to allow for economic development of gas, and to support conclusions reached to be contained in the ARP EIS.” Id.

The three Pods are part of a nine-Pod exploratory project to be undertaken pursuant to BLM’s 2001 *Interim Drilling Policy, Conditions and Criteria Under Which Development Activities May Occur Concurrent with EIS Preparation for the Atlantic Rim Coalbed Methane Project* (IDP), which allows the drilling of a maximum of 200 wells (a maximum of 24 wells per Pod) in the ARP area while the development of the EIS for the ARP proceeds, subject to a variety of terms and conditions designed to ensure that drilling activity remains within the level of activity permitted pursuant to Council on Environmental Quality (CEQ) regulation 40 CFR 1506.1. <sup>1/</sup> See IDP, Appendix A

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<sup>1/</sup> CEQ regulation 40 CFR 1506.1, Limitations on actions during NEPA process, in part provides as follows:

(a) Until an agency issues a record of decision as provided in § 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

- (1) Have an adverse environmental impact; or
- (2) Limit the choice of reasonable alternatives.

\* \* \* \* \*

(continued...)

to Environmental Assessment (EAs). While operators will be able to produce any wells that prove successful in the course of Pod operations, a primary objective is to obtain information and data needed for the Atlantic Rim EIS. (DR/FONSI at 1.)

In December 2003, the RFO issued EA No. WY-030-04-EA-067 for the Brown Cow Pod (BCEA), pursuant to which Merit proposed to drill 12 CBM wells and convert 2 existing shut-in wells to water injection wells, and construct related access roads and facilities.<sup>2/</sup> The proposal was approved by issuance of the DR/FONSI on December 12, 2003 (IBLA 2004-133).

In the Red Rim Pod, Anardarko and Warren proposed to drill 9 exploratory CBM wells and up to 2 water injection wells, operate 7 existing wells, and construct 2 water conditioning facilities, 3 surface discharge outfalls, a compressor station, and associated access roads and infrastructure, for which EA No. WY-030-04-EA-055 (RREA) was prepared in November 2003.<sup>3/</sup> A DR/FONSI was issued on April 23, 2004 (IBLA 2004-289).

In the Jolly Roger Pod, Anardarko and Warren proposed to drill 16 exploratory CBM wells and 2 deep injection wells, operate 8 existing wells and 1 existing deep injection well, and construct access roads and related facilities. The RFO prepared

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<sup>1/</sup> (...continued)

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

- (1) Is justified independently of the program;
- (2) Is itself accompanied by an adequate environmental impact statement;

and

- (3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives. \* \* \*

<sup>2/</sup> The Brown Cow Pod project area is 1,600 acres of Federal land, and is within existing development of the Browning Field in Carbon County. (BCEA at 1-1 and 2-1.)

<sup>3/</sup> The Red Rim Pod project area is 3,200 acres. (DR/FONSI at 1.) Of the wells to be drilled, 5 will be on BLM land, 1 will be on State land, and the remaining wells will be on private land. (RREA at 2-1.)

EA No. WY-030-04-EA-390 (JREA) for that Pod in September 2004 and issued the DR/FONSI approving the project on December 14, 2004 (2005-189).<sup>4/</sup>

NWF protested the three DR/FONSIs, resulting in the SDR decisions here appealed. Because of the common legal and factual issues, we have consolidated these appeals on our own motion.

[1] When an agency issues a DR/FONSI, based on an EA, concluding that it is not necessary to prepare an EIS before undertaking the proposed action, that decision will be deemed to comply with section 102(2)(C) of National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(2)(c) (2000), if the record demonstrates that the agency has considered all relevant matters of environmental concern, taken a “hard look” at potential environmental impacts, and made a convincing case that any potentially significant impact will be reduced to insignificance by imposing appropriate mitigation measures. Cabinet Mountain Wilderness v. Peterson, 685 F.2d 678, 681-82 (D.C. Cir. 1982).

An appellant seeking to overcome a FONSI bears the burden of demonstrating, with objective proof, that BLM has failed to adequately consider an environmental question of significance to the proposed action, or otherwise failed to abide by section 102(2)(C) of NEPA. Frederic L. Fleetwood, 159 IBLA 375, 382 (2003); Defenders of Wildlife, 169 IBLA 117, 132 (2006); Southern Utah Wilderness Alliance, 127 IBLA 331, 350, 100 I.D. 370, 380 (1993). That an appellant has a different opinion about the likelihood or significance of environmental impacts or prefers that BLM take another course of action does not establish that BLM violated the procedural requirements of NEPA. San Juan Citizens Alliance, 129 IBLA 1, 14 (1994). When BLM has completed the procedural requirements of section 102(2)(C) of NEPA by taking a hard look at the potential environmental impacts of a proposed action, it will be deemed to have complied with the statute, regardless of whether a different substantive decision would have been reached by an appellant, this Board, or a court (in the event of judicial review). Stryker’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). When deciding whether BLM has taken a hard look, this Board is guided by the “rule of reason.” Don’t Ruin Our Park v. Stone, 802 F. Supp. 1239, 1247-48 (M.D. Pa. 1992); Armando Fernandez, 165 IBLA 41, 50 (2005).

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<sup>4/</sup> The Jolly Roger Pod project area consists of 3,926.77 acres. (JREA at 1-1.) Of the 24 proposed well locations, 10 would be on BLM lands, and the remaining 14 would be on private lands, as would the compressor station and new injection wells. The existing injection well is also on private land. (JREA at 2-1.)

This Board recently decided NWF's appeal involving two other Pods in the ARP area. In National Wildlife Federation, 169 IBLA 146 (2006), we considered the Cow Creek and Blue Sky Pods, with respect to which NWF advanced a number of the same issues. Thus, in those protests, NWF argued that (1) the Cow Creek and Blue Sky Pod EAs violated NEPA, 42 U.S.C. § 4332(2)(c) (2000), because they relied on the IDP, which makes numerous decisions that result in environmental impacts that should have been analyzed under NEPA; (2) the EAs failed to consider connected, similar, and cumulative impacts adequately, as required by NEPA; (3) the EAs violated the Federal Land Policy and Management Act of 1976 (FLPMA) because authorizing drilling for CBM does not conform to the RMP, as required by 43 U.S.C. § 1732(a) (2000); (4) the EAs failed to disclose likely environmental impacts that would occur during the production phase; and (5) the EAs failed to consider a reasonable range of alternatives. National Wildlife Federation, 169 IBLA at 150.

In the appeals of the SDR decisions denying the protests of the Cow Creek and Blue Sky DR/FONSIs to this Board, NWF attacked BLM's decisions on three main fronts. First, NWF argued that those EAs did not comply with NEPA because they were predicated on the IDP, which was never analyzed under NEPA. More specifically, citing Kern v. U.S. Bureau of Land Management, 284 F.3d 1062 (9<sup>th</sup> Cir. 2002), NWF contended that, when the IDP was incorporated into site-specific proposals, independent of the analyses of the impacts of Pod activities, BLM was required to analyze the IDP under NEPA. Second, NWF argued that the approval of the projects for CBM development violates FLPMA because CBM development does not conform to the 1990 Great Divide RMP in that CBM impacts "are substantially different" in magnitude and nature from impacts contemplated in the RMP/EIS for conventional oil and gas production. Third, appellants asserted that BLM cannot mitigate impacts to wildlife during the production phase of Pod activities because lease provisions preclude the imposition of timing limitations once the projects are past the exploration and development phases, and thus they contended that those EAs failed to disclose "likely" impacts that will materialize "during the production phase." National Wildlife Federation, 169 IBLA at 150-51.

Those arguments and points in support of them are again raised in these appeals, in virtually identical form. Accordingly, most are controlled by the analysis and holdings in National Wildlife Federation, 169 IBLA at 152-165. We rejected NWF's contentions regarding the import of the IDP or the obligation to subject it to NEPA review, finding that "[t]he conditions and criteria in the IDP do not constitute agency action within the meaning of NEPA, as it proposes no agency action." Id. at 156. We concluded that

the IDP merely establishes the boundaries within which a surface-disturbing pod action, when it is proposed, must fit. The IDP is therefore not itself independently subject to NEPA's requirements, so

long as, when and to the extent it is incorporated into a specific proposed agency action, full NEPA review and analysis of the effects of that action is undertaken.

Id. at 156-57.

With respect to the alleged FLPMA violation, it is established that CBM is a fluid mineral subject to the land use planning decisions applicable to such minerals, regardless of whether it is identified by name or not. Therefore, a land use planning decision that opens the planning area to oil and gas leasing opens it to CBM exploration and development as well.

Id. at 153 and cases cited.

As to NWF's allegations regarding the kind and magnitude of CBM-related impacts and conformance with the Great Divide RMP, we first explained that, in a post-leasing context,

the real issue presented by CBM activity in these appeals is not whether it conforms to the Great Divide RMP land use decision authorizing oil and gas activity, but whether there are any environmental impacts associated with CBM activity on the leased parcels beyond those resulting from conventional oil and gas activity, hence rendering them "unique" impacts or impacts never addressed in the EIS. To the extent truly unique CBM impacts demonstrably exist or are likely to materialize, it is not FLPMA's land use planning provisions that are triggered, but those of \* \* \* NEPA \* \* \* , which requires an agency to analyze such impacts before undertaking an action.

Id. at 154. We concluded that NWF's arguments regarding the applicability of the decisions in Wyoming Outdoor Council, 158 IBLA 384 (2003), and Wyoming Outdoor Council, 160 IBLA 387 (2004), were misplaced because the Cow Creek and Blue Sky Pods, like those presently before us, constitute post-leasing proposed actions that must stand or fall on the quality and completeness of the analyses contained in the EAs. We therefore examined those environmental analyses and went on to detail the reasons why we could not agree that BLM had failed to adequately consider an environmental question of significance to the proposed action or otherwise failed to comply with section 102(2)(C) of NEPA and, on that basis, concluded that the DR/FONSI were properly sustained.

As we have said, in the present appeals, NWF largely repeats the same arguments. We have scrutinized each of the EAs in these appeals in light of NWF's

arguments, however, paying particular attention to impacts that can be significant in the CBM context, and we conclude that the reasoning and analysis in National Wildlife Federation is dispositive.

These three EAs, like those previously considered in National Wildlife Federation, summarize the potential issues and concerns posed by the proposed exploration activity, including potential effects on surface water and groundwater, air, soils, and wildlife. (BCEA at 1-5 to 1-6; RREA at 1-6 to 1-9; JREA at 1-4 to 1-5.) Each EA prescribes detailed project-wide mitigation measures and best-management practices (BMPs), which include both BLM-imposed and applicant-committed measures, to govern preconstruction planning, design, and compliance measures, as well as resource-specific requirements. (BCEA at 2-13 to 2-20; RREA at 2-9; JREA at 2-14 to 2-22.) See also Appendices to BCEA (Master Surface Use Plan, Master Drilling Program, and Water Management Plan), and to JREA (Master Surface Use Plan, Master Drilling Program); and Appendices C and D to RREA DR/FONSI (Master Surface Use Plan, Master Drilling Plan, Conditions of Approval). Operators must comply with all permitting requirements imposed under Federal or State law, including those that govern water quality, air quality, and wildlife. See Appendix B to BCEA and JREA (Federal, State, and County Permits, Approvals, and Authorizing Actions). <sup>5/</sup>

With respect to impacts on particular resources, air quality, for example, none of the subject Pods is expected to have any significant impact on ambient air quality in large part because of the small number of wells proposed, but also because emissions from methane that is “nearly 100 percent methane” are negligible and no new compressor engines are proposed (BCEA at 4-4), and compressor emissions “would contain minimal amounts of sulphur dioxide and particulate matter (JREA at 4-2); because air quality impacts from all the wells that would be drilled pursuant to the IDP were analyzed under the air quality model developed for the Continental Divide/Wamsutter II (CD/WII) and South Baggs Natural Gas Development Project EISs (RREA at 4-35) or the Desolation Flats Natural Gas Field Development Project (BCEA at 4-4; JREA at 4-2 to 4-3); and because construction emissions are temporary and would occur in isolation (BCEA at 4-3; RREA at 4-35; JREA at 4-2).

Regarding water resources, typically one of the impact areas of greatest concern in CBM extraction and development, it is clear that these EAs have

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<sup>5/</sup> BLM did not furnish a copy of the RREA, and NWF provided only incomplete copies without all the Appendices with which we have become familiar as a result of reviewing appeals involving the ARP. Given the topic and the references to such Appendices in the Red Rim DR/FONSI, however, we are confident that the Red Rim Pod, like all that we have reviewed to date, also has an Appendix that deals with Federal, State, and County Permits, Approvals, and Authorizing Actions.

undertaken the requisite hard look at impacts. Most existing groundwater wells and the proposed CBM wells would penetrate Mesaverde aquifers. (BCEA at 3-28; RREA at 3-16; JREA at 3-12.) Mesaverde groundwater is suitable for livestock use, but is not suitable for domestic supplies or irrigation without treatment or dilution. (BCEA at 3-28; RREA at 3-17; JREA at 3-12.) The other land uses within the Pod project areas consist of “[a]griculture (primarily cattle and sheep grazing), wildlife habitat, oil and natural gas exploration, development, and transmission, and dispersed outdoor recreation (primarily hunting in the fall).” (BCEA at 3-32; RREA at 3-24; JREA at 3-20.) There will be no surface discharge of produced water on Federal lands within the project areas, and produced water will be injected. (BCEA at 2-8 to 2-9; RREA at 2-27; JREA at 2-8.) The water is to be injected below the coal seams in the Cherokee or Deep Creek Sands at 3,000' to 5,000' (BCEA at 2-6); 5,965' to 6,335' (RREA at 2-8); and 3,800' to 4,600' (JREA at 2-6). Shallow groundwater would be unaffected, given the depths of the injection targets, and injected produced water would not migrate or infiltrate into overlying fresh water zones. (BCEA at 4-6; RREA at 4-9; see JREA at 4-22.) Within the Red Rim project area on private land, some produced water will be discharged to ephemeral drainages, subject to mitigation and to a National Pollutant Discharge Elimination System permit issued by the Wyoming Department of Environmental Quality. (RREA at 4-10 to 4-11.) Some of the produced water will be used for livestock. Therefore, surface water quality is expected to be good. (BCEA at 4-6; RREA at 4-10; JREA at 4-22.) All the EAs specify a number of mitigation measures and BMPs to further protect water quality and quantity.

As the Appendices show, access to the Pods will be obtained by existing highways, main roads, and two-track roads, and all equipment and vehicles will be confined to those travel corridors when practical. Construction of some access roads is envisioned, and these will be spurs from existing roads and will be 16 feet wide and subject to a number of requirements regarding their construction and maintenance. (Appendix to C to BCEA, Surface Use Plan.) See also DR/FONSI for JREA, Summary of Comments on Appendix B (Surface Use); DR/FONSI for RREA, Summary of Comments on Appendix B (Surface Use).<sup>6/</sup>

[2] We could continue in this vein, but we think it unnecessary to do so because our review of the EAs convinces us that BLM has taken the requisite hard look at the impacts of these Pod activities. If there are any particular facts or circumstances about the Brown Cow, Red Rim, or Jolly Roger projects that compel different reasoning or a different outcome than that reached in National Wildlife Federation, NWF has not filed supplemental briefing to address the impact of that decision. It did not do so, presumably because there are no such distinguishing facts or circumstances regarding these Pod activities. We therefore decline to shoulder the

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<sup>6/</sup> See n.5 *ante*.

burden of a more exhaustive discussion of these EAs when, with one possible exception, NWF has not shown why the arguments expressly considered and rejected in the previous decision remain viable in these cases.

NWF has raised one argument in its challenge to the Brown Cow and Red Rim projects that was not expressly raised or implicated in the prior appeal. NWF contends that these two projects exceed the reasonably foreseeable development scenario (the RFD or RFD scenario) established in the 1990 RMP/EIS. In support, NWF argues that BLM has authorized more than the 1,440 wells projected in the RFD for the RMP/EIS (BCEA at 44); that BLM is required to count all wells drilled in the planning area rather than only active wells (BCEA at 45; RREA at 43); that BLM's reliance on long-term disturbance to measure conformance with the RFD scenario is not justified (BCEA at 46-47; RREA at 44-45); and that BLM improperly assumes that previously disturbed acreage has been reclaimed (BCEA at 47-48; RREA at 45-46). In essence, these are further contentions in support of the arguments that the wells to be drilled in each Pod do not conform to the RMP, as required by FLPMA.

In Wyoming Outdoor Council (WOC), 164 IBLA 84 (2004), we considered an allegation that the RFD scenario analyzed in the Pinedale RMP/EIS had been exceeded. Noting that an RFD scenario is an analytical tool, we expressly rejected both the idea that it “establishes a point past which further exploration and development is prohibited, and the assumption that the underlying environmental analysis has no validity beyond the RFD scenario.” WOC, 164 IBLA at 99. In rejecting that assertion, we implicitly agreed with BLM that an RFD scenario “is neither a planning decision nor the ‘No Action Alternative’ in the NEPA document.” Id. at 100. We stated that “[t]he better question is whether in any given case an exceeded RFD scenario demonstrates that further environmental analysis is required, a question that must be determined on a case-by-case basis,” specifically declining to decide whether the need for further environmental review also required a land use plan amendment or revision. Id. at 102 n.22.

On the question of whether the RFD scenario has been exceeded, NWF takes a different tack than that argued in WOC, 164 IBLA 84. In WOC, appellants argued that the number of authorized and drilled wells was greater than that projected in the RFD and, therefore, that BLM was required to amend or revise the RMP before further leasing occurred. Id. at 101-102. Here, NWF objects to BLM's method of determining the status of the RFD scenario, specifically the fact that BLM has altered its calculation method. As explained in the SDR decision pertaining to the Brown Cow Pod:

The Great Divide analysis is based on 40 acres of surface disturbance for each gas well brought into production (this figure includes well pads, pipelines and roads). Since the Great Divide RMP was released,

technology has changed and the assumptions for which the RFD was made have also changed (each gas well and associated facilities disturbs [sic] significantly less than 40 acres).

Estimated surface disturbance for the Brown Cow project is a short-term disturbance of 3.23 acres/well (12 wells and ancillary facilities requiring 38.82 acres) and a long-term disturbance of .063 acres/well. According to the response prepared by the RFO to comments received for the BCPEA, there are still approximately 7000 acres available for future oil and gas projects before the amount of RFD surface-disturbance would be exceeded (DR/FONSI at 16).

As indicated above, the number of wells permitted is one RFD reference point. The number of surface acres disturbed is another reference point. Surpassing one of these reference points does not necessarily mean the RFD has been exceeded and does not mean that additional development cannot occur. Should the number of wells and the level of surface disturbance exceed those analyzed in the Great Divide RMP, BLM would re-examine the Great Divide RMP assumptions and compare them to actual on-the-ground impacts and at that point will determine if the authorization of further oil and gas exploration and development is an appropriate action.

(Brown Cow SDR Decision at 8.) On the basis of the foregoing, the Acting Deputy State Director concluded that the RFD had not been exceeded. He reached the same conclusion, following the same reasoning, in deciding NWF's protest of the Red Rim project decision. (Red Rim SDR Decision at 13.)

[3] NWF obviously would prefer that no more wells be drilled in the planning area and, to that end, it moves the Board to invalidate BLM's methodology for ascertaining the number of wells that remain to be drilled pursuant to the RFD. As a general matter, we perceive no fault in a calculus that presumes that the number of wells that can be drilled in an RFD scenario is properly a function of reduced surface disturbance resulting from achievements in increased efficiencies, better management practices and techniques, technological advances, reclamation, and so on. Nor has NWF shown that such logic is flawed, although it plainly objects to the impact on the RFD scenario to the extent it leads to more development. Instead, NWF challenges the propriety of revising the method at all. We find nothing in FLPMA or NEPA, or implementing regulations, that plausibly requires us to hold that BLM cannot revise its method of calculating the number of wells remaining to be drilled under an RFD scenario based upon, among other things, the degree of short- and long-term surface

disturbance resulting from oil and gas activities.<sup>7/</sup> Even if we believed that there was a different or better approach to quantifying the degree of development remaining under an RFD scenario, however, as an appellate tribunal, the Board of Land Appeals does not exercise supervisory authority over BLM, outside the context of deciding an appeal over which the Board has jurisdiction. Defenders of Wildlife, 169 IBLA 117, 127 (2006); Benton Cavin, 166 IBLA 78, 83 (2005); Nevada Outdoor Recreation Center, 158 IBLA 207, 210 (2003). Therefore, in the absence of a showing by appellant of a violation of applicable law or regulations, we have no general authority to substitute our judgment for BLM's with regard to a method of calculating the number of wells that remain under an RFD scenario.<sup>8/</sup>

NWF also asserts that, in determining the number of wells remaining to be drilled under the RFD scenario, BLM was required to count every well that has ever been drilled in the planning area within the planning period, not just active wells. We cannot agree. We have found nothing in the RMP/EIS or its ROD, or in FLPMA or NEPA, that supports or compels this conclusion. To buttress its contention, NWF further alleges that BLM has failed to ensure that well sites have been properly reclaimed. Such an allegation could conceivably fortify a challenge to the method of calculating the status of the RFD scenario, and thus NWF attacks BLM's failure to "provide any evidence to back its unsupported assumption that all inactive wells have already been fully and successfully reclaimed." (Brown Cow SOR at 50; Red Rim SOR at 48.) It is NWF's burden to affirmatively demonstrate error in the decision appealed, however, not BLM's. Great Basin Mine Watch, 159 IBLA 325, 353 (2003); Southern Utah Wilderness Alliance, 158 IBLA 212, 219-20 (2003); The Ecology Center, 140 IBLA 269, 271 (1997). In this case, NWF has failed to support its charge that BLM is improperly excluding wells from the calculation of RFD by deeming them inactive, fully reclaimed wells; NWF fails even to identify a single instance of an improperly designated well, and it certainly has not demonstrated a general failure to

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<sup>7/</sup> In so stating, we do not mean to suggest that the number of wells and facilities would never be the most compelling parameter in ascertaining the current status of the RFD scenario. Air quality, for example, on a long-term basis might be more forcibly driven by the number of wells and compressors, rather than the degree of surface disturbance associated with each.

<sup>8/</sup> While NWF mistrusts the timing of this change in methodology, we note that the approach was presented at least as early as 1999. See Draft EIS for the CD/WII Natural Gas Project at 4-6 to 4-7. Noting that the RMP/EIS assumed long-term surface disturbance of 11.2 acres per well, the CD/WII Draft EIS stated that experience had shown that the long-term disturbance is 9 acres per well, but even that revised figure was deemed to be an "overestimation." (CD/WII Draft EIS at 1-8.)

require full reclamation when wells and their attendant facilities are taken out of service.

Under the circumstances, we reach the same conclusion we reached in National Wildlife Federation with respect to the Cow Creek and Blue Sky Pods:

Appellants have demonstrated their conviction that BLM should have imposed more stringent restrictions on interim exploratory activities and more intense mitigation measures. While NWF's arguments clearly reveal a difference of opinion, they do not demonstrate an error of law or fact, or show that the EAs failed to consider a substantial environmental problem of material significance. The Fund for Animals, Inc., 163 IBLA 172, 179 (2004); Rocky Mountain Trials Association, 156 IBLA 64, 71 (2001). Moreover, as we observed in Oregon Natural Resources Council, 116 IBLA 355, 361 n.6 (1980), NEPA is a procedural statute. It does not direct that BLM take any particular action and it specifically does not prohibit action even where environmental degradation is inevitable. The statute only mandates a full consideration of the environmental impact of a proposed action before undertaking it. The records in these cases clearly and convincingly show that BLM fulfilled its obligations under NEPA.

National Wildlife Federation, 169 IBLA at 165.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

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T. Britt Price  
Administrative Judge

I concur:

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Lisa Hemmer  
Administrative Judge