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Editor's note: On June 25, 1991 the Secretary issued a decision which affirmed as to findings of inadequacies of EIS but reversed as to issuance of general rule. See 115 IBLA 229A th 229K below.

MICHAEL GOLD (ON RECONSIDERATION)

IBLA 86-1575

Decided July 12, 1990

Reconsideration of decision styled Michael Gold, 108 IBLA 231 (1989).

Reaffirmed as modified.

1. Environmental Policy Act--Environmental Quality: Environmental Statements--Oil and Gas Leases: Drilling

Under the decision of the Court of Appeals for the Tenth Circuit in Park County Resource Council, Inc. v. United States Department of Agriculture, 817 F.2d 609 (1987), where an initial exploratory well has been successfully drilled and a lessee files an APD for additional development wells, the filing of the APD normally triggers the requirement for an environmental impact statement, unless an environmental impact statement has already been prepared which analyzes the impacts that can be expected from full field development.

APPEARANCES: Grove T. Burnett, Esq., Glorieta, New Mexico, for appellants; John F. Shepherd, Esq., and Ruth B. Johnson, Esq., Denver, Colorado, for petitioner, Amoco Production Company; Charles L. Kaiser, Esq., Denver, Colorado, for amicus curiae Rocky Mountain Oil and Gas Association; Eric Twelker, Esq. and William Perry Pendley, Esq., Denver, Colorado, for amicus curiae Mountain States Legal Foundation; William R. Murray, Esq., Office of the Solicitor, Washington, D.C., and Margaret C. Miller, Esq., Office of the Solicitor, Santa Fe, New Mexico, for petitioner, Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

By decision styled Michael Gold, 108 IBLA 231 (1989), this Board set aside a decision of the Farmington Area Manager, Bureau of Land Management (BLM), approving an application for a permit to drill (APD) filed by Dugan Production Company (Dugan) for the Divide #2 well on lease NM 28709. The Board made three discrete rulings in its decision, all of which dealt with the applicability of the National Environmental Policy Act of 1970 (NEPA), 42 U.S.C. § 4331 (1982), to the matter under consideration.

The Board first held that the categorical exclusion set forth at 516 Departmental Manual (DM) 6, Appendix 5.4D(2)(d), which exempts APD approval from the NEPA process so as to make preparation of an environmental assessment (EA) unnecessary, applied only to exploratory wells and not, as in the instant case, to development wells. Second, the Board held that the

specific EA prepared for the APD was deficient in its discussion of the possible effects of the proposed action on wildlife, failed to discuss relevant mitigation measures, and did not document the reason why various alternatives to the proposed action were rejected. Third, the Board held, based on the decision of the Court of Appeals for the Tenth Circuit in Park County Resource Council, Inc. v. United States Department of Agriculture, 817 F.2d 609 (1987), that "when the instant lease proceeded from the exploratory stage to the developmental stage, an EIS [environmental impact statement] became necessary unless such a document had already been prepared analyzing the environmental impacts of development." 108 IBLA at 239.

The Board's decision issued on April 24, 1989. On June 22, 1989, counsel for BLM filed a request for a 2-month extension of time in which to file a petition for reconsideration. On June 23, 1989, counsel for Amoco Production Company (Amoco), successor-in-interest to Dugan, filed a petition seeking reconsideration of that part of the Board's decision which had held that an EIS was required for oil and gas development wells. On that same date, Rocky Mountain Oil and Gas Association (RMOGA) filed a notice informing the Board that it desired to file an amicus brief with respect to Amoco's petition for reconsideration.

By Order dated July 17, 1989, the Board granted Amoco's petition for reconsideration "for the limited purpose of reconsidering that part of the decision which determined that an EIS was needed for a development well, unless an EIS had already been prepared which covered the area." Simultaneous therewith, the Board granted BLM's request for an extension of time and afforded RMOGA amicus curiae status in the reconsideration proceeding. Thereafter, petitioners and amicus filed briefs seeking reversal of the Board's ruling with respect to preparation of an EIS for development wells, while counsel for Michael Gold appeared arguing for reaffirmation of the Board's holding on this point. Additionally, Mountain States Legal Foundation (Mountain States) petitioned for leave to file an amicus curiae brief in support of the petition for reconsideration, which request is hereby granted.

This matter is now ripe for determination. In order to place the issue within its proper context, we will first reiterate the basis upon which it made its original conclusion and then proceed to consideration of the objections to this analysis raised by the petitioners.

In its decision in Michael Gold, supra, the Board analyzed the issue of EIS preparation within the context of development wells as follows:

The Park County case involved, inter alia, the question whether, as a precondition for lease issuance, BLM and the Forest Service were required to prepare an EIS. In its decision, the Court of Appeals affirmed a decision of the Wyoming District Court and rejected a contention that an EIS was necessary prior to leasing. Appellants had contended that an EIS was necessary at the leasing stage because of the eventual cumulative and foreseeable effects of exploratory drilling and subsequent full field development. The court disagreed, noting that only 1 out of 10 leases

issued ever had exploratory activities conducted thereon and, of those, only 1 out of 10 proceeded to development. The court concluded that

[t]o require a cumulative EIS contemplating full field development at the leasing stage would thus result in a gross misallocation of resources, "would trivialize NEPA and would 'diminish its utility in providing useful environmental analysis for major federal actions that truly affect the environment.'" Cabinet Mountain Wilderness, 685 F.2d at 682 (quoting Committee for Auto Responsibility v. Solomon, 603 F.2d 992, 1003 (D.C. Cir. 1979), cert. denied, 445 U.S. 915).

Id. at 623.

The court, however, carefully distinguished subsequent development activities from the situation existing at the leasing stage:

This is not to say that drilling or development at a single site will never require an overall assessment. * * * As an overall regional pattern or plan evolves, the region-wide ramifications of development will need to be considered at some point. A singular, site-specific APD, one in a line that prior to that time did not prompt such a broad-based evaluation, will trigger that necessary inquiry as plans solidify. We merely hold that, in this case, developmental plans were not concrete enough at the leasing stage to require such an inquiry.

Id.

It seems clear from the foregoing that, far from holding that the approval of an APD would never necessitate the requirement to prepare a full-blown EIS, the court affirmatively recognized that, as drilling proved successful and activities proceeded from exploration to development, a point would be reached where the decisionmaker, in order to fulfill the mandate of NEPA, would be required to examine the cumulative and synergistic effects of not only the individual APD but the entire field development. Accord, Natural Resources Defense Council v. U.S. Nuclear Regulatory Commission, 539 F.2d 824, 841 (2d Cir. 1976), vacated on other grounds, 434 U.S. 1020 (1978).

We recognize, of course, that it is arguable whether such consideration must necessarily entail a full EIS. Indeed, a review of the Departmental Manual provisions indicates that, while some type of environmental document is required, there is no requirement that it automatically rise to the level of an EIS. Thus, not only is there a categorical exclusion for exploratory

drilling (516 DM 6, Appendix 5.4D(2)(d)) there is also a categorical exclusion for "Approval of an APD for oil and gas wells subsequent to the first confirmation drilling for which an environmental document is required." 516 DM 6, Appendix 5.4D(2)(f) (emphasis supplied).

A careful review of the court's decision in Park County, however, leaves little room for doubt that the court was of the view that an EIS would be required. Thus, after noting the distinction between reviewing a FONSI determination which required a "reasonableness" analysis and reviewing a determination as to the timing of an EIS which justified the lower "rational basis" scrutiny, the court noted:

The inquiry with respect to an oil and gas lease does not fall indisputably within one category rather than the other. If no exploration under the lease is ever pursued, determining whether an EIS is required at the lease issuance stage falls within the first category. If oil or gas is found and development undertaken, an EIS is clearly required, and determining whether that EIS should issue at the leasing stage becomes merely a timing question. The difficulty in oil and gas leasing, of course, is that one cannot predict which path will eventually be taken at the leasing stage. We have thus considered both possibilities herein and conclude that in neither context is an EIS required at the leasing stage absent firm plans to develop. [Emphasis supplied.]

Id. at 624 n.5.

Thus, under the court's analysis, when the instant lease proceeded from the exploratory stage to the developmental stage, an EIS became necessary unless such a document had already been prepared analyzing the environmental impacts of development. The record before this Board shows no evidence that an EIS has ever been prepared with respect to development of the area in question. On the contrary, the 1982 Environmental Assessment for Oil and Gas Leasing and Related Activities for the Farmington Resource Area contained a FONSI [finding of no significant impact] declaration. While it is of substantially greater detail than the short, 4-page EA prepared for the APD herein, it is also of far larger geographic scope, encompassing the entire Farmington Resource Area which includes the San Juan Basin, the second largest gas field in the United States, with over 9,000 wells, 10,000 miles of road and thousands of miles of pipelines. See EA at 2, 64.

We need not decide whether the FONSI declaration was sustainable with respect to the 1982 EA. The question before this Board is whether, consistent with the decision of the Tenth Circuit Court of Appeals in Park County Resource Council, Inc. v. United

States Department of Agriculture, *supra*, the EA prepared for the APD in this case represents a proper discharge of the Department's responsibilities under NEPA. For the reasons set forth above, we hold that it does not. In the absence of either a field-wide EIS for the San Juan Basin or an EIS for a more limited geographic area embracing the area of the lease, we must hold that an EIS should be prepared prior to allowance of the subject APD. [Footnotes omitted.]

Id. at 237-40.

[1] In their respective filings with the Board, petitioners and amici make a number of arguments. Two, in particular, are generally replicated in all filings. Thus, it is argued that the Board has misinterpreted the scope of the decision in Park County, inappropriately placing too much weight on a footnote discussion which, it is further contended, is dictum in any event. In one important aspect, however, we note that counsel for BLM apparently disagrees with counsel for Amoco or the amici. BLM seemingly argues that while the decision in Park County did determine that an EIS would be required for developmental activities, it did not determine when the EIS would be required. See BLM Brief at 4-6.

This is a significant distinction which properly leads into an examination of the question whether footnote 5 of the court's decision in Park County is dictum and, if so, what effect this has, or should have, on the Board's reliance thereon. Dictum may be generally defined as a holding or statement of law not necessary to the resolution of the question under consideration. Dictum is accorded less controlling authority because, by its nature, being peripheral to the subject being directly examined, the statement "may not have received the full and careful consideration of the court that uttered it." Sarnoff v. American Home Products Corp., 798 F.2d 1075, 1084 (7th Cir. 1986).

But, while dictum, as a conceptual matter, may be easy to define, the determination of what is and what is not dictum is not always so simple a question to resolve. Petitioners and amici point out that there were two discrete issues before the Court of Appeals in Park County. The first question was whether the EIS which had been prepared for the APD in that case was adequate. Since the well had already been unsuccessfully drilled and the site was in the process of being reclaimed, the court determined that this question was moot. 817 F.2d at 614-15. The court then turned to appellants' assertion that the initial issuance of the lease, which remained outstanding, should have required preparation of an EIS, concluding, as noted above, that issuance of the subject oil and gas lease did not constitute such "a major federal action significantly affecting the quality of the human environment" so as to necessitate preparation of an EIS.

Petitioners point to this holding, arguing that, since the issue before the court was the question of the need to prepare an EIS as a precondition to lease issuance, statements which the court may have made relative to the need, at some future time, for an EIS were in the nature of dicta and not properly deemed precedential. However, the mere fact that the specific

issue being determined related to NEPA compliance prior to lease issuance does not make every statement which the court made with reference to post-issuance requirements dicta. Rather, the proper focus is on whether the statements made by the court with reference to such actions were an essential part of its reasoning for the conclusion that an EIS was not necessary as a precondition to lease issuance.

By way of example, if the court had declared that "an EIS is not needed before lease issuance because one will be prepared prior to the allowance of any full-scale development activities" (emphasis supplied), the reference to subsequent development activities as triggering the need for an EIS is not dictum but rather an essential component of the court's holding, since the actual point being decided (*i.e.*, an EIS is not required prior to lease issuance) is directly dependent upon the subsidiary conclusion (*i.e.*, an EIS is required prior to the commencement of development activities). Thus, the question as to whether a specific statement is dictum cannot be resolved merely by a determination of what the ultimate conclusion was but must necessarily take into consideration those subsidiary holdings upon which the ultimate conclusion was based.

The thrust of the court's analysis was dually based. The court looked both to the specific effects which lease issuance engendered as well as to ultimate impacts which might be expected to ensue should full-scale development of the lease eventually result. With respect to the first point, the court noted BLM's assertion that, with appropriate lease stipulations, lease issuance, which is "essentially a paper transaction, does not usually require preparation of an EIS." 817 F.2d at 621. The court held that BLM's conclusion that its actions in issuing the lease would have no significant environmental consequences was a reasonable one. *Id.*

The court then examined the contention that an EIS must be prepared at the leasing stage not merely because of the effects of lease issuance itself but because of "the eventual cumulative and foreseeable effects of exploratory drilling and then full field development." *Id.* at 622. The appellants in Park County had argued that unless an EIS issued at the leasing stage there would be an improper segmentation of a single project into smaller components, none of which might be deemed to require an EIS even though, when viewed in its entirety, the total environmental effects of the activity were sufficient to mandate issuance of an EIS. In responding to this argument, the court noted:

This argument would have more force in this context if full field development were likely to occur and could be specifically described at the leasing stage. The paradigmatic oil and gas lease, however, does not fall into such a category. Full field development is typically an extremely tentative possibility at best at the leasing stage. Because "exploration activities are conducted on only about one of ten federal leases issued and development activities are conducted on only one of ten of those leases on which exploration activities have been approved and completed," Intervenor's Answer Brief at 45-46, the steps from leasing to full field development are not "so interdependent that

it would be unwise or irrational to complete one without the others"--the benchmark signalling the need for a cumulative impact EIS. * * * NEPA's goal is not to generate paperwork evaluating speculative possibilities that the odds favor will never occur.

Id. at 623.

Thus, far from being a passing observation, non-germane to the specific holdings of the decision, the statement in footnote 5 noting that "[i]f oil or gas is found and development undertaken, an EIS is clearly required, and determining whether that EIS should issue at the leasing stage becomes merely a timing question," is intrinsically related to the reasoning underlying the decision. Indeed, in the appeal before the Board, we were not faced with a situation in which "full field development were likely to occur," we had a situation in which full field development had been occurring for nearly 20 years without the benefit of an EIS. Preparation of an EIS in this context could not be further removed from realization of the fears expressed by the court as to the generation of "paperwork evaluating speculative possibilities that the odds favor will never occur." No odds need be given on whether the San Juan Basin will develop into a large gas field. That is a bet which has already been cashed. 1/

Moreover, the fact that the sentence which the Board quoted in Michael Gold, supra, was located in a footnote is beside the point. The analysis which the Tenth Circuit used in determining that an EIS was not needed at

1/ Admittedly, extensive development had occurred in the San Juan Basin prior to the adoption of NEPA. Petitioners point to this fact and argue that such impacts as were dependent upon development of the San Juan Basin predated the adoption of NEPA and hence need not be covered by an EIS. See, e.g., BLM Brief at 8-9. This argument would be more persuasive if the productive limits of the Basin had been delineated prior to 1970 and all actions taken since that time have been in the nature of a continuing progression toward maximization of ultimate recovery of hydrocarbons. Such, however, has not been the case. The EA for Oil and Gas Activities in the Farmington Resource Area, dated April 1982, expressly noted that 1,008 gas wells had been completed in 1980 and that, as of 1978, 5,600 additional gas wells were expected within 15 to 20 years. The EA concluded: "This tremendous activity will have a major impact on the economy and environment" (EA at 2).

As the instant appeal illustrates, the productive limits of the San Juan Basin continue to be expanded at the present date. Moreover, in considering the impact of actions subsequent to the adoption of NEPA, cumulative impacts of actions taken in the past, present and reasonably foreseeable future must be considered together. See, e.g., Kleppe v. Sierra Club, 427 U.S. 390, 410 (1976); Sierra Club v. Penfold, 664 F. Supp. 1299, 1303 (Alaska 1987), aff'd 857 F.2d 1307 (9th Cir. 1988); Sierra Club, 111 IBLA 122 (1989); 40 CFR 1508.7 and 1508.25. Viewed in this light, it is scarcely arguable that the development of the San Juan Basin has not been the result of "major federal action significantly affecting the quality of the human environment."

the leasing stage in order to consider cumulative and synergistic effects of development was not located in a footnote and was, in fact, an essential component of its holding. In other words, the court held that precisely because cumulative and synergistic impacts would be considered should development occur (a 1 in 100 possibility) there was no danger of improper segmentation in the analysis of environmental effects.

Petitioners suggest that the Board's holding that an EIS is required whenever a development well is being drilled 2/ is totally inconsistent with the entire course of NEPA adjudication which has consistently emphasized that determinations under the Act are essentially fact-intensive. While we do not quarrel with the assertion that whether or not any specific environmental analysis comports with the requirements of NEPA is inherently a question of fact, it does not follow, as petitioners would have it, that general rules of broad applicability may not be applied to specific factual situations. Thus, the fact that a lease has progressed from exploration to development can be both a fact relating to the specifics of a matter under appeal as well as a fact which generally elicits a specific response under NEPA analysis.

The concept that specific fact situations may be subject to the same general treatment is, indeed, inherent in the establishment of categorical exclusions. Pursuant to guidelines established by the Council on Environmental Quality (CEQ), the Department has set up specific categories of actions which, because of their nature, may generally be deemed to have no significant impact on the quality of the human environment. See Colorado Open Space Council, 73 IBLA 226 (1983); 516 DM 6, Appendix 5.4D. As we noted in our original decision herein, under 40 CFR 1508.4, the effect of a categorical exclusion is to eliminate the necessity for preparation of either an EA or an EIS. Michael Gold, supra at 234. In other words, because certain actions have general effects a general treatment of these actions under NEPA has been directed. This does not mean that, for example, with respect to the drilling of an exploratory well the NEPA analysis has been divorced from the specific factual milieu in which it arises. Rather, it is merely recognition of the reality that the lack of adverse environmental consequences emanating from specific activities can be generalized.

2/ The Board, in fact, made no such holding. What the Board actually ruled was that "[i]n the absence of either a field-wide EIS for the San Juan Basin or an EIS for a more limited geographic area embracing the area of the leases, we must hold that an EIS should be prepared prior to allowance of the subject APD." 108 IBLA at 240. This Board has, on numerous occasions in the past, permitted BLM to tier EA's onto existing EIS's. See, e.g., Upper Mohawk Community Council, 104 IBLA 382, 384-85 (1988); In re Lick Gulch Timber Sale, 72 IBLA 261, 309, 90 I.D. 189, 216 (1983). The preparation of a single field-wide EIS which would then be tiered into individual EA's as needed (see 516 DM 6, Appendix 5.4D(2)(f)) would normally constitute complete compliance with the obligations imposed by NEPA. Thus, the assertion that our prior decision herein mandated the preparation of an EIS for every development well entails a substantial distortion of the realities of both NEPA adjudication and hydrocarbon accumulation.

Moreover, in addition to providing categories of activities which are categorically excluded from the NEPA process, the Department has also delineated types of BLM proposals which will normally require preparation of an EIS. See 516 DM 6, Appendix 5.3. Included therein are approvals of new non-coal surface mine plans disturbing more than 640 acres and approval of a new commercial surface oil shale mine plan of any size. See 516 DM 6, Appendix 5.3A(10) and (11). Here, too, the Department has affirmatively recognized that a specific category of fact situations will normally give rise to environmental consequences which compel preparation of an EIS. There is, in short, nothing inconsistent with recognizing the essentially fact-dependent nature of NEPA determinations and at the same time applying general rules applicable to those situations.

In one regard, however, further consideration of the matter has convinced us that we may have been overly rigorous in applying the Court of Appeal's holding in Park County. In our prior decision herein, we stated

a universal rule that, where drilling had proceeded beyond the exploratory stage and was being carried forward as a matter of development, an EIS was needed unless such a document had already been prepared either for the entire field or a more limited geographic area embracing the lease. We note, however, that while the Department has established general rules exempting some activities from the NEPA process and mandating that other activities generally require an EIS, the Department, consistent with the CEQ regulations, has made specific provision for exceptions in both situations. Thus, even though a specific activity may be subject to a categorical exclusion, express provision is made for exemptions to the categorical exclusions. See 516 DM 2, Appendix 2. Similarly, while the Department has established certain categories of actions which normally require preparation of an EIS, it is also expressly noted that "[i]f, for any of these actions, it is proposed not to prepare an EIS, an EA will be prepared and handled in accordance with Section 1501.4(e)(2)." 516 DM 6, Appendix 5.3B.

To the extent, therefore, that our prior decision was susceptible to the interpretation that there were no situations in which approval of an APD for a development well could proceed absent an EIS for either the specific well or for the entire field it may be considered overbroad. Rather than enunciating a universal rule of unvarying applicability, we believe on reconsideration that the decision of the Circuit Court in Park County should be read as establishing a general rule which may, in special circumstances warranted by the extant factual circumstances of a specific case, be varied. Thus, it is certainly within the realm of possibility that a specific field being developed will be of such limited extent that it would be obvious that full-field development would not constitute major Federal action significantly affecting the quality of the human environment. Certainly, in such a case, preparation of an EIS would not be warranted. But, while we recognize the possibility that such a situation may, indeed, arise, it is clearly not involved in the instant appeal. Accordingly, on reconsideration we modify our earlier holding to provide that, as a general matter, where an initial exploratory well has been successfully drilled and a lessee files an APD for additional development wells, the filing of the APD triggers the requirement

for an EIS, unless an EIS has already been prepared which analyzes the impacts that can be expected from full field development.

The other arguments pressed herein can be more swiftly dealt with. BLM argues that, since it is in fact presently preparing an EIS covering oil and gas development in the San Juan Basin, approval of the APD in the instant case may proceed without awaiting completion of the EIS. We do not agree. A similar argument was advanced in In re Upper Floras Timber Sale, 86 IBLA 296 (1985), where BLM argued that it should be permitted to proceed with timber clearcuts in excess of those provided for in an EIS since it was in the process of preparing a supplemental EIS, which was already in draft form. In rejecting this contention, we noted:

[W]e cannot conclude from its mere existence in draft form that the final supplemental EIS will merely duplicate the conclusions tentatively forwarded in draft. Indeed, while all EIS's are prepared in light of a specific proposal for action (or inaction), the premise of the entire environmental analysis is that data may be developed which will convince the decisionmaker to discard or modify his initial approach in favor of an alternative approach which minimizes adverse environmental impacts disclosed during the analysis. Unless the decisionmaker remains open to such a possibility, the preparation of the EIS becomes but a hollow mockery of its real purpose. We cannot, as a matter of law, presume that the course of action outlined in the draft supplemental EIS will be the action which ultimately commends itself to the authorized officer upon a review of all of the evidence.

Id. at 299-300. Here, too, we cannot assume that the allowance of the instant APD is such a foregone conclusion that awaiting the issuance of the EIS is merely an exercise in futility. 3/

3/ Counsel's reliance on the decision of the District Court for the District of Columbia in Peshlakai v. Duncan, 476 F. Supp. 1247 (1979), as supporting this argument is misplaced. That case involved a pilot project for underground uranium leaching for which it had been determined, after an extensive EA, that no significant impacts would result. Accordingly, no EIS was prepared. The District Court agreed with the decision not to prepare an EIS, noting that "while plaintiffs have catalogued and described possible environmental impacts at great length, in vivid detail, and with considerable imagination and ingenuity, in the final analysis these impacts amount to very little, both individually and in the aggregate." Id. at 1255. While the District Court did note that a draft EIS had been prepared and subsequently stated that even if a regional EIS had been required under the Supreme Court's analysis in Kleppe v. Sierra Club, supra, approval of the pilot project could proceed, the fact that an EIS was in preparation had no effect on its decision since the court had already held that an EIS was not needed. In contradistinction, under the Tenth Circuit's decision in Park County an EIS is needed with respect to the instant APD. Thus, the decision of the District Court in Peshlakai v. Duncan, supra, is simply not on point.

BLM also points out that "in other cases where the Board found an EA to be inadequate, the Board remanded the matter to BLM for revision of the EA," arguing that this course of action should have been followed in our original decision (BLM Brief at 7-8). While BLM's description of the Board's actions in other cases is doubtless accurate, it is, in the context of the present case, totally irrelevant. In Michael Gold, supra, appellant had specifically asserted that the FONSI declaration was not supportable with reference to approval of the specific APD at issue. In reviewing this matter, the Board held that preparation of an EIS for the instant APD was required under the decision of the Tenth Circuit in Park County. Having made this holding, it is difficult to see how the Board could have avoided remanding the matter to BLM with directions to prepare an EIS. See, e.g., Sierra Club v. Penfold, 664 F. Supp. 1299, 1305 (Alaska) 1987).

Counsel for Amoco suggests that the decision in Michael Gold, supra, represents an interpretation of Park County at odds with that of the Secretary as enunciated by the Department of Justice in its brief arguing against a request for a writ of certiorari in Conner v. Burford, 848 F.2d 1441 (9th Cir. 1988), cert. denied sub nom. Sun Exploration & Production Co. v. Lujan, __ U.S. __, 103 L.Ed.2d 184 (1989). Leaving aside the questionable assertion that a statement contained in a brief filed in opposition to a petition for a writ of certiorari constitutes a statement of policy of the Secretary of the Interior of the type which would bind the Board in subsequent actions, we note that nothing in that brief is inconsistent with the views expressed in Michael Gold, supra. Thus, Amoco argues that since the Secretary had asserted that the decisions in Conner v. Burford and Park County had rested on the respective courts' evaluation of the specific facts of record before them and that there was no essential conflict between the two Circuits, the Board's decision establishing a general rule contradicted this analysis. But, as we explained above, there is nothing contradictory in declaring that the specific facts of an appeal must control the result and at the same time establishing general rules which apply when certain specific facts are shown to exist.

Counsel for RMOGA contends that the decision will have the practical effect of generating attempts by lessees to have development activities classified as exploratory. In its most pristine form, this is really an assertion that if the law requires preparation of an EIS, the parties will attempt to evade it. This is scarcely an argument so much as a threat. For our part, we prefer not to credit such a contention, believing from our experience that the overwhelming majority of oil and gas lessees, far from desiring to evade environmental obligations, are anxious to fulfill them to the best of their capabilities. In any event, BLM is quite capable of independently determining whether operations are properly deemed exploratory or have advanced to the development stage.

In conclusion, therefore, we hold that, as a general matter, where an initial exploratory well has been successfully drilled and a lessee files an APD for additional development wells, the filing of the APD triggers the requirement for an EIS, unless an EIS has already been prepared which analyzes the impacts that can be expected from full field development.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the prior decision of the Board, reported as Michael Gold, 108 IBLA 231 (1989), is reaffirmed as modified herein.

James L. Burski
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

THE SECRETARY OF THE INTERIOR
WASHINGTON

Decision on Review in Michael Gold (On Reconsideration)
115 IBLA 218 (1990)

INTRODUCTION

In Michael Gold (On Reconsideration), 115 IBLA 218 (1990), the Interior Board of Land Appeals (IBLA) ruled as a general matter that where an initial exploratory oil and gas well has been successfully drilled and a lessee files an Application for Permit to Drill (APD) additional development wells, the filing of the APD triggers the requirement that an Environmental Impact Statement (EIS) be prepared, unless an EIS has already been prepared which analyzes the impacts that can be expected from full field development. 115 IBLA at 228.

The issue before me in this review is whether this ruling should be sustained. 1/ The issue has been briefed at length by Michael and Patricia Gold (the Golds), the Mineral Policy Center, the Assistant Secretary - Land and Minerals Management, Amoco Production Company (Amoco), and the Rocky Mountain Oil and Gas Association (RMOGA) (sometimes referred to hereinafter collectively as the parties). Several other entities have also submitted letters making their views known. 2/

PROCEDURAL BACKGROUND

This matter arises as the result of an appeal to the IBLA by the Golds and others from a 1986 decision of the Bureau of Land Management's (BLM) Farmington, New Mexico Area Manager approving a Federal oil and gas lessee's APD for a development well on land whose surface is owned by a corporation of which the Golds are principals. The size of the surface estate is 800 acres. The Golds operate a children's camp on the surface estate. The proposed development well site would occupy a maximum of 5 acres and would be located about one and one-half miles from the camp. The mineral rights to the land are reserved to the United States.

1/ I have undertaken review of this matter in accord with 43 CFR § 4.5 (1990). I requested the Solicitor to provide me staff support in the review process. On November 30, 1990 the Solicitor, with the assistance of the Division of General Law, established a briefing schedule for the review, and ultimately all briefs were required to be filed by January 24, 1991.

2/ They are: 1) the Governor of New Mexico; 2) Yates Petroleum Corporation; 3) the Independent Petroleum Association of New Mexico; 4) the New Mexico Oil and Gas Association; and 5) the American Association of Petroleum Geologists.

under 43 U.S.C. § 299 (1988). The parties do not dispute that the lessee has the right under the statute to enter upon the Golds' surface estate for the purpose of extraction of oil and gas. See Michael Gold et al., 108 IBLA 231, 233 n.2 (1989). The land is located in the San Juan Basin, a large oil and gas field, part of which is in northern New Mexico. The APD approval followed the completion of an environmental assessment (EA) by the Area Office, which concluded that the proposed drilling together with mitigation measures would not result in significant environmental effects on the human environment, and therefore an EIS was not required.

On appeal the IBLA concluded that the EA was inadequate because of its failure to address wildlife issues properly, its faulty discussion of alternatives and its failure to consider cumulative impacts of development drilling. Michael Gold et al., *supra*, 108 IBLA at 235-37. However, citing the Tenth Circuit Court of Appeals decision in Park County Resource Council, Inc. v. United States Department of Agriculture, 817 F.2d 609 (10th Cir. 1987), the IBLA did not follow its usual practice of remanding to the BLM for supplementation of an inadequate EA, but held that an EIS had to be prepared before the APD could be approved, because "when the instant lease proceeded from the exploratory stage to the developmental stage, an EIS became necessary unless such a document had already been prepared analyzing the environmental impacts of development." Michael Gold et al., *supra*, 108 IBLA at 237, 239-40. ^{3/} Requests for reconsideration of the decision

^{3/} The issue in Park County was whether the BLM was required to prepare an EIS before an oil and gas lease of certain National Forest lands could be approved. The court held that an EIS was not required at the leasing stage, but recognized that an EIS would be required at some point during the development of the field. 817 F.2d at 623-24.

The IBLA's conclusion that an EIS was required was based upon a footnote, where the court stated there was a distinction between the standard of judicial review to be applied in the review of a "finding of no significant impact" or FONSI (a "reasonableness" standard) and the standard of judicial review to be applied where the only issue is when an EIS that is "admittedly required" must be performed (a "rational basis" standard). The court said:

If no exploration under the lease is ever pursued, determining whether an EIS is required at the lease issuance stage falls within the ["reasonableness" standard]. If oil or gas is found and development undertaken, an EIS is clearly required, and determining whether that EIS should issue at the leasing stage becomes merely a timing question. The difficulty in oil and gas leasing, of course, is that one cannot predict which path will eventually be taken at the leasing stage. We have

(footnote continued)

followed quickly, ^{4/} and the IBLA agreed to reconsider the matter.

The parties advanced numerous arguments in support of their respective positions. The petitioning parties argued, among other things, that: 1) the Park County court did not hold that the filing of an APD for a development well automatically requires the preparation of an EIS, and statements in footnote 5 of the opinion regarding the requirement for an EIS is required in a particular situation is inherently fact-intensive and does not generally lend itself to the creation of general categories of situations requiring the preparation of EIS; and 3) general (or "per se") rules should be established only in accordance with rulemaking procedures.

The Golds (who refer to themselves as Appellants) contended in response, among other things, that: 1) the Park County decision's references in footnote 5 to an EIS requirement are not dicta; 2) the IBLA correctly interpreted the court decision as requiring a general rule; and 3) it is broadly accepted that certain types of Federal actions always trigger the need for an EIS.

In its July 12, 1990 decision on reconsideration the IBLA modified its earlier decision and "reaffirmed" it. Michael Gold (On Reconsideration), 115 IBLA 218, 229 (1990). The IBLA concluded its earlier hearing was not inconsistent with the fact-intensive nature of NEPA determinations because general rules, such as the IBLA announced in the 1990 decision, are appropriate under Council on Environmental Quality (CEQ) regulations and Departmental NEPA procedures, and the facts of the particular situation determine whether a general rule is to be applied. 115 IBLA at 225-26. However, the IBLA concluded that because the Department's general rules (found in "categorical exclusions" and types of BLM actions normally

(footnote continued from previous page)

thus considered both possibilities herein and conclude that in neither context is an EIS required at the leasing stage. We have thus considered both possibilities herein and conclude that in neither context is an EIS required at the leasing stage absent firm plans to develop.

817 F.2d at 624 n.5.

^{4/} Amoco, successor in interest to the operator of the lease, petitioned the IBLA to reconsider that part of its decision requiring an EIS for oil and gas development wells. BLM also petitioned for reconsideration. The Rocky Mountain Oil and Gas Association (RMOGA) and the Mountain States Legal Foundation filed amicus briefs in support of reconsideration.

requiring an EIS, see 516 DM 6, Appendix 5.3, 5.4) recognize exceptions, the IBLA's general rule should also recognize an exception. The IBLA then held:

Rather than enunciating a universal rule of unvarying applicability, we believe on reconsideration that the decision of the Circuit Court in Park County should be read as establishing a general rule which may, in special circumstances of a specific case, be varied. Thus, it is certainly within the realm of possibility that a specific field being developed will be of such limited extent that it would be obvious that full-field development would not constitute major Federal action significantly affecting the quality of the human environment. Certainly, in such a case, preparation of an EIS would not be warranted. Accordingly, on reconsideration we modify our earlier holding to provide that, as a general matter, where an initial exploratory well has been successfully drilled and a lessee files an APD for additional development wells, the filing of the APD triggers the requirement for an EIS, unless an EIS had already been prepared which analyzes the impacts that can be expected from full field development.

115 IBLA at 226, 227 (emphasis supplied).

The IBLA also concluded, contrary to arguments of RMOGA and Amoco, that the Park County court's references in footnote 5 (817 F.2d at 624 n.5) to the need for an EIS when development of a lease is undertaken, were not dicta as the court's determination that an EIS was not necessary at the leasing stage was made with the awareness that an EIS would occur at the development stage. 115 IBLA at 222-225.

On September 7, 1990, RMOGA and Amoco filed a joint petition requesting me to review that portion of Michael Gold (On Reconsideration) "requiring an EIS for virtually all oil and gas development wells" and requested me to remand the EA to BLM to remedy the EA's defects and order BLM to reconsider, after supplementing the EA, BLM's finding of no significant impact (FONSI). In the alternative they requested me to revise the Board's decision to state that an EIS is required under the particular facts of this case, and that the Department was not establishing a universal rule that EISs are required for all development wells. Joint Petition at pp. 10-11, 20-21. In a memorandum to me on October 5, 1990, the Assistant Secretary - Land and Minerals Management argued that the IBLA had decided Michael Gold (On Reconsideration) incorrectly and requested a stay of the two decisions.

I decided to review Michael Gold (On Reconsideration), and to stay the effect of both Michael Gold decisions pending the outcome of the review. By notice of November 30, 1990 the Solicitor announced to the parties that I would be reviewing the matter, and announced that briefs could be filed. By January 24, 1991, the end of the time period for filing briefs, nine substantive briefs had been filed (the RMOGA and Amoco joint petition of September 7, 1990, the Assistant Secretary's memorandum of October 5, 1990, a letter from the Golds dated November 23, 1990, a letter from the Mineral Policy Center dated December 31, 1990, a brief from the Golds dated January 8, 1991, a brief from BLM and the Assistant Secretary dated January 10, 1991, and reply briefs from Amoco, RMOGA and the Golds, all dated January 24, 1991) and five other interested entities had made their views known. 5/

ANALYSIS

In reaching my decision in this matter, I have discussed this matter in depth with the Solicitor, the Deputy Solicitor and two representatives of the Division of General Law. I am aware that these individuals have reviewed the record in this case, including the briefs of the parties, the two IBLA decisions, and the record before the IBLA.

Findings of Fact on the Record

As an initial matter, the review of the record indicates that the EA in this case was inadequate and I uphold the IBLA's decision with respect to the inadequacy of the EA. See 108 IBLA at 235-37. The issues of Endangered Species Act compliance and other wildlife effects, available alternatives and cumulative impacts must be raised and considered in any environmental review. The Bureau did not do so in this case. The remainder of this opinion will discuss the legal issues raised by the review, and the appropriate remedy.

The Park County Decision

Every entity filing a substantive brief in this matter has focused on the Park County decision as a crucial factor to the outcome of the review. The IBLA acknowledges it was the Park County decision that precluded it from remanding the matter to the BLM for supplementation of the EA and BLM's determination whether an EIS was required before the APD at issue could be approved.

The parties have made many observations about the issue in Park County, the court's holding, the impact of footnote 5's references to the requirement of an EIS if field development is undertaken, the impact of Park County on the instant proceeding, and the impact of the Government's brief in opposing certiorari

5/ See note 2, supra, p. 1.

in Conner v. Burford, 848 F.2d 1441 (9th Cir. 1988), cert. denied sub nom. Sun Exploration and Production Company v. Lujan, 109 S. Ct. 1121 (1989), (holding that the selling of leases containing "no surface occupancy" stipulations did not require preparation of an EIS, but that an EIS was required before the selling of leases without "no surface occupancy" stipulations).

The precise issue in the Park County case was whether the BLM was required to prepare a comprehensive EIS prior to the issuance of a particular oil and gas lease of National Forest land, and the court held, in the particular circumstances of the case, that development plans were not concrete enough at the leasing stage to require a cumulative impact EIS. 817 F.2d at 623 6/.

The IBLA concluded that the Park County court's discussion about the need for an EIS at the development stage was "intrinsically related to the reasoning underlying the decision," 115 IBLA at 224. The Appellants make a similar argument. January 8, 1991 brief at pp. 8-9. However, as the court's discussion dealt with an issue not specifically before the court, the Solicitor concurs with the viewpoint of the Assistant Secretary that the court's statements on the need for an EIS at the development stage are dicta and I adopt that position. 7/

Indeed, as the Assistant Secretary's brief indicates, it is unclear whether the court was discussing a development well or development of the lease. The terms have different meanings in oil and gas law. A "development well" is "any well drilled within the presently known or proved productive area of a pool (reservoir) as indicated by reasonable interpretation of subsurface data, with the objective of obtaining oil or gas from that pool." Southern Utah Wilderness Alliance, Inc., 108 IBLA 318, 324 n.4 (quoting 5 H. Williams and C. Myers, Oil and Gas Law, § 847, at 381). On the other hand, "development of a lease" is not necessarily synonymous with the drilling a "development well," as "development of a lease" may include construction of pipelines. Id., 108 IBLA at 325. The question of when to proceed with a full EIS remains a fact-based determination. Marsh v. Oregon Natural Resources Council, 109 S. Ct. 1851, 1860-64 (1989); Kleppe v. Sierra Club, 427 U.S. 390, 412 (1976);

6/ At the time of the Court of Appeals' Park County decision, the lessee involved had abandoned its single drilling effort and had completed its reclamation of the site. 817 F.2d at 614-15. Though the lessee indicated that it "may in the future seek approval" to drill an additional well, the issue of whether an EIS would be required for that development clearly was not specifically before the court.

7/ See United States v. Crawley, 837 F.2d 291 292-93 (7th Cir. 1988); Black v. Cutter Laboratories, 351 U.S. 292, 297-98 (1956).

River Road Alliance v. Corps of Engineers of U.S. Army, 764 F.2d 445-449-51 (7th Cir. 1985); Southwest Resources Council, 94 I.S. 56-64-5 (1987). See 40 CFR § 1501.4

While I concur with that general view of the Assistant Secretary, I nevertheless believe that the Park County decision and the discussion therein are instructive. The Assistant Secretary and the Bureau would do well to consider the discussion of the relevant NEPA law in considering future actions. The court's observation that at some point in the development process a full EIS will be necessary should be factored into decisions about future NEPA compliance as oil wells proceed from leasing to full development. The issue to be decided in this and all future actions is at what point activities are sufficient to significantly affect "the quality of the human environment," 42 U.S.C. § 4332, and thereby require a full environmental review.

The Authority of the Office of Hearings and Appeals

However the Park County ruling is interpreted, in issuing its general rule the IBLA strayed beyond the boundaries of its appellate function and its precedent.

As a general matter, the offices of the Department receive their authority to act by virtue of delegations from the Secretary, which appear in the Departmental Manual or temporarily in Secretary's Orders. 220 DM 1.1, 1.3.

The Secretary has delegated to the Assistant Secretary-Land Minerals Management, with certain exceptions not relevant here, "all of the authority of the Secretary," including the authority to issue amendments and additions to the Code of Federal Regulations. 209 DM 7.1. Under 516 DM 1.3c and 1.3D the Assistant Secretary and the Director, BLM are assigned the responsibility to comply with NEPA and CEQ regulations. In accordance with CEQ regulations at 40 CFR §§ 1501.4(a)(1), 1507.3(b)(2)(i), the Director of BLM has established a list of actions normally requiring the preparation of an EIS. See 516 DM 6.5, 516 DM 6 Appendix 5.3. The Secretary has not delegated similar authority to the IBLA.

The Assistant Secretary notes, and the IBLA has itself recognized, that the Office of Hearings and Appeals (OHA), and the Boards within the OHA, do not have plenary authority to act merely because a perceived need exists. Assistant Secretary Brief, January 10, 1991, at 34. In an appeal from BLM's rejection of coal prospecting permit applications in response to a Secretary's Order that all coal prospecting permit applications must be recognized that it had authority only to determine if the Secretary's instructions had been followed. Robert V. Bailey, 12 IBLA 252 (1973), affirmed sub nom. Krueger v. Morton, 539 F.2d 235 (D.C. Cir. 1976).

While the situation before me is not precisely analogous to situations where the Secretary has issued a Secretarial directive, the cases citing the principle that the IBLA has no authority to act in a policymaking role are instructive. See A.C.O.T.S., 60 IBLA 1 (1981). The Department's issuance of the NEPA procedures flows from the Secretary's responsibility to comply with NEPA and the CEQ regulations. Certainly these procedures, published for notice and comment in the Federal Register, constitute Departmental regulations binding on the IBLA. See Blue Star, Inc., et al., 41 IBLA 333, 335 (1979). These regulations set forth those situations where an EIS is normally required, 516 DM 6, Appendix 5. They do not include the approval of APD for a development well under the circumstances presented here as a situation where an EIS is normally required. Accordingly, the IBLA's action announcing a general rule that an EIS would normally be required for development wells was inconsistent with existing Departmental regulations on the subject. Numerous IBLA decisions stand for the proposition that all units within the Department, including the IBLA, are bound by regulations promulgated by the Department. Wisnak, Inc., 87 IBLA 67 (1985), and cases cited therein.

The Assistant Secretary also argues (January 10, 1991, brief, pp. 23-25) that even if Park County could be construed as holding an EIS was necessary for a development well for the lease at issue in that case, the Board is not necessarily bound to apply a circuit court decision to other BLM actions, even actions within the Tenth Circuit. I am advised by the Solicitor that this is a correct view of the law. In Utah Wilderness Association, 80 IBLA 64, 68 (1984) where the BLM Moab, Utah District Office dismissed a protest against the issuance of a right-of-way to Shell Oil Company and stated the decision was not subject to appeal to the United States District Court for the District of Utah, the IBLA found that though it could not supersede or overrule the court decision, it was not deprived of appellate jurisdiction by the district court decision.

The Solicitor concurs with the Assistant Secretary that the recent decision in Lavaca-Navidad River Authority State of Texas Water Development Board, 115 IBLA 373 (1990), stands for proposition that a decision in one United States Court of Appeals does not bind the agency in actions taken within the geographic jurisdiction of other United States Courts of Appeals. January 10, 1991, brief at 24. As the Department administers oil and gas development in states in circuits other than the Tenth, the IBLA should not have issued the general rule of Michael Gold. 8/ I

8/ The Solicitor notes the decision in Pacificorp, 95 IBLA 16 (1986), an appeal from BLM's refusal to readjust the terms of a Wyoming coal lease under the Mineral Leasing Act, in which the IBLA recognized that even if the Tenth Circuit were to rule against the Government in then-pending Federal court litigation

adopt the Solicitor's conclusion on this proposition. Accordingly, the IBLA should not have established a general rule for all Departmental oil and gas development situations. An appropriate action for IBLA on this matter would have been to follow its usual course and remand the EA to the BLM, advising it of the Park County decision. At that point the BLM would be obliged to review its legal options and policy with the Solicitor's Office.

DECISION

In light of the above analysis, while upholding IBLA's ruling on the inadequacy of EA, I conclude that the IBLA erred in announcing the general rule. The question remaining is what action I need to take remedy this error.

Underlying my determination of the proper remedy is the NEPA requirement that any agency prepare an EIS whenever a proposed major federal action will significantly affect the quality of the human environment. 43 U.S.C. § 4332(2)(c). Under regulations, issued by the CEQ, agencies are generally to prepare an EA. If the agency finds on the basis of the EA that the proposed action will produce no significant impact on the human environment (FONSI), an EIS need not be prepared. 40 CFR § 1501.4(b), (c) &

(footnote continued from previous page

involving the same issue, that decision would not necessarily govern the disposition of the appeal before the IBLA because the district courts in both the Tenth Circuit and the D.C. Circuit would have venue over any judicial action arising from the appeal. The IBLA then quoted at length the Supreme Court's decision in United States v. Mendoza, 464 U.S. 154 (1984). The Court stated:

A rule allowing nonmutual collateral estoppel against the Government in such cases would substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue. Allowing only one final adjudication would deprive this Court of the benefit it receives from permitting several courts of appeals to explore difficult question before this Court grants certiorari. See E.I. duPont de Nemours & Co. v. Train, 430 U.S. 112, 135, n.26 (1977); see also Califano v. Yamasaki, 442 U.S. 682, 702 (1979). Indeed, if nonmutual estoppel were routinely applied against the Government, this Court would have to revise its practice of waiting for a conflict to develop before granting the Government's petitions for certiorari.

464 U.S. at 160

(e). In reaching a FONSI, an agency may impose various mitigation requirements to assure environmental impact will be minimized. Sierra Club v. Peterson, 717 F.2d 1409, 1413 (D.C. Cir. 1983).

I have also taken into consideration certain factual information about the San Juan Basin, which the Solicitor obtained from conversations with BLM staff in New Mexico upon the understanding that the information was publicly available, and from public documents. I understand the BLM Colorado State Office has completed a Resource Management Plan (RMP) Amendment for the lands administered by BLM in Colorado, including the portion of the San Juan Basin (Basin) in the state. I am also informed the Amendment includes a cumulative impact EIS. I will refer to this kind of document as a RMPA/EIS for northern New Mexico, including the portion of the Basin in New Mexico. 56 F.R. 23931-32, May 24, 1991. The draft requests public comment. The Solicitor has obtained a copy of the draft. I am informed that when the northern New Mexico RMPA/EIS has been completed, it, together with the Colorado RMPA/EIS will constitute a cumulative impact EIS for all the BLM-administered oil and gas estate in the San Juan Basin.

The New Mexico State Office indicates that the San Juan Basin is one of the largest oil and gas fields in the United States, and is the single largest source of gas under BLM jurisdiction. The portion of northern New Mexico covered by its RMPA/EIS includes about 4,296,500 surface acres administered by BLM, and 5.6 million acres of oil and gas estate administered by BLM. About 2.3 million acres of this Federal oil and gas estate are in the San Juan Basin. In this portion of northern New Mexico there are almost 22,000 producing or producible wells, almost all of which are in the Basin. Of this number there are about 12,000 Federal wells, including those on National Forest land. I understand that drilling of additional Federal wells is expected to continue over the coming years.

Determining the approach to follow under the circumstances presented in this specific case has not been an easy task. This case is complicated by the fact that many thousands of development wells already have been drilled in the San Juan Basin. See 108 IBLA at 239-40; 115 IBLA at 224.

The NEPA litigation to date, as the Solicitor advises me, does not provide an appropriate foundation for the issuance at this time of any general rules regarding the preparation of EISs in development situations. As noted earlier, there are stages to development. Any general rule would cover situations where development drilling has not yet begun, where a small amount of development drilling has occurred, where, like the present case,

much drilling has occurred and is expected to continue, and where a field approaches exhaustion after significant amounts of development drilling have occurred and only an occasional development well is drilled. The Assistant Secretary and the Director have the primary responsibility in the Department for assuring compliance with NEPA law and for recommending any changes in our NEPA regulations; and I expect that the Assistant Secretary and Director will be diligent in assuring that rules and regulations are up to date. I adhere to the view the NEPA general rules should be issued only after thorough analysis by those entities to which the Secretary has delegated appropriate policy making authority.

As I have indicated earlier, the inadequacy of the EA prepared by BLM in this case requires new review. Should that review disclose significant potential impacts, full EIS preparation is a measure the BLM should - and must - consider. I expect the BLM to consider fully its obligations under NEPA for full and informed decisionmaking. The EA prepared in this case clearly did not perform that function.

Accordingly, I uphold the IBLA findings on the factual inadequacies of the EA, but reject at this time a general rule concerning the preparation of EISs for development wells, and reverse the two Michael Gold decisions insofar as they relate to the issuance of that general rule. This matter is remanded to the BLM for a thorough analysis and supplementation of the EA in those areas found deficient by the IBLA in Michael Gold et al., 108 IBLA 231 (1989), and in any other respect BLM finds necessary. If BLM determines at the completion of this supplementation process that a site-specific EIS is warranted, it shall prepare one. The APD may not be approved until BLM completes its work on remand.

s/ Manuel Lujan, Jr.
Secretary

Date: 6/25/91

IBLA 86-1575