

GREAT BASIN MINE WATCH, ET AL.

IBLA 2000-273

Decided July 16, 2003

Appeal from a finding of no significant impact/decision record and a decision issued by the Elko, Nevada, Field Office Manager, Bureau of Land Management, approving a plan of operations for a mining exploration project. N17-99-002P, N-66237.

Affirmed.

1. Exchanges of Land: Generally--Federal Land Policy and Management Act of 1976: Exchanges--Land Policy and Management Act of 1976: Land-Use Planning--Federal Land Policy and Management Act of 1976: Plan of Operations--Mining Claims: Plan of Operations

Pursuant to 43 CFR 2200.0-6(g), land acquired through a land exchange automatically becomes part of the BLM district in which it is located and is subject to management under the applicable resource management plan. BLM therefore need not amend the applicable resource management plan to specifically address the acquired land before approving a plan of operations to continue exploration within a project area that includes lands obtained pursuant to a land exchange.

2. Exchanges of Land: Generally--Federal Land Policy and Management Act of 1976: Exchanges--Federal Land Policy and Management Act of 1976: Inventory and Identification--Federal Land Policy and Management Act of 1976: Land Use Planning--Federal Land Policy and Management Act of 1976: Plan of Operations--Mining Claims: Plan of Operations

Under 43 U.S.C. § 1711(a) (2000), the preparation and maintenance of an inventory of all public lands and their resource and other values “shall not, of itself, change or prevent change of the management or use of public

lands.” BLM therefore need not wait until an inventory of all the lands acquired through a land exchange has been completed before approving a mining plan of operations for an exploration project area that includes acquired lands where it is consistent with current management of a checkerboard pattern of adjacent lands on which exploration has been undertaken as part of the project.

3. Federal Land Policy and Management Act of 1976: Plan of Operations--Federal Land Policy and Management Act of 1976: Surface Management--Mining Claims: Plan of Operations

A finding that approval of a plan of operations for a phased exploration project will not cause unnecessary or undue degradation of public lands will be affirmed, even though the plan does not specify the exact location of future activities because those locations depend on the results of the initial exploration phase, where BLM compensates for the lack of specific location information by analyzing the impacts of the total acreage of approved surface disturbance anywhere in the entire project area and imposes protective stipulations for identified resources throughout the entire project area and where the appellant has not shown that the project, with the mandated stipulations, will cause unnecessary or undue degradation of the public lands.

4. Environmental Quality: Environmental Statements--Federal Land Policy and Management Act of 1976: Plan of Operations--Mining Claims: Plan of Operations--National Environmental Policy Act of 1969: Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact

BLM’s approval of a mining plan of operations based on an EA and FONSI will be affirmed if the record establishes that BLM took a "hard look" at the proposed action, carefully reviewed environmental problems, identified all relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation

measures. A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal.

5. Environmental Quality: Environmental Statements--Federal Land Policy and Management Act of 1976: Plan of Operations--Mining Claims: Plan of Operations--National Environmental Policy Act of 1969: Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact

An EA must include a brief discussion of alternatives as mandated by section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), which requires that every Federal agency "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." Appropriate alternatives include reasonable and feasible alternatives to the proposed action which will accomplish its intended purpose with lesser or no impact. If an alternative does not achieve the purpose of the proposed action or would not have lesser or no impact, BLM does not err in failing to consider that alternative.

6. Federal Land Policy and Management Act of 1976: Plan of Operations--Mining Claims: Plan of Operations--National Historic Preservation Act: Generally

The National Historic Preservation Act, 16 U.S.C. § 470f (2000), requires BLM to take into account an undertaking's effect on any property eligible for inclusion on the Register of Historic Places and to provide the Advisory Council on Historic Preservation the opportunity to comment. BLM's approval of a mining plan of operations will be affirmed without requiring consultation with the State Historic Preservation Officer where BLM has followed the procedures set forth in a State Protocol Agreement developed under BLM's National

Programmatic Agreement for implementing the NHPA, and where the appellant has failed to show error in BLM's determination that the proposed exploration operations (with the stipulations imposed to avoid or mitigate impacts to eligible sites) will have no adverse effect on eligible cultural resources.

APPEARANCES: Roger Flynn, Esq., and Jeffrey C. Parsons, Esq., Boulder, Colorado, for appellants; John W. Steiger, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management; Jim Butler, Esq., and Anne E. Rice, Esq., Salt Lake City, Utah, for intervenor Pittston Nevada Gold Company.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Great Basin Mine Watch and Friends of Nevada Wilderness (referred to collectively as GBMW) have appealed the finding of no significant impact and decision record (FONSI/DR) for the Pittston Nevada Gold Company, Ltd. (Pittston), Pequop exploration project, and the decision approving the plan of operations for that project, issued on May 24, 2000, by the Elko, Nevada, Field Office Manager, Bureau of Land Management (BLM). BLM based the challenged decisions on the analysis contained in the environmental assessment (EA) prepared for the project. (BLM/EK/PL-2000-011, May 2000.)^{1/}

Pittston's plan of operations for the Pequop project, submitted in September 1999 and revised in March 2000, proposed the expansion of earlier exploration activities conducted from 1994 through 1996 on 4.45 acres of unpatented lode mining claims pursuant to Notice N17-94-033N. The plan of operations proposed to include up to 95.55 acres of additional surface disturbance within the boundaries of the 3,336-acre project area located in secs. 22, 23, 26, 27, and 34-36, T. 36 N., R. 65 E., and secs. 1-3, T. 35 N., R. 65 E., Mount Diablo Basin and Meridian (MDB&M), Elko County, Nevada, approximately 24 miles southeast of the town of Wells.^{2/} (Plan of Operations (Plan) at 7; EA at 2-1.) The project also includes access roads

^{1/} By order dated June 27, 2000, the Board granted Pittston's motion to intervene in this appeal, and by order dated July 18, 2000, the Board denied both Pittston's motion to dismiss the appeal for lack of standing and GBMW's petition for stay pending appeal.

^{2/} About half the land in the project area (1,700 acres) was acquired by BLM in 1999 as part of the Big Springs Ranch land exchange which transferred to BLM ownership lands from approximately 70,498 acres of private land previously part of a checkerboard pattern of land ownership in northeastern Nevada. See EA at 1-6, 3-1; FONSI/DR, Big Springs Ranch Land Exchange, BLM/EK/PL-97-011, N-60262.

situated in secs. 28, 29, 32 and 33 and a water well sited in sec. 20, T. 36 N., R. 65 E., MDB&M. See Plan at 6-7; EA at 1-1.^{3/}

The plan contemplates phased work within the project area over approximately a 3-year period with subsequent phases dependent on the results of the previous phase. Phase 1 exploration work planned for the spring of 2000 would disturb 11.17 acres and consists of: (a) the construction and maintenance of approximately 10.75 acres of new and spur roads, including water bars, with 12-foot running surfaces and average combined disturbance widths of 20 feet; (b) the construction of 12 drill sites, each about 70 feet long by 40 feet wide including any necessary sediment traps, which would be located within the 40-foot width of the drill pad (0.42 acres) and would be approximately 15 feet wide by 15 feet long and 6 feet deep; and (c) the drilling of approximately 12 exploration drill holes, with reverse circulation drill holes measuring 5.25 inches in diameter and ranging from 400 to 1200 feet deep and core drilling with holes 2.5 inches in diameter and starting either from the bottom of the reverse circulation holes or collared on the surface and possibly reaching a depth of 2,500 feet. (Plan at 6-7, EA at 1-1, 2-1.) Drilling activities would generally be limited to daylight hours but could be 24 hours per day for some drill rigs. (Plan at 13.) Exploration activities would occur from March through December with very limited or nonexistent drilling activities during the winter months. (EA at 2-2.) Two portable trailers would be located at the project areas to store drill samples, drilling cores, and drilling supplies regularly used for mineral exploration and to provide a mobile work space for project geologists. They would be removed from the site during periods of seasonal shutdown and upon completion of exploration activities. (Plan at 14; EA at 2-2.)

Phase 2 and any subsequent exploration work would depend on the outcome of Phase 1. Although drill site and road locations for the additional phases would be determined based upon geologic data and assessments of the area's mineral potential discovered during Phase 1, the dimensions of the drill pads and sediment traps and the running surface and disturbance widths of the roads would be consistent with those outlined in Phase 1. (Plan at 7, EA at 2-1.) The plan notes that additional drill sites, sediment ponds, and roads constructed in later phases of the project could occur anywhere in the project area and would be subject to the same parameters used in the description of Phase 1; that as many as 300 additional drill holes could be drilled; that drill roads, pads, and sediment traps needed to access the drill sites, as well as trenching activities, could occur until a total of 100 acres in the project area

^{3/} Pittston also applied for a right-of-way for a 100-foot by 142-foot water well facility encompassing 0.30 acres of public land in the SW1/4 SW1/4 sec. 20, T. 36 N., R. 65 E., MDB&M. (EA at 2-1; Figure 2.) BLM issued the right-of-way grant (N-66237), effective June 23, 2000, for a 10-year period. GBMW has not specifically challenged the granting of this right-of-way.

has been disturbed (including the 4.45 acres affected by the earlier exploration); and that “geophysics” might also be conducted during any of the exploration phases. (Plan at 7, EA at 2-1.) According to the Plan, Pittston would provide BLM with an exploration program summary report describing work completed for the previous phase and work planned for any subsequent phase prior to initiating work on additional stages. The summary report would be due by April 15 of each year or prior to commencing subsequent phases, whichever comes first. (Plan at 8, EA at 2-2.)

The plan also adopts procedures for avoiding disturbance of cultural resources and significant paleontological resources, including the establishment of exclusion zones with a buffer of at least 164 feet around the perimeter of sites eligible for listing on the National Register of Historic Places. (Plan at 8.) Activities within the exclusion zone would be precluded unless Pittston submits a modification to the exploration plan with a detailed description of the proposed action and a map depicting the location of the action and access roads in relation to the cultural site. Id. Before Pittston can proceed with proposed ground disturbing activities within the exclusion zone, BLM must approve any such plan modification. Id. The plan further states that, if avoidance is not feasible or would not adequately mitigate the effects of the project, Pittston would develop an appropriate treatment plan or other mitigative measures and would complete data recovery to BLM’s satisfaction. Id. Pittston would not initiate exploration activities until BLM approves those activities. Id.

After seeking and receiving initial comments on the project, BLM prepared an EA analyzing the environmental effects of the proposed action. BLM circulated the draft EA and FONSI/DR for comment on March 13, 2000. BLM extended the comment period in response to requests and then revised the EA to address the issues and concerns identified by the commenting parties. It issued the revised EA in May 2000. See EA at 1-5 to 1-6 and Table 1. The EA discussed the purpose and need for the project, and defined the proposed action and the no action alternative and identified other alternatives considered but eliminated from detailed analysis. (EA at part 2.) The EA described the relevant components of the affected environment throughout the entire project area, including land status and use, mineral exploration and development, access, soils, air quality, water resources, biological resources (including vegetation, wildlife, and threatened, endangered, candidate, and BLM sensitive species), invasive and nonnative species, cultural resources, Native American religious concerns, visual and auditory resources, range resources, socioeconomics, paleontology, and recreation. See EA at parts 3.1 and 4.1. It analyzed the environmental consequences of the proposed action and the no action alternative on the affected environment, including the cumulative impacts of the project and other activities within the area; and provided mitigation measures to eliminate or avoid impacts to wildlife and cultural resources. Id. at parts 4.3 and 4.4.

The Elko Field Office Manager based the May 24, 2000, FONSI/DR for the Pequop project on the analysis of potential impacts contained in the EA, concluding that the project would not have a significant impact on the human environment and that an environmental impact statement (EIS) would not be prepared. She decided to authorize the project and water facility right-of-way subject to the following stipulations:

1. [Pittston] shall hire a biological/botanical contractor mutually acceptable to BLM and [Pittston] to survey to identify the presence of buckwheat (*Eriogonum microthecum* var. *laxiflorum*) prior to initiating surface disturbing activities. BLM shall be notified if any buckwheat is identified. Those areas where the buckwheat exists shall be avoided.
2. If road construction or exploration activities are proposed within rock outcrop or cliff habitats, surveys for bats shall be conducted by a biological contractor mutually acceptable to BLM and [Pittston] to determine if these are occupied roost sites for sensitive bat species, prior to ground disturbing activities. If sensitive bat species are found to be present and affected by the proposed work, [Pittston] shall contact BLM to determine appropriate mitigation.
3. During the raptor nesting survey and other biological surveys, observations of bat activity and threatened, endangered, and other sensitive species shall be reported to BLM and Nevada Division of Wildlife.
4. Unavoided impacts to sensitive species shall be documented and forwarded to the Nevada Natural Heritage Program.
5. The well for the Water Facility Right-of-Way shall be abandoned, plugged, and reclaimed in accordance with Nevada State Water law and NAC [Nevada Administrative Code] 534.420.

(FONSI/DR at 1-2.)

The Field Office Manager further determined that the proposed mining exploration activity analyzed in the EA was consistent with the objectives of the Wells Resource Management Plan (RMP) and complied with Federal, state, and local laws and regulations to the maximum extent possible. (FONSI/DR at 2.) She also found that implementation of the project would allow Pittston to continue its exploration and development drilling program on public lands within the Pequop project area

from 2000 to 2003 and would not result in unnecessary or undue degradation to the public lands. Id. She rejected the no action alternative because it would not allow Pittston to create more than five acres of surface disturbance prior to performing reclamation activities on its drilling program for the project. Id.

In a separate decision, also issued on May 24, 2000, the Elko Field Office Manager approved Pittston's plan of operations for the Pequop exploration project, consistent with the description of the project identified in the EA and Plan, as described above. The Field Manager described the project as a phased approach to exploration potentially leading to a total surface disturbance over the 3-year project period of up to 100 acres, as warranted by positive exploration results. The Field Office Manager approved the plan subject to the following stipulations:

1. Pittston will be required to submit to the BLM an Exploration Program Summary Report by April 15 of each year or prior to initiating subsequent phases, whichever comes first. This Exploration Program Summary Report will describe, including a map illustrating disturbance, all exploration activities that occurred for the year, including all disturbance constructed and reclaimed. The scope of the planned activities and reclamation cost calculations for the upcoming year or phase shall be outlined as part of the Summary Report. If the proposed activities go beyond the limits defined in the Plan of Operations, then an amendment to the plan will be required to be filed with the BLM.
2. Bonding for Phase 1 of the Plan has been accepted for \$64,100 by decision issued April 17, 2000. Prior to initiation of each subsequent phase, Pittston must post the required surety as determined by the BLM and Nevada Division of Environmental Protection (NDEP).
3. Prior to the implementation of the proposed action, Pittston will ensure avoidance of impacts to eligible cultural sites by:
 - A. A BLM approved archaeologist will be enlisted to mark boundaries of existing, eligible cultural sites that could be impacted by the proposed action.
 - B. An exclusion zone will be established around the cultural site by staking a minimum 50 meter (164 feet) buffer around the perimeter with steel t-posts and 3 strands of barbless wire to ensure that a

visible barrier is present between the cultural site and the surrounding operations area in order to protect the cultural site from damage. No exploration, or other earth disturbing activities shall be allowed on the cultural property or within the buffer except as stipulated below.

In order to conduct exploration activities within an exclusion zone established around an archaeological site, Pittston must submit, to the BLM, a modification to the exploration plan with a detailed description of the proposed action and a map illustrating the location of the proposed action and access route in relation to the cultural property. Earth disturbing activities within the exclusion zone shall proceed only after approval by the BLM authorized officer and in the presence of an archaeological monitor.

- C. If avoidance is not feasible or would not adequately mitigate project effects, a treatment plan or other mitigative measures would be developed as appropriate. [Pittston] would complete data recovery (including the final report) or other mitigative measures to the satisfaction of the BLM and would not initiate exploration activities until receiving approval from the authorized officer.
 - D. [Pittston] shall direct its personnel and the personnel of its contractors to avoid all staked exclusion zones under penalty of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470) and other Federal statutes. [Pittston] shall be responsible for insuring that eligible cultural properties were not damaged during the period of exploration, and for any costs of restoring the property or mitigating effects if damage were to occur.
4. [Pittston] shall be responsible for controlling all noxious weeds and other undesirable invading plant species in the reclaimed area until the revegetation activities have been determined to be successful and signed off by the BLM authorized officer in accordance with BLM Instruction Memorandum Number NV-99-013, Final Version of the Revised Guidelines for

Successful Mining and Exploration Revegetation. The operator shall obtain approval from the BLM authorized officer for any and all applications of herbicide, including types of herbicide used and quantities applied.

5. Since ferruginous hawks were observed within the study area without being linked to a nest during the raptor nesting survey conducted in the fall of 1998 (EMA 1998), a subsequent nest survey will be conducted by a biological contractor mutually acceptable to BLM and [Pittston] within ½ mile of any surface disturbance associated with exploration that is proposed to occur during the nesting season (March 1 through June 15). The survey will be conducted post-spring migration during the nesting season and prior to the disturbance. The results of the survey will be used to avoid disturbance of ferruginous hawk nesting activity, or the nesting activity of any other bird species protected under the Migratory Bird Treaty Act (15 U.S.C. 701-718).
6. Pittston will avoid 1) Old Growth trees (equal to or greater than 150 years of age for pinyon pine, Utah juniper and the higher elevation conifers, and equal to or greater than 200 years of age for curleaf mountain mahogany) and 2) trees being used as nesting habitat (including cavity nesters). Where feasible, roads and drill pads will be placed where the least impact to these forest types will occur. The BLM forester will be utilized during project layout to help minimize forest impacts.
7. [Pittston] shall hire a biological/botanical contractor mutually acceptable to BLM and [Pittston] to survey to identify the presence of buckwheat * * * prior to initiating surface disturbing activities. BLM shall be notified if any buckwheat is identified. Those areas where the buckwheat exists shall be avoided.
8. If road construction or exploration activities are proposed within rock outcrop or cliff habitats, surveys for bats shall be conducted by a biological contractor mutually acceptable to BLM and [Pittston] to determine if these are occupied roost sites for sensitive bat species, prior to ground disturbing activities. If sensitive bat species are found to be present and affected by the proposed work, [Pittston] shall contact BLM to determine appropriate mitigation.

9. During the raptor nesting survey and other biological surveys, observations of bat activity and threatened, endangered, and other sensitive species shall be reported to BLM and Nevada Division of Wildlife.
10. Unavoided impacts to sensitive species shall be documented and forwarded to the Nevada Natural Heritage Program.

(Decision at 1-3.)

On appeal ^{4/} GBMW argues that BLM's approval of the Pequop exploration project violates provisions of the Federal Land Policy and Management Act of 1976, as amended (FLPMA), 43 U.S.C. §§ 1701-1784 (2000), the 43 CFR Subpart 3809 surface management regulations, and the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) and (E) (2000). We address these issues seriatim.

FLPMA ISSUES

GBMW's FLPMA challenge focuses on the fact that portions of the land included within the project area were acquired by BLM in May 1999 pursuant to the Big Springs Ranch land exchange. ^{5/} GBMW first maintains that the newly acquired lands are not covered by the Wells RMP which was completed in 1985, and that approval of the project therefore violates both the land use planning and management provisions of FLPMA, 43 U.S.C. §§ 1712, 1732(a) (2000), which GBMW interprets as mandating that BLM amend land use plans governing parcels of public land acquired via a land exchange prior to authorizing uses of such land, and also 43 CFR 1610.5-3 which requires that all resource management authorizations and actions conform to an approved RMP. GBMW submits that, in order for the Pequop project to conform to the RMP, all the involved lands must be expressly addressed by

^{4/} GBMW's Statement of Reasons (SOR) for this appeal consists of its Appeal and Request for Stay (Stay Request) and its Reply to BLM's and Pittston's Responses (Reply/SOR). See Reply at 1. Pittston's appeal submissions include its Response to the Stay Request (Pittston Response) and its Response to GBMW's Statement of Reasons (Pittston Answer). BLM's appeal submissions encompass its response to the Stay Request (BLM Response) and its Answer (BLM Answer).

^{5/} To the extent GBMW's arguments relate to the entire 70,000 acres obtained through the Big Springs Ranch land exchange, rather than the approximately 1,700 acres of acquired land located in the 3,300 acre project area, they are not properly at issue here and will not be addressed further. Likewise, GBMW's comments regarding 20,000 acres of acquired lands "in and near the Pequop Project Area" will be addressed only to the extent they refer to the project area as defined by the project proponent and the EA. See Stay Request at 2, 9 (emphasis added).

the land use plan. GBMW contends that the project does not conform to the Wells RMP in any event, and that consistency with the objectives of the plan does not render the project “clearly consistent with the terms, conditions, and decisions” of the RMP as required by the definition of “[c]onformity or conformance” set forth in 43 CFR 1601.0-5(b). (Stay Request at 9-12.)

GBMW argues that BLM’s failure to amend that RMP to cover the new lands and the proposed mineral exploration violates 43 CFR 1610.5-3(c). Citing 43 CFR 1610.5-5, which requires the amendment of an RMP when BLM encounters “a change in circumstances or a proposed action that may result in a change in the scope of resource uses,” GBMW insists that the Big Springs Ranch land exchange represents such a change in circumstances because the new lands form “a large, contiguous, and often roadless tract of land” that was not in Federal ownership when the Wells RMP was finalized in 1985 and, consequently, was not addressed there. That change in circumstances extends to the public lands adjacent to the exchanged lands, GBMW submits, as those lands have new potential for management as a roadless or wilderness area or as an area of critical environmental concern (ACEC) and for recreational resources now that the previous checkerboard pattern of private and public ownership has been consolidated under Federal ownership. GBMW therefore asserts that BLM must amend the Wells RMP to fully consider these new resource values, the importance of which BLM acknowledged in the 1997 EA and FONSI/DR prepared for the land exchange, before it can properly evaluate the Pequop exploration project. (Stay Request at 13-16.) GBMW complains that BLM’s action in “unilaterally determin[ing] that the management of the newly acquired lands should be identical to that governing the surrounding lands that were in federal ownership at the time the [Wells RMP] was developed” is a violation of FLPMA. *Id.* at 16.

GBMW’s third FLPMA argument alleges that BLM’s failure to base its approval of the Pequop project on a current inventory of the affected public lands and their resources and other values violates section 201(a) of FLPMA, 43 U.S.C. § 1711(a) (2000), which directs BLM to prepare and maintain on a continuing basis such an inventory and to keep that inventory current “so as to reflect changes in conditions and to identify new and emerging resource and other values.” According to GBMW, the acquisition of a large tract of contiguous, high quality lands clearly represents a change in resource values and mandates the performance of an inventory as an essential prerequisite to meaningful land use planning because, absent a current inventory, BLM does not know the value of the existing resources and cannot reasonably decide how those resources should best be used. While acknowledging that the last sentence of 43 U.S.C. § 1711(a) (2000) states that the preparation and maintenance of the inventory does not, “of itself, change or prevent change of the management or use of public lands” (the “of itself” language), GBMW submits that the legislative history of FLPMA clarifies Congress’ intent that uses allowed prior to

inventory should not foreclose any future use or uses that might be found appropriate through the inventory process. (Stay Request at 17-19, citing S.Rep. 94-583, at 43-45 (1975) reprinted in Comm. On Energy and Natural Resources, U.S. Senate, Legislative History of [FLPMA] (Public Law 94-579, S. Doc. No. 95-99, at 108-110.) GBMW thus maintains that, before approving the Pequop exploration project, which “will forever foreclose the potential for the BLM lands at issue from management as roadless, wilderness, or as an [ACEC], the BLM must make an inventory of those lands and resources.” (Stay Request at 19-20.)

In response, Pittston explains that only about 1,700 acres out of the 70,000 acres transferred to BLM via the Big Springs Ranch land exchange are included in the approximately 3,300-acre project area. Pittston points that the acquired lands involved in the project area constitute a small area on the western boundary of the exchanged lands, that the lands in the general vicinity of the project are characterized by roads, trails, and other manmade disturbances, and that the project area is bisected by existing roads cutting across sec. 27 and into sec. 26 on the north and sec. 34 on the south, facts which demonstrate that most of GBMW’s FLPMA and other claims do not specifically relate to the project area or nearby lands but rather to the larger area covered by the entire exchange. (Pittston Response at 2-3; see also Plan Figure 3 (depicting boundaries of proposed project area and existing and planned roads).)

Pittston maintains that BLM complied with FLPMA’s planning requirements which, contrary to GBMW’s assertion, do not require amendment of the Wells RMP. Citing BLM’s land exchange regulation, 43 CFR 2200.0-6(g), Pittston avers that the lands acquired through the Big Springs Ranch land exchange automatically became part of BLM’s Elko District (formerly the Wells Resource Area) subject to the provisions of the Wells RMP upon completion of the exchange and thus were covered by the RMP when Pittston submitted its plan of operations. Pittston similarly contends that BLM did not need to amend the Wells RMP before approving the plan because, pursuant to 43 U.S.C. § 1715(c) (2000) and 43 CFR 2201.9(b), those lands became public lands open to the operation of the public land and mineral laws 90 days after their acquisition by BLM. Pittston therefore maintains that BLM’s obligation under FLPMA and the applicable regulations was to determine whether the proposed action conformed to the Wells RMP, which it did as documented in the EA at 1-6. (Pittston Response at 16-18.)

BLM’s conclusion that the project conformed to the RMP finds ample support in the record, Pittston submits, because the Wells RMP Record of Decision (ROD) states, at 25, that the lands should be managed in manner recognizing the need for domestic sources of minerals and does not place the project area in or near any area designated for restrictions on mineral or energy development. Likewise, Pittston states that BLM’s decision to approve the project conforms to the RMP’s general

direction regarding mineral management and does not cause any changes in the RMP's stated resource conditions or goals. Pittston further notes that, as described in the Pequop EA at 1-6 and 3-2, the acquired lands are adjacent to and intermingled with BLM lands on which mining-related activities such as exploration and road building are already occurring. Pittston points out that the Wells RMP contemplates the acquisition of the affected lands, citing both the Big Springs Ranch land exchange EA at 6 and the Wells RMP ROD at 13. Pittston contends that, in any event, even if the Wells RMP should be amended, FLPMA does not require BLM to forego management decisions and actions during the amendment process and that GBMW therefore has not shown any breach of FLPMA's planning requirements. (Pittston Response at 18-20.)

Pittston dismisses GBMW's contention that BLM violated FLPMA's inventory mandates. Not only does the Pequop EA include a detailed itemization of the resources and values of the lands in the project area, but, Pittston submits, BLM also inventoried the land and its natural resources as part of the extensive examination conducted for a broader area during the land exchange process for the Big Springs Ranch land exchange and documented in the Big Springs Ranch land exchange EA at, for example, 9, 24-32, and Table 3-7. Pittston asserts that FLPMA's inventory and planning processes correspond to NEPA and land exchange processes and that the background resource information provided in the land exchange EA, coupled with the site-specific resource information contained in the project EA, establishes that, contrary to GBMW's contention, BLM based the approval decision on thorough knowledge of the affected resources. (Pittston Response at 20-21.)

Even if a proper inventory had not been completed, Pittston argues that the timing of an inventory rests within BLM's discretion, adding that the "of itself" language of section 201(a) of FLPMA specifically states that the preparation and maintenance of an inventory does not change or preclude change of the management or use of public lands. Pittston further maintains that GBMW has failed to demonstrate that completion of an inventory would likely have resulted in a different decision. While relying on the existing, authorized surface disturbances to dispute GBMW's supposition that the lands might constitute a roadless or wilderness resource, Pittston avers that, even if some portion of the project area might conceivably be managed as a wilderness study area (WSA), BLM's Interim Management Policy for Lands Under Wilderness Review (IMP) explicitly states that mining operations on WSA's can be regulated only to prevent unnecessary or undue degradation of the lands, and not to prevent impairment of wilderness suitability. Since BLM has taken appropriate action to prevent unnecessary or undue degradation, Pittston maintains that GBMW has not shown that the results of an inventory would prevent BLM from approving the Pequop exploration project. (Pittston Response at 22-23.)

BLM adopts Pittston's response. (BLM Response at 1, 2.) BLM further asserts that GBMW's claim that the acquired lands are roadless and therefore suitable for wilderness consideration is belied by aerial photographs and topographic maps which document that the area does not fit the roadless category based on current BLM guidelines regarding the Recreation Opportunity Spectrum (ROS), as discussed in the EA at 3-12 to 3-13. In any event, BLM stresses that it was not obligated to amend the Wells RMP before considering the plan of operations because 43 CFR 2200.0-6(g) automatically placed the newly acquired lands under the applicable land use plan, and because, in accordance with 43 U.S.C. § 1716(I)(2) (2000) and 43 CFR 2201.9(b), although the acquired land was initially segregated from operation of the mining laws, it became subject to those laws 90 days after acceptance of title. BLM acknowledges that amendment of an RMP may be necessary in certain circumstances, but avers that no amendment is needed here because the Wells RMP anticipated both continued mining and consolidation of public lands; the newly acquired lands comprise only half of the project area; Pittston has already conducted exploration work in the area; the new operations simply continue the exploration work; the new disturbance consists of less than 100 acres spread over approximately 3,300 acres and will be reclaimed; BLM did not identify any resources or values in the area that would be significantly affected by the project; and, as documented in the EA at 1-6, BLM prepared "plan maintenance documentation" for the newly acquired land sufficient to satisfy 43 CFR 1610.5-4. (BLM Response at 2-3.)

BLM further maintains that it did not violate FLPMA's inventory requirements, asserting that, while section 201 of FLPMA does require BLM to prepare and maintain on a continuing basis a current inventory of public lands, resources, and values, BLM necessarily has some discretion as to when to undertake such an inventory because requiring an immediate inventory every time changed conditions or new resources or values are suspected would divert funding and personnel from more critical agency functions. BLM submits that, although it has not had the necessary funding to conduct a section 201 inventory of the lands since their 1999 acquisition, it is committed to undertake that inventory as soon as agency resources allow. Accordingly, BLM argues that GBMW has not shown that BLM acted arbitrarily in approving the project before conducting a FLPMA inventory of the lands. (BLM Response at 3-4.)

Reiterating its prior positions in its Reply, GBMW contests BLM's position that the opening of exchanged lands to mineral entry 90 days after their acquisition has a consequence in this case, because the regulations do not mandate that mining must immediately be allowed on the lands or expressly provide that an RMP amendment addressing that use need not be completed prior to authorizing any mining. GBMW suggests that BLM could easily have amended the RMP in the same NEPA document through which it approved the land exchange but did not do so. (Reply at 3-7.) GBMW objects to any suggestion that project-specific EAs for the exploration project

and the land exchange could substitute for FLPMA's inventory and planning requirements. GBMW also contends that the project will affect an area far larger than the 3,300 acre project area and that its adverse impacts therefore are not isolated from the remainder of the Pequop Mountains and surrounding area. GBMW denies that the timing of an inventory is wholly within BLM's discretion, pointing out that Congress specifically mandated that inventories be conducted on a continuing basis and kept current to reflect changes in conditions. Nor, according to GBMW, does the "of itself" language excuse BLM's lack of an inventory given Congress' intent that the Secretary make management decisions which will ensure that no appropriate future use or uses of the land are foreclosed by uses allowed before completion of the inventory. (Reply at 7-12.)

In its Answer, Pittston contests GBMW's assertion that the Wells RMP does not apply to the newly acquired lands because it does expressly discuss those lands, asserting that the statutory and regulatory language, not the provisions of the RMP, makes the plan applicable to the acquired lands and in fact renders all the land in the Pequop project area subject to the RMP. According to Pittston, adopting GBMW's interpretation would place the acquired lands in limbo until BLM amended the RMP to cover them and would create another checkerboard pattern of land, thus thwarting the purpose of the underlying land exchange. (Pittston Answer at 2-5.)

Pittston also avers that GBMW's reading of FLPMA's inventory provision would make meaningless the statutory and regulatory sections establishing that acquired lands become public lands upon the Secretary's acceptance of title and opening those lands to entry under the public land and mineral laws 90 days after acceptance of title, by effectively freezing management decisions on acquired lands pending completion of inventories and plans covering those lands. Pittston further contends that applicable precedent, including authorities cited by GBMW, support BLM's differentiation between inventory activities and management activities and avers that GBMW's interpretation of the statute and regulations conflicts with FLPMA's provisions encouraging land exchanges. (Pittston Answer at 5-8.) Pittston further points out that, contrary to GBMW's assertions, BLM did not have jurisdiction over the lands until May 1999 when the land exchange was finalized with the actual transfer of title to the lands and thus has not been dilatory in inventorying the lands. (Pittston Answer at 8-12.)

BLM adopts Pittston's briefing in its Answer. BLM also submits that it fully complied with FLPMA's land use planning requirements and refutes GBMW's argument to the contrary because GBMW fails to provide any evidence that the exchange created a previously nonexistent block of public land suitable for wilderness or ACEC consideration, an omission BLM finds especially significant given the record evidence controverting the alleged roadless nature of the obtained lands. (BLM Answer at 2-3.)

[1] Section 202(a) of FLPMA, 43 U.S.C. § 1712(a) (2000), directs the Secretary of the Interior to “develop, maintain, and, when appropriate, revise land use plans,” which govern in part the use of the public lands. See Southern Utah Wilderness Alliance, 159 IBLA 220, 232 (2003); Southern Utah Wilderness Alliance, 158 IBLA 212, 216 n.3 (2003). BLM’s implementing regulations require all resource management authorizations and actions to conform to the approved land use plan. 43 CFR 1610.5-3(a). The regulations define “conformity or conformance” as meaning “that a resource management action shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan or plan amendment.” 43 CFR 1601.0-5(b). If a proposed action is not in conformance with the approved plan but deserves further consideration before the next scheduled plan revision, “such consideration shall be through a plan amendment in conformance with the provisions of [43 CFR] 1610.5-5.” 43 CFR 1610.5-3(c). Under 43 CFR 1610.5-5, land use plan amendments “shall be initiated by the need to consider monitoring and evaluation findings, new data, new or revised policy, a change in circumstances or a proposed action that may result in a change in the scope of resource uses or a change in the terms, conditions, and decisions of the approved plan.”

BLM concluded in the EA that the proposed exploration project was consistent with the objectives of the Wells RMP and the June 28, 1985, ROD for the RMP and with Federal, state, and local laws, regulations, and plans to the maximum extent possible. (EA at 1-6.) In determining that the RMP adequately covered the lands analyzed in the EA, BLM noted that half the lands in the project area were acquired through the Big Springs Ranch land exchange and were considered to be Retention/Consolidation lands, i.e, public lands high in resource values that were to be “retained and managed extensively and consolidated where possible to enhance management opportunities.” (EA at 1-6, citing RMP at 3-1.) BLM interpreted the term “consolidation of lands” as implying that the acquired lands would be incorporated into the land management base, noting that

[a] major goal for acquiring the affected lands, as stated in the Big Springs Ranch Land Exchange [EA] was to eliminate the checkerboard ownership patterns in the area in order to provide for management efficiencies for both the public and private sector. This goal directly addresses problems associated with Land Management Issue #1 identified in the RMP: “Problems, including access, accommodation of public works projects, and unauthorized uses of public lands occur in certain areas as a result of the intermingled pattern of public and private lands.” (Chapter 1, p. 1-2).

(EA at 1-6.)

BLM further observed that mining and mineral exploration had occurred in the Pequop Mountains before the land exchange and that both the Wells RMP and the Big Springs Ranch land exchange EA specifically discussed the consolidation of public lands to facilitate management and the existence of active and historic exploration and mining in the area. Accordingly, BLM concluded that the existing plan maintenance documenting the implementing actions of the Wells RMP, including the land exchange, adequately addressed planning issues as required under 43 CFR 1610.4-9 and 1610.5-4.^{6/} (EA at 1-6.) The FONSI/DR for the EA concurred in the finding that the project was consistent with the objectives of the Wells RMP.

GBMW argues that approval of the exploration project does not conform to the Wells RMP because the project area includes formerly private lands obtained by BLM in 1999 as part of the 70,000-acre Big Springs Ranch land exchange, the use of which was not specifically addressed in the 1985 RMP. GBMW maintains that no activities may be authorized on those lands until BLM amends the RMP to explicitly cover all of the newly acquired area and its resources.

GBMW's arguments on this issue ignore the regulations governing land exchanges found in 43 CFR Part 2200, which squarely address the interplay between land exchanges and resource management planning:

The authorized officer shall consider only those exchange proposals that are in conformance with land use plans or plan amendments, where applicable. Lands acquired by an exchange within a [BLM] district shall automatically become public lands as defined in 43 U.S.C. 1702 [^{Z/}] and shall become part of that district. The acquired lands shall be managed in accordance with existing regulations and provisions of applicable land use plans and plan amendments. Lands acquired by an exchange that are within the boundaries of areas of critical environmental concern or any other area having an administrative designation established through the land use planning process shall automatically become part of the unit or area within

^{6/} The cited regulations address monitoring and evaluation of existing land use plans to determine whether sufficient cause exists to warrant amendment or revision of the plan, 43 CFR 1610.4-9, and plan maintenance to refine or document previously approved decisions incorporated in the land use plan that do not expand "the scope of resource uses or restrictions or change the terms, conditions, and decisions of the approved plan." 43 CFR 1610.5-4.

^{Z/} That statutory section defines "public lands" as "any land and interest in land owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership * * *." 43 U.S.C. § 1702(e) (2000).

which they are located, without further action by [BLM], and shall be managed in accordance with all laws, rules, regulations, and land use plans applicable to such unit or area.

43 CFR 2200.0-6(g). See also 43 U.S.C. §§ 1715(c), 1716(c) (2000). Non-Federal lands obtained by the United States via a land exchange are automatically segregated from appropriation under the public land laws, including the mining laws, for 90 days after acceptance of title by the United States with the segregation terminating at the end of the 90-day period and the lands opening to operation of the public land and mining laws unless otherwise closed to entry under those laws. 43 U.S.C. § 1716(i)(2) (2000); 43 CFR 2201.9(b).

The Big Springs Ranch land exchange conformed to the Wells RMP. See, e.g., EA at 1-6. In accordance with 43 CFR 2200.0-6(g), once the Secretary accepted title to those lands, they automatically became public lands included within BLM's Elko District, subject to the Wells RMP, the applicable land use plan for that district. And, pursuant to 43 U.S.C. § 1716(i)(2) (2000) and 43 CFR 2201.9(b), the lands were open to mineral entry 90 days after their acquisition. Contrary to GBMW's assertions, BLM properly determined that the Wells RMP covers all the lands within the 3,300-acre Pequop project area, including the approximately 1,700 acres obtained through the Big Springs Ranch land exchange.

GBMW's argument to the contrary is based on its insistence that the land exchange represents a "change in circumstances * * * that may result in a change in the scope of resource uses," which, pursuant to 43 CFR 1610.5-5, requires amendment of the Wells RMP before BLM can approve the project. This argument derives from GBMW's contention that the acquired land contains a "large, contiguous, often roadless, block of land" with new potential for management as a roadless or wilderness area or as an ACEC and for recreational resources. The record belies this characterization of the approximately 1,700 acres of acquired land at issue here. Not only do two bladed roads split the project area into thirds (see EA at 3-13 and Figures 2 and 3), but the lands in the general vicinity of the project area have a long history of mining activities, range improvements, road development, and other manmade activities hampering the area's suitability for wilderness status. See EA at 1-6; Pittston Response Exs. 2 and 3. GBMW, as the party challenging BLM's decision, has the burden of showing error in the appealed decision. See, e.g., William J. Schweiss, 139 IBLA 10, 12 (1997). Since GBMW has not shown that the acquisition of the 1,700 acres included in the project area constitutes a change in circumstances possibly altering the scope of resource uses necessitating amendment of the RMP, we reject its argument that the BLM was obligated to amend the Wells RMP before approving the exploration project.

GBMW fails to demonstrate an inconsistency between the approval of the project and the Wells RMP. The Wells RMP ROD expressly states that “public lands will be managed in a manner which recognizes the Nation’s need for domestic sources of minerals.” (Wells ROD at 25.) Moreover, the ROD expressly identifies impacts on mineral development opportunities as a result of wilderness designation, but such impacts do not fall within the project area. *Id.* Rather, the RMP specifies that mineral development within 22,705 acres “having good mineral potential” within the “Spruce/Goschutes [Resource Conservation Area (RCA)] and the O’Neil/Salmon Falls RCA” could be impacted. *Id.* These areas do not coincide with the project area, and all of the wilderness study areas identified by the Wells RMP are south of the project area. Compare Wells RMP ROD at Maps 4, 5, Proposed Wells [RMP] and Final EIS at Map 2-1, with EA Figure 2. Moreover, as Pittston and BLM correctly note, the project area is on lands identified within the Wells RMP ROD as the checkerboard pattern of public/private ownership which, the ROD noted, was targeted for potential land exchange. See Wells RMP ROD at 13 and Map 2. Accordingly, GBMW fails to demonstrate an inconsistency between the project and the RMP necessitating the amendment appellants demand.

[2] GBMW further maintains that BLM violated its FLPMA obligation to inventory the acquired lands before it approved the exploration project. Section 201(a) of FLPMA, 43 U.S.C. § 1711(a) (2000), provides:

The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values. The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change of the management or use of public lands.

The inventory mandated by section 201(a) is not a land use plan, nor does it make any decisions concerning management or use of the public lands. State of Utah v. Babbitt, 137 F3d 1193, 1209 (10th Cir. 1998). Rather, the legislative history of this provision, cited by both GBMW and Pittston, explains that the goal of this section was to ensure that the Secretary had the requisite basic knowledge about the land and its resources, including all the economic, social, and environmental demands for its use, before undertaking the land use planning required by section 202, 43 U.S.C. § 1712 (2000); S. Rep. No. 94-583 at 43 (1975), attached to Pittston Answer as Ex. 1. The Senate Report also provides background regarding the meaning of the last sentence of section 102 of S. 507, the Senate bill which, with minor modifications, became section 201(a) of FLPMA:

Section 102 [of S. 507] also contains a statement that the “preparation and maintenance of such inventory or the identification of such areas [possessing wilderness characteristics] shall not, of itself, change or prevent change in the management or use of the national resource lands.” The purpose of this statement is to insure that, under no circumstances, will the pattern of uses on the national resource lands be frozen, or will uses be automatically terminated during the preparation of the inventory and the identification of areas possessing wilderness characteristics. Equity demands that activities of users not be arbitrarily terminated or that the Secretary not be barred from considering and permitting new uses during the lengthy inventory and identification processes. On the other hand, the “of itself” language is not meant to be license to continue to allow or disallow uses as if no inventory and identification processes were being conducted. The Committee fully expects that the Secretary, wherever possible, will make management decisions which will insure that no future use or combination of uses which might be discovered as appropriate in the inventory and identification processes -- be they wilderness, grazing, recreation, timbering, etc. -- will be foreclosed by any use or combination of uses conducted after enactment of S. 507, but prior to the completion of those processes.

S. Rep. No. 94-583 at 44-45 (1975).

While section 201(a) of FLPMA, 43 U.S.C. § 1711(a) (2000), clearly requires the Secretary to keep a current inventory of the public lands and their resource values, the manner and timing of that statutory mandate is committed to the discretion of the Secretary. Southern Utah Wilderness Alliance, 158 IBLA at 216. BLM admits that it did not conduct a FLPMA inventory of the lands obtained through the Big Springs Ranch land exchange before it approved the Pequop exploration project. That fact alone does not mandate a finding that the approval decision violated BLM’s FLPMA obligations, especially given BLM’s discretion as to the timing of inventories, the finalization of the land exchange in May 1999 (only a year before the approval decision), the lack of sufficient funding to perform an immediate inventory, and the legislative history’s recognition of the protracted time involved in the inventory and identification processes and the need for continuing land management during that time period. Although GBMW asserts that approval of the project will preclude other possible uses for the acquired land and its resources which might be uncovered during the inventory process (specifically roadless, wilderness, recreation, and ACEC uses) and thus runs afoul of Congress’ admonitions, the record, as discussed above, undercuts GBMW’s speculation that the land in the project area would be suitable for those uses. In any event, given the careful scrutiny of the land and resources documented in the Pequop EA and the Big Springs Ranch Land

Exchange EA,^{8/} BLM had sufficiently detailed knowledge about the affected land and its resources before approving the exploration project, thus satisfying the underlying goal of FLPMA's inventory requirement. Accordingly, we find that BLM's approval of the Pequop exploration project did not violate FLPMA's land use planning and inventory directives. Southern Utah Wilderness Alliance, 159 IBLA at 244.

43 CFR SUBPART 3809 ISSUES

GBMW attacks BLM's approval decision on the ground that the decision fails to comply with the surface management regulations found at 43 CFR Subpart 3809.^{9/} GBMW contends that BLM's approval of all the phases of the multi-phase project, despite BLM's recognition of the plan of operations' failure to provide any significant details for the phases other than Phase 1, conflicts with 43 CFR 3809.1-5 (2000) which requires a plan of operations to include, among other things, maps or sketches showing existing and proposed access routes and the size of areas of planned surface disturbance, such as roads, drill pads, and support facilities. BLM's reliance on annual exploration summary reports does not cure the incomplete plan of operations, GBMW submits, because these reports provide no opportunity for public review. GBMW further asserts that BLM's approval of the project based on the incomplete plan also violates BLM's duty under FLPMA to prevent unnecessary or undue degradation because, absent information about where all the activities will take place, BLM cannot adequately consider the effects of the operations on other resources and land uses. GBMW therefore maintains that the plan must be rejected at this time. (Stay Request at 20-23.)

Pittston contends that BLM's approval of the plan and the analysis in the EA demonstrate that the plan provided sufficient detail to allow BLM to meaningfully evaluate the proposal and design appropriate mitigation measures, a contention bolstered by the fact that anticipated surface disturbance will occur in a defined and limited geographic area and will involve activities similar to those proposed for Phase 1. Pittston adds that BLM and other authorities have long recognized the need for flexibility in locating drill holes, due to the constant refinement of mineral exploration programs as additional information is collected and analyzed. The

^{8/} Pittston has appended excerpts from the Big Springs Ranch Land Exchange EA as Ex. 4 to its Response.

^{9/} On Nov. 21, 2000, BLM amended the regulations in 43 CFR Subpart 3809. These regulations became effective Jan. 20, 2001. See 65 FR 69998. BLM again amended 43 CFR Subpart 3809 with publication of final rulemaking in the Federal Register on Oct. 30, 2001, effective Dec. 31, 2001. See 66 FR 54834. Citations to the 43 CFR Subpart 3809 regulations in this decision will refer to the provisions in effect before the Nov. 21, 2000, amendments.

process necessarily hampers a miner's ability to include the exact location and extent of all operations in a plan of operations. In any event, Pittston submits that the EA demonstrates that BLM considered the impacts of up to 100 acres of surface disturbance in the entire 3,300-acre project area and established protective stipulations for activities that might affect particular areas or resources in the entire project area, such as potential bat habitat. Since GBMW has claimed neither that the analysis and conclusions in the EA are wrong nor that the stipulations are insufficient to protect the resources in the project area from unnecessary or undue degradation, Pittston insists that GBMW has not demonstrated how a detailed map projecting precise future road construction and drill pad locations would have improved the decision or the environmental analysis. (Pittston Response at 23-26.)

In its Reply, GBMW contends that Pittston ignores the distinctions the 43 CFR Subpart 3809 regulations make between "Notice" and "Plan of Operations" activities. GBMW avers that none of the purported authorities cited by Pittston undermines the clear differentiation between the limited data and review required for activities under a Notice and the detailed level of data and evaluation mandated by 43 CFR 3809.1-5 (2000) for operations under a plan, including maps and descriptions of the size of each area where surface disturbance will occur, which were not provided here. (Reply at 12-14.)

In its Answer, Pittston maintains that section 2 and Figures 2 and 3 of its proposed plan of operations included topographical maps of the project areas, including access routes and areas of proposed disturbance, and described the expected size of drill pads, drill roads, and access roads, and the construction methods for those disturbances. Pittston submits that BLM's review of the plan, preparation of the EA, request for revisions, and issuance of a decision with limitations and stipulations fully comply with the 43 CFR Subpart 3809 regulations. Pittston avers that BLM addressed the situation created by the company's admitted inability to delineate where each particular drill road or pad was to be located within the area of disturbance by analyzing the environmental impacts of the entire exploration program throughout the entire project area; by imposing stipulations throughout the entire project area to protect particular resources, including measures to protect natural vegetation from noxious weed invasion, to protect ferruginous hawk nesting activity, to avoid old growth trees and trees used for nesting habitat, to protect rock outcrop and cliff habitat for bats, and to avoid impacts to cultural resources; and by requiring Pittston to submit reports describing planned activities before moving on to subsequent phases of exploration. These measures, Pittston avers, satisfy the regulations and BLM's duty to prevent unnecessary or undue degradation of the public lands. Since GBMW's arguments constitute no more than a disagreement with BLM and are totally unsupported by any authority or logic, Pittston asserts that GBMW has failed to show any substantive error in BLM's decision. (Pittston Answer at 16-19.)

[3] The regulations at 43 CFR Subpart 3809 implemented the Secretary's statutory duty under section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (2000), to manage public lands to prevent unnecessary or undue degradation. See 43 CFR 3809.0-1 (2000). The subpart defines unnecessary or undue degradation as

surface disturbance greater than what would normally result when an activity is being accomplished by a prudent operator in usual, customary, and proficient operations of similar character and taking into consideration the effects of operations on other resources and land uses, including those resources and uses outside the area of operations. Failure to initiate and complete reasonable mitigation measures, including reclamation of disturbed areas[,] or creation of a nuisance may constitute unnecessary or undue degradation. Failure to comply with applicable environmental protection statutes and regulations thereunder will constitute unnecessary or undue degradation.

43 CFR 3809.0-5(k) (2000); see 43 CFR 3809.2-2 (2000); Legal and Safety Employer Research Inc., 154 IBLA 167, 174 (2001); Island Mountain Protectors, 144 IBLA 168, 202 (1998). The provisions of section 302(b) of FLPMA, like those of NEPA, require BLM to consider the nature and extent of surface disturbance resulting from a proposed operation and environmental impacts on resources and lands outside the area of operations. Legal and Safety Employer Research Inc., 154 IBLA at 175, citing Kendall's Concerned Area Residents, 129 IBLA 130, 140-41 (1994); Nez Perce Tribal Executive Committee, 120 IBLA 34, 36 (1991); see Sierra Club v. Hodel, 848 F.2d 1068, 1091 (10th Cir. 1988).

To aid BLM in ensuring that activities undertaken pursuant to a mining plan of operations do not unnecessarily or unduly degrade the public lands, the regulations require plans of operations to contain the information specified in 43 CFR 3809.1-5(c) (2000), including “(2) [a] map, preferably a topographic map, or sketch showing existing and/or proposed routes of access, aircraft landing areas, or other means of access, and size of each area where surface disturbance will occur.” GBMW contends that Pittston's plan of operations for the multi-phase exploration project failed to provide the requisite maps or sketches of proposed access routes and areas or to specifically delineate the size of each area of surface disturbance for any of the phases other than Phase 1, and that the lack of this information fatally compromises BLM's determination that the entire project will not cause unnecessary or undue degradation of the public lands.

We disagree. Pittston and BLM acknowledge that the plan of operations does not specify the locations of the access roads and drill sites for phases other than Phase 1. They explain, however, that the nature of exploration activities necessarily renders prediction of the site of future activities, if any, difficult, if not impossible, because

those activities depend on the results of the initial exploration operations. They note that miners, therefore, typically propose, and BLM generally approves, activities structured a manner similar to Pittston's exploration project. Despite the lack of definitive sites for future activities, the plan nevertheless clarifies that the dimensions of the drill pads and the access roads and the methods utilized to construct them will be consistent with those used in Phase 1, and that total surface disturbance for the entire project, including the pre-existing disturbance, will not exceed 100 acres. See Plan at 7-8; EA at 2-1. Armed with this data, BLM compensated for the lack of specific location information by analyzing the impacts of 100 acres of surface disturbance over the entire 3,300-acre project area and imposed protective stipulations for identified resources throughout the entire project area as they are discovered during the course of the project. See FONSI/DR at 1-2; Decision at 1-3. Although it objects to this procedure, GBMW has not substantiated its argument that the project, with the mandated stipulations, will actually cause unnecessary or undue degradation of the public lands. As the party challenging BLM's decision, GBMW has the burden of showing error in the appealed decision. See, e.g., William J. Schweiss, 139 IBLA at 12, and cases cited. We find that it has failed to meet that burden under the circumstances presented here.

NEPA ISSUES

GBMW avers that BLM's approval of the FONSI/DR and proposed action without taking inventory of the area's resources or conducting land use planning and without knowing the extent, scope, and location of future phases violates BLM's NEPA obligations to adequately discuss the affected environment and the potential environmental impacts of the project and to develop and analyze reasonable alternatives to the proposed action. According to GBMW, BLM's failure to identify the resources obtained through the Big Springs Ranch land exchange (including roadless, recreation, and wilderness resources and potential ACECs) before evaluating the project clearly conflicts with NEPA's directive that an agency gather all necessary environmental information before making a decision. GBMW contends that, absent such information about current environmental resources, BLM's analyses of the environmental impacts of the proposed action are inadequate. (Stay Request at 23-25.)

GBMW further submits that BLM's approval of the multi-phase project without knowing the details of the exploration operations for phases other than Phase 1 and without requiring additional NEPA analysis and public review of any future activities also breaches BLM's NEPA obligation to study all reasonably foreseeable environmental impacts before approving a proposed action. Approval of the currently unknown activities, which could occur anywhere within the project area, is especially egregious, GBMW asserts, because important cultural resources admittedly exist in the project area. GBMW also suggests that the failure to identify the sites of

future roads and drill pads hampered BLM's compliance with the consultation requirements of the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470-470w-6 (2000), and its implementing regulations, 36 CFR Part 800. GBMW disputes that such a flaw may be cured by Pittston's commitment to try to avoid any cultural sites in future phases and to work with BLM to mitigate their destruction if avoidance is impossible, especially since neither the public or affected Native Americans will be afforded the opportunity to participate in developing appropriate mitigation measures. (Stay Request at 25-28.)

GBMW also objects to BLM's limitation of the alternatives considered in detail to the proposed action and the no action alternative. GBMW complains that the EA's cursory rejection of other alternatives, including alternate exploration and access routes, alternative access methods for exploration equipment such as helicopter support, and different drilling methods, as either not providing any significant environmental benefit or failing to meet the technical needs of the project, did not afford the public sufficient information about how these alternatives were evaluated or why they would not meet project needs. GBMW contends that BLM's failure to seriously analyze any action alternative except Pittston's proposed exploration plan conflicts with NEPA's mandate that an agency consider all reasonable alternatives to a proposed action. GBMW maintains that the lack of complete information about the resources in the project area and the extent of the project's total operations and facilities prevented BLM from considering and analyzing an adequate range of reasonable alternatives. Such reasonable alternatives, GBMW submits, should have included a phased exploration alternative and an alternative requiring Pittston to first confirm the mineral values in areas along existing roads before constructing new roads and drill pads in pristine areas. (Stay Request at 28-32.) ^{10/}

Pittston contends that GBMW has failed to provide any objective proof that BLM ignored a material environmental question or that the FONSI is in error. Pittston points out that the EA included a thorough and detailed survey of the resources in the project area and that, based on the analysis of resources in the entire project area and its experience from managing earlier exploration activities in the

^{10/} GBMW also argues that BLM's approval of the Pequop project without first fulfilling its FLPMA inventory and land use planning responsibilities contravenes NEPA and the BLM NEPA Handbook. GBMW asserts that because the Handbook requires that projects conform to the applicable RMP, BLM's failure to either amend the Wells RMP or change the project to conform to that RMP renders the EA insufficient and mandates reversal of the FONSI/DR and approval decision. (Stay Request at 32-33.) Our rejection of GBMW's FLPMA arguments renders these arguments similarly unpersuasive.

vicinity, BLM projected and discussed the environmental impacts likely to occur from the entire exploration project. Pittston cites the EA's discussion of potential impacts to soils and wildlife (EA at 4-2 and 4-4) as examples of the expanse of the impact analysis.

As to cultural resources, Pittston asserts that, GBMW's contentions to the contrary notwithstanding, BLM inventoried the entire project area for cultural resources, recorded nine sites with as yet undetermined final eligibility for listing on the National Register of Historic Places, and required Pittston to avoid all eligible or unevaluated sites and establish buffer zones around cultural resource sites. Pittston points to the EA at 4-6 and the stipulations set forth in the approval decision as evidence of the thoroughness of BLM's analysis of the potential impacts to cultural resources. Pittston adds that discussions in the EA at 3-10, 3-11, and section 5 clearly indicate that appropriate consultation with Native Americans about specific cultural sites has and continues to occur. (Pittston Response at 11-13.)

Pittston further submits that BLM adequately considered appropriate alternatives to the proposed action, noting that courts and that Board have routinely upheld EAs addressing only the proposed action and the no action alternative. According to Pittston, NEPA does not require consideration of a minimum number of alternatives but rather dictates that the selection and discussion of appropriate alternatives be reasonable. Since appropriate alternatives are those which would accomplish the intended purpose of the action, are technically feasible, and have a lesser or no impact, Pittston avers that BLM properly eliminated the other alternatives delineated in the EA because they did not accomplish the purpose of the action or provide environmental benefits. Pittston adds that an EA, as opposed to an EIS, need only briefly explain the reasons for eliminating an alternative to satisfy BLM's NEPA obligation to address appropriate alternatives. Pittston further points out that it has already performed the phased exploration alternative suggested by GBMW by conducting exploration activities in the area since 1994, including the drilling of 30 exploration holes to confirm the mineral value of the area, and that it sees no rational basis for extending the exploration process or for breaking the project and analysis into smaller pieces. (Pittston Response at 13-16.)

BLM adopts Pittston's arguments. In addition, BLM addresses GBMW's assertion that the agency failed to consult with the State Historic Preservation Officer (SHPO) regarding approval of the project. BLM submits that no such consultation was necessary because, according to the 1999 State Protocol Agreement between BLM and the Nevada SHPO, consultation is not required if undertakings do not involve complex cultural resources or management or if proceeding with an undertaking is deemed to have no adverse effect. BLM avers that, since the Pequop project is straightforward, the archaeological resources few in number, and the measures required to mitigate effects easy to implement, no consultation was

necessary. BLM adds that no activities are planned in the vicinity of cultural resources during the initial exploration phase and that the avoidance measures prescribed in the EA will adequately negate any potential adverse effects of exploration in the subsequent phases. (BLM Response at 4-5.)

In its reply, GBMW reiterates its prior NEPA arguments and contends that BLM violated its duties under the NHPA because none of the future treatment plans or mitigation measures developed by Pittston will be subject to public review or comment prior to implementation. GBMW also objects to BLM's reliance on its determination that the project will have no adverse effect on cultural sites as justifying the lack of consultation with the SHPO, pointing out that the determination was unilaterally made without knowledge of the location of the roads and drill pads which might severely impact or obliterate those sites and relied on the erroneous assumption that any damage would be avoided by vague future mitigation and treatment measures. (Reply at 14-17.)

In response, Pittston avers that GBMW has overstated the project's potential impacts by offering only conclusory, generalized statements with no concrete evidence of any violation while ignoring the content of the EA and FONSI. According to Pittston, GBMW unconvincingly speculates that the bonded and reclaimable disturbance of up to 100 acres in the project area could have an irreversibly negative effect on the entire 70,000 acres acquired through the Big Springs Ranch land exchange by eliminating potential resource values, which, despite the record evidence to the contrary, GBMW nevertheless claims include roadless, recreation, and wilderness values. (Pittston Answer at 13-14.)

Pittston further submits the NHPA is a procedural, rather than a substantive, statute that does not prohibit destruction but requires avoidance and mitigation. Pittston observes that the Department's NHPA regulations, 36 CFR Part 800, track the statute and establish a consultation and review process to identify historic properties potentially affected by an undertaking, assess the undertaking's affects on the identified properties, and seek ways to avoid, minimize, or mitigate any adverse effects on those properties. Pittston denies that BLM's avoidance and mitigation measures will allow future destruction of the sites or that site destruction is a foregone consequence of the approved project, stressing that not only will Phase 1 not disturb any such sites, but that Pittston's duty to avoid exclusion zones continues into subsequent phases and, if avoidance measures are not feasible, mandates entry into a lengthy, detailed process with BLM to mitigate effects to BLM's satisfaction prior to disturbance of those sites. (Pittston Answer at 14-15.)

Finally, Pittston avers that BLM had sufficient information to analyze the impacts of the phased Pequop project and impose necessary mitigation measures. Pittson submits that GBMW's arguments ignore BLM's evaluation of the affected

environment of the entire project area and the terms of the approved project and limiting stipulations. (Pittston Answer at 15-16.)

In its Answer, BLM denies that it has violated NEPA by failing to properly account for the area's wilderness, ACEC, and related values, citing the EA at 1-7, 3-1, 3-11 to 3-13, 4-7, and 4-9 to 4-10, as examples of the EA's analysis of those and other related issues. BLM again maintains that the evidence in the record contradicts GBMW's view of the lands in question adding that, even if the land could qualify for wilderness or ACEC protection, GBMW has not shown that Pittston's approved exploration activity would disqualify the land for such designation. GBMW's apparent supposition that the imposed reclamation requirements would not suffice to protect the purported wilderness and ACEC values, BLM avers, has no evidentiary support. (BLM Answer at 3-4.) BLM contends that, absent some objective proof that its approach to analyzing phased exploration projects misses a substantial environmental issue of material significance, GBMW's opposition to that approach must be rejected, adding that acceptance of GBMW's theory would have far reaching consequences because BLM employs the same method of environmental evaluation for many diverse projects for which requiring the precise location of all facilities would be highly impractical, if not impossible. (BLM Answer at 4-5.)

GBMW's objections to BLM's treatment of cultural resources is similarly flawed, BLM submits, because further NEPA review will occur before any cultural sites are adversely affected, noting that, according to the EA at 2-9, in order to work within 50 meters of a cultural site, Pittston must submit to BLM, for approval by an authorized officer, a proposed modification of the exploration plan before proceeding with the work. BLM maintains that this approval would be a Federal action triggering further appropriate NEPA review, which might also include the preparation of an EA or other NEPA document. BLM therefore submits that GBMW's claim is at best premature and at worst unmerited. (BLM Answer at 5-6.)

[4] A BLM decision to approve an action based on an EA and FONSI will generally be affirmed if BLM has taken a "hard look" at the proposed action, identified relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. Southern Utah Wilderness Alliance, 159 IBLA at 234-35; Southern Utah Wilderness Alliance, 158 IBLA at 219; Colorado Environmental Commission, 142 IBLA 49, 52 (1997); Owen Severance, 118 IBLA 381, 385 (1991). We will ordinarily uphold a BLM determination that a proposed project, with appropriate mitigation measures, will not have a significant impact on the quality of the human environment if the record establishes that a careful review of environmental problems has been made, all relevant environmental concerns have been identified, and the final determination is reasonable. Southern Utah Wilderness Alliance, 159 IBLA at 235; The Ecology

Center, Inc., 140 IBLA 269, 271 (1997); Blue Mountains Biodiversity Project, 139 IBLA 258, 265-66 (1997). A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Southern Utah Wilderness Alliance, 158 IBLA at 219-20; The Ecology Center, 140 IBLA at 271. Mere differences of opinion provide no basis for reversal. Rocky Mountain Trails Association, 156 IBLA 64, 71 (2001).

GBMW's challenge to the adequacy of the EA and FONSI rests on its claim that BLM failed to identify and consider the resources acquired through the Big Springs Ranch land exchange, specifically roadless, recreation, and wilderness resources and potential ACECs. The evidence in the record refutes this contention. The EA explicitly acknowledges that part of the lands within the project area were acquired in the Big Springs Ranch land exchange. (EA at 3-1 through 3-2.) It proceeds to identify and discuss the affected environment within the entire project area as a whole, including lands (status and land use, mineral exploration and development and access), soils, air quality, water resources, biological resources (vegetation and wildlife), threatened, endangered, candidate, and BLM sensitive species (vegetation and wildlife), invasive and nonnative species, cultural resources, Native American religious concerns, visual resources, auditory resources, range resources, socioeconomics, paleontology, and recreation. See EA at 3-1 through 3-13 and Figure 4 (depicting vegetative community in the entire project area). As to recreation, the EA found that the majority of the project area could be classified as Roadless Natural under the ROS because "[t]he presence of two bladed roads, which split the Project Area into thirds, would place most of the Project Area into the Roadless Natural opportunity class. * * * Due to the existing roads, the majority of the Project Area cannot be considered to be roadless." (EA at 3-13.)^{11/} The EA also analyzed the project's impacts on the identified resources; cumulative impacts of the project and other past, present, and reasonably foreseeable future activities including mining and exploration, Christmas tree harvesting, hunting, pine nut harvesting, and range and grazing activities; and mitigation measures for wildlife and cultural resources. (EA at 4-1 through 4-10.) BLM fully and thoroughly identified and evaluated the resources in the entire project area including those within the acquired lands. GBMW has not shown error in BLM's analysis of the project's impacts on those resources. Rather, GBMW's assertions regarding the roadless nature of the area appear to be disagreements with the characterization in the EA, lacking any foundation.

^{11/} The EA explains that "[t]he ROS is a planning tool used to evaluate potential recreation experiences. The six classes range from primitive through modern urban. The physical, social, and managerial settings are used to classify lands into the six ROS classes (Appendix B)." (EA at 3-12 through 3-13.)

We reject GBMW's contention that a lack of details of the operations for phases other than Phase 1 fatally taints BLM's NEPA compliance. BLM compensates for the omission of precise sites for future activities by analyzing the impacts of approximately 95.55 acres of additional surface disturbance anywhere within the project area and imposing resource-specific stipulations and mitigation measures for all activities throughout the entire project area. See FONSI/DR at 1; Decision at 1-3. Although GBMW specifically questions the efficacy of the stipulations designed to avoid impacts to cultural resources set forth in the Decision at 2, it presents nothing more than speculation that the imposed measures will not ensure the avoidance or mitigation of adverse effects to eligible sites within the project area required by 36 CFR 800.8(e) and 800.9(c). We find that GBMW has not shown error in BLM's evaluation of the impacts of 95.55 acres of surface disturbance anywhere within the entire project area or in BLM's conclusion that the project-area wide stipulations and mitigation measures are sufficient to reduce any potential impacts to insignificance.

[5] GBMW asserts that BLM erred in addressing only the proposed action and the no action alternative and ignoring other purportedly viable alternatives. An EA must include a brief discussion of alternatives as mandated by section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000); see 40 CFR 1508.9(b); 516 DM 3.4(A). Section 102(2)(E) of NEPA requires, independent of the necessity to file a formal EIS, that every Federal agency "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E) (2000); see also 40 CFR 1501.2(c), 1508.9(b); Southern Utah Wilderness Alliance, 159 IBLA at 240-41 (discussion of alternatives requirement in context of EAs). The requirement that appropriate alternatives be studied applies to the preparation of an EA even if no EIS is found to be warranted. Id., citing Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228-29 (9th Cir. 1988), cert. denied, 489 U.S. 1066 (1989).

Section 102(2)(E) requires BLM to consider appropriate alternatives to the proposed action as well as their environmental consequences. See 40 CFR 1501.2(c) and 1508.9(b); Southern Utah Wilderness Alliance, 158 IBLA at 217; City of Aurora v. Hunt, 749 F.2d 1457, 1466 (10th Cir. 1984); Larry Thompson, 151 IBLA 208, 219 (1999). "Such alternatives should include reasonable alternatives to a proposed action, which will accomplish the intended purpose, are technically and economically feasible, and yet have a lesser impact. 40 CFR 1500.2(e)." Southern Utah Wilderness Alliance, 158 IBLA at 217, citing Headwaters, Inc. v. BLM, 914 F.2d 1174, 1180-81 (9th Cir. 1990); City of Aurora v. Hunt, 749 F.2d at 1466-67; Sierra Club Uncompahgre Group, 152 IBLA 371, 378-79 (2000); Defenders of Wildlife, 152 IBLA 1, 9 (2000); Larry Thompson, 151 IBLA at 219-20; see also 43 CFR 1501.2, 1502.14, 1508.9. Mere disagreement or difference of opinion as to the proper alternative does not suffice to establish error in BLM's choice of alternatives. Blue Mountains Biodiversity Project, 139 IBLA at 267.

Although alternatives analysis is required, GBMW has not explained how any alternatives it suggests can meet these standards. GBMW fails to demonstrate how a phased exploration plan would have a lesser impact, especially given that Pittston has already been pursuing exploration activities in the area for several years. While GBMW suggests an alternative requiring Pittston to first confirm the mineral values in areas along existing roads before constructing new roads and drill pads in pristine areas, GBMW has not identified pristine areas affected or shown how drilling along roads in a purportedly "roadless area" is feasible. Nor has GBMW demonstrated error in BLM's elimination of the other alternatives identified in the EA at 2-9 from further consideration because they either did not provide a significant environmental benefit or would not meet the technical needs of the project. GBMW fails to meet its burden of showing error in BLM's limitation of the EA's detailed analysis of appropriate alternatives to the proposed action and the no action alternative. See Headwaters, Inc., 116 IBLA 129, 135 (1990).

[6] Finally, we find that GBMW has not demonstrated that the failure to identify the sites of future roads and drill pads violates BLM's consultation obligations under the NHPA, 16 U.S.C. § 470(f) (2000). Section 106 of the NHPA provides:

The head of any * * * department or independent agency having authority to license any undertaking shall, prior to the * * * issuance of any license, * * * take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or is eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation * * * a reasonable opportunity to comment with regard to such undertaking.

16 U.S.C. § 470f (2000). Regulation 36 CFR 800.1(b) states that a purpose of the section 106 process is "to accommodate historic preservation concerns with the needs of Federal undertakings." The regulations identify consulting parties as the primary participants in the section 106 process, including agency officials with jurisdiction over the undertaking, the SHPO, and the Advisory Council on Historic Preservation. 36 CFR 800.1(c). Consulting parties may also include "interested persons" who include "individuals that are concerned with the effects of an undertaking on historic properties" and Indian tribes. 36 CFR 800.1(c)(2). The regulations define "undertaking" to mean "any project, activity, or program that can result in changes in the character or use of historic properties." 36 CFR 800.2(o). See Legal and Safety Employer Research Inc., 154 IBLA at 190-91; see also Sharon Long, 83 IBLA 304, 312-15 (1983).

Although GBMW contends that BLM violated the consultation requirements by failing to consult with the SHPO and affected Native Americans, we agree with BLM

that the 1999 State Protocol Agreement, which defines how BLM and the Nevada SHPO will interact and cooperate under BLM's 1997 National Programmatic Agreement with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers for implementation of the NHPA, eliminated the need for BLM to consult with the SHPO in this case.^{12/} See Wyoming Independent Producers Association, 133 IBLA 65, 81 (1995). GBMW has not shown that BLM failed to follow the procedures set forth in the State Protocol Agreement. As noted above, the entire project area has been surveyed, nine sites potentially eligible for listing in the National Register of Historic Places have been identified, and BLM has imposed stipulations designed to ensure avoidance of impacts to those eligible sites. See EA at 3-9 through 3-10, 4-6. Given these circumstances, we find that GBMW has not demonstrated error in BLM's determinations that the project does not involve complex cultural resources or management and that the effects of the project with the imposed stipulations would have no adverse effects. Additionally, BLM's extensive consultations with Native Americans documented in the EA at 5-3 through 5-9 effectively refute GBMW's complaint that BLM failed to properly consult with affected Native Americans. Accordingly we find no merit in GBMW's challenge to BLM's compliance with the NHPA.

To the extent not specifically addressed herein, GBMW's other arguments have been considered and rejected.

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

Lisa Hemmer
Administrative Judge

I concur:

David L. Hughes
Administrative Judge

^{12/} On GBMW's objection to its reference to the Protocol Agreement, BLM submitted a copy of this document as part of a "Supplemental Administrative Record" on July 12, 2000.