

OWEN SEVERANCE;
SOUTHERN UTAH WILDERNESS ALLIANCE;
UTE MOUNTAIN UTE TRIBE

IBLA 2001-301, 2001-302, 2001-309

Decided October 21, 2004

Appeals from Decision Record/Finding of No Significant Impact issued by the Monticello, Utah, Field Office Manager, Bureau of Land Management, for the Cottonwood Wash Watershed Abandoned Mine Reclamation Project. UT-090-00-01.

Set aside and remanded in part; appeal in 2001-309 dismissed.

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

Review of a FONSI hinges on whether BLM took a “hard look” at the environmental impacts of a project and made a convincing case either that the impact was insignificant or that potential impacts have been reduced to insignificance by changes in the project. A FONSI may be set aside when BLM fails to consider the indirect and cumulative impacts of the project disclosed in the record.

APPEARANCES: Owen Severance, Monticello, Utah, pro se; W. Herbert McHarg, Esq., Monticello, Utah, for Southern Utah Wilderness Alliance; Daniel H. Israel, Esq., Payson, Utah, and Peter Ortego, Esq., Towaoc, Colorado, for Ute Mountain Ute Tribe; Emily Roosevelt, Esq., Office of the Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Separate appeals have been filed by Owen Severance (IBLA 2001-301), the Southern Utah Wilderness Alliance (SUWA) (IBLA 2001-302), and the Ute Mountain Ute Tribe (Ute Mountain) (IBLA 2001-309) from the May 11, 2001, Decision Record (DR)/Finding of No Significant Impact (FONSI) issued by the Monticello, Utah, Field

Manager, Bureau of Land Management (BLM), for the Cottonwood Wash Watershed Abandoned Mine Reclamation Project, UT-090-00-01.^{1/} A motion to consolidate these appeals was granted and requests for stay of the decision were denied in an order issued by the Board on July 13, 2001. A motion to reconsider the stay requests and a motion to dismiss Ute Mountain's appeal were denied by order dated May 23, 2002.

At issue in this case is a joint initiative undertaken by the Utah Department of Natural Resource (Division of Oil, Gas, and Mining), the Utah Department of Environmental Quality (Division of Water Quality), the U.S. Forest Service (FS), and BLM, proposing to reclaim mining-related disturbances in the Cottonwood Wash watershed in San Juan County, Utah. The proposed action contemplates stabilizing and reclaiming abandoned mining disturbances to improve the overall health of the watershed. The critical issues raised on appeal relate to that part of the plan which involves upgrading the Cottonwood Wash road in the project area by applying gravel to the surface of the road and installing hardened crossings where the road crosses streambeds. In particular, appellants Severance and SUWA contend that BLM failed to consider the cumulative and indirect impacts of the road upgrade together with other reasonably anticipated actions when issuing its FONSI. Appellant Ute Mountain argues BLM failed to consider the need for obtaining a right-of-way from Ute Mountain for upgrades to portions of the road crossing Indian allotted lands.

The Cottonwood Wash watershed comprises approximately 143,000 acres and ranges in elevation from about 4,000 feet in the southernmost reaches to above 10,000 feet in the upper portions of Elk Ridge. (Environmental Assessment (EA) at 3.) The watershed includes all lands which drain into Cottonwood Wash located to the north of State Highway 95. These waters in turn drain into the San Juan River. The watershed is normally accessed via State Highway 95 and the Cottonwood Wash road. Most of the area within the watershed consists of Federal lands. BLM-managed lands account for approximately 34 percent of the watershed, about 48,100 acres, while FS has management jurisdiction over 85,480 acres, or approximately 60 percent of the watershed. *Id.* However, 75 percent of the mine sites proposed for reclamation are located on BLM-administered lands. The remaining lands are held in almost equal proportions by the State of Utah and private owners. About 4,900 acres, representing almost 3 percent of the watershed, is

^{1/} The notice of appeal by counsel for the Tribe was filed on behalf of Indian trust allotment owners. (Notice of Appeal at 1.) Ute Mountain indicates that the "Tribe and certain of its members own allotments held in trust by the United States" within the project area. *Id.* Similarly, the statement of reasons (SOR) for appeal dated July 6, 2001, noted it was filed "on behalf of the individual and tribal trust allottee owners" who hold land in the Cottonwood Wash area. (SOR at 1.)

State-owned property. (EA at 3.) The State's principal interest and involvement in this case arises from its responsibility to protect the public from mining hazards and water degradation. Ute Mountain holds most of the remaining 3 percent of the watershed, about 4,480 acres held in allotments. Id.

In the past, vanadium and uranium were extensively mined in this area; at present, mine openings and mine waste dumps present a threat to human health. This project area was selected for reclamation because water quality sampling identified radiologic constituents in the water (gross alpha particles) at levels that exceed the State of Utah's water quality standards. (EA at 74-75.) In addition, the Cottonwood Wash road is a source of particulate matter. Id. at 78.

The objective of the project is set forth in the EA under section 1.1, Purpose and Need:

- Mine openings need to be closed because they present a risk to human health and welfare. Open mines are unstable; roofs may cave in and walls may collapse, internal timber supports may fail, drops to lower levels of the mine may be obstructed or unseen, and oxygen may be at dangerously low levels. Radiation in the mine atmosphere, particularly radon gas, is an unseen hazard.
- Mine structures and debris from mining activities often present a hazard to humans and wildlife.
- Mine waste dumps may have high levels of radioactive minerals which can erode into surface water or leach into groundwater. These mine dumps need to be stabilized, because wind and water transport pollutants, including soil and sediments, into the watershed and contribute to the degradation of water supplies. Poor water quality limits beneficial uses for drinking, recreation, aquatic life, wildlife, grazing, and agriculture.
- Unneeded access roads and mineral exploration roads and trails require rehabilitation because they provide sources of sediment runoff, pose a threat to water quality, and remove lands from beneficial resource production. Drill holes located on or near these access ways need to be plugged because they pose a threat to physical safety and a pathway for pollutants to enter groundwater.
- The primary road in Cottonwood Wash that provides access to most of the mine sites and exploration areas has a significant amount of fine

sediments in the roadbed. The road, including stream crossings requires stabilization to reduce sediment runoff to streams, minimize dust, and limit further degradation of water and air quality.

(Cottonwood Wash Watershed Abandoned Mine Reclamation Project EA, Dec. 2000, at 2.)

The project would involve reclamation of 81 abandoned mine sites embracing approximately 144 acres of surface disturbance, about 15.2 miles of mine access roads, and about 44 miles of mining exploration roads. (EA at 21.) It would also include stabilization of approximately 14 miles of the Cottonwood Wash road. Stabilization of the road would involve graveling and construction of 17 hardened stream crossings. *Id.* Mining-related features to be reclaimed on BLM-managed lands are identified as follows (along with the totals including both BLM lands and FS lands combined in parentheses): Mine openings, 177 (199); open adits, 159 (179); inclines, 11 (13); open shafts, 7 (7); exploration drill holes, 279 (282); mine pits, 12 (12); mine prospects, 69 (75); mine trenches, 31 (31); subsidence holes, 10 (10); mine waste dumps, 215 (265); mine waste dump volume, 88,240 cubic yards (143,000 cubic yards); acres of mine site disturbance, 107.4 (144); access roads, 8.6 miles (15.2 miles); exploration roads and trails, 0 miles (44 miles). (EA at 23, Table 2-1.)

The upgrades to the Cottonwood Wash road are described in the EA as follows:

2.1.5 Stabilizing the Cottonwood Wash Road Road Surfacing

Approximately 14 miles of the Cottonwood Wash road would be upgraded from native surface road (i.e., a road surface built on soil in the immediate area with no imported material) to a gravel road. This work would occur from the intersection at South Elks Road (NE $\frac{1}{4}$, Sec. 20, T. 36 S., R. 21 E.) to the cattle guard above the switchbacks (center of Sec. 21, T. 34 S., R. 20 E.), where San Juan County jurisdiction ends.

About 43,217 loose cubic yards of gravel would be needed to surface the road. An average gravel truck hauls about 14 cubic yards per load so about 3,086 round trips would be required to get the necessary amount of material to the road reclamation segment. The gravel would be obtained from an existing gravel pit located on BLM lands or from a permitted commercial source. * * *

Hardened Stream Crossings

A total of 17 hardened stream crossings would be constructed. Sixteen crossings would be constructed along the Cottonwood Wash Road (County Road 268/Forest Development Road 50106) and one crossing would be constructed along the South Elks road (Development Road 50092). Fifteen of the crossings would be constructed along Cottonwood Wash, one crossing would be constructed across Dry Wash, and one crossing would be constructed across Allen Canyon Wash. * * *

Crossings would be constructed as a 9-inch thick at-grade concrete slab so that the stream flows on top of the concrete. The slab would be set on top of a 6-inch aggregate base with a 2-foot deep cutoff wall on both the upstream and downstream edges to prevent scouring and subsequent undermining of the slab. The finish grade would approximate the original grade. The length of the crossings is variable, corresponding to the variable width of the wash and flood plain, but the majority of crossings would be approximately 120 feet long, which would require 51 cubic yards of aggregate and 89 cubic yards of concrete. Crossings would extend across the entire wash, as opposed to covering only the low-flow channel. Disturbance to either side of the road would be 5 feet or less. Disturbed areas adjacent to the crossings would be revegetated with native riparian vegetation. * * *

The State Engineer has approved [an] application for a stream alteration permit for the hardened stream crossings. * * *

(EA at 33.)

Notice of the proposed project was announced to the public in 1999. Additional notice and scoping letters were sent and a 30-day comment period was provided, ending on June 25, 1999. A public meeting was held in Blanding, Utah, on June 1, 1999. Id. at 183.

In the EA for the project, the proposed action and two other alternatives were analyzed. The first alternative, considered as a result of concerns expressed in the scoping process, involved a modification of the proposed action in which only the physical safety hazards associated with the abandoned mine sites would be remedied. The mine dumps, drill holes, access roads, and the Cottonwood Wash road would not be affected. The other alternative considered was the no action alternative.

On May 11, 2001, the Field Manager, Monticello Field Office, BLM, issued the DR/FONSI, concluding that “the proposed action would not result in significant impacts to the human environment” and “[t]he evaluation determined that all impacts to the resources can be mitigated to an acceptable level, and no legal thresholds would be exceeded.” (FONSI at 1.) Further, he found that “[t]he environmental consequences of this project were adequately addressed in the EA and are acceptable.” (DR at 3.) The project was also approved by FS in a Decision Notice (DN)/FONSI issued by District Ranger, Moab-Monticello Ranger District, on May 11, 2001.

In his statement of reasons for appeal, appellant Severance asserts that BLM erred in ignoring the indirect effects and cumulative impacts associated with this major upgrade of the Cottonwood Wash road. (SOR at 3.) Noting that the existing road is a native dirt road^{2/} which becomes rutted, slippery, and impassable when wet,^{3/} he contends that paving the stream crossings and eliminating the mud problems by graveling would make the road easier to use and increase user impacts. Id. Appellant Severance challenges the lack of cumulative impact analysis in the EA regarding the road upgrade in view of recent gravel upgrades on the Elk Mountain road, the Elk Ridge road, and the Bears Ears road. Id. He also cites FS proposals to establish a “Bears Ears” interpretative loop from Highway 95 up the Cottonwood Wash road to South Elk road to Elk Ridge road and back to Highway 95, involving upgrading the roads to accommodate passenger vehicle traffic. Id. at 4-5. A proposal by FS for another interpretative loop in the area is also cited by Severance.

Appellant SUWA also notes that an EA requires consideration of cumulative impacts of a project when added to the impacts of past, present, and reasonably foreseeable future actions. (SOR at 7.) Citing the reference in the EA to the planned graveling of the Elk Ridge and Causeway roads, as well as the Cottonwood Wash road, to “enhance recreational opportunities” (EA at 179), SUWA contends that BLM erred in failing to consider the cumulative impacts of the project together with other planned improvements. (SOR at 8-10.) SUWA argues that the contention by FS that there is nothing in the road upgrade which would make the road easier to use is arbitrary in view of the absence of supporting data and prior recognition by FS in the South Cottonwood Assessment^{4/} of predicted strong growth in visitor use if the road

^{2/} A road surface built on soil in the immediate area with no imported material. (EA at 33.)

^{3/} Severance and SUWA point out that the county has posted a sign warning the public to keep off the road when it is wet.

^{4/} Manti-La Sal National Forest, Monticello Ranger District, South Cottonwood
(continued...)

system is improved for passenger cars. (SOR at 13.)^{5/} Further, SUWA asserts BLM failed to consider a reasonable range of alternatives, particularly including conducting the mine reclamation without upgrading the road. Id. at 4.

Appellant Ute Mountain argues that the BLM decision ignores the trust duty to compensate the Tribal and individual trust allotment owners for the adverse effects of past mining trespass and contamination to Tribal and individual trust allotments. (Notice of Appeal at 1-2; SOR at 1.) Ute Mountain also contends that BLM must obtain a right-of-way across the trust allotments and that if BLM fails to resolve the compensation issue as it relates to the trust allotment owners it will not be able to pursue upgrades to the Cottonwood Wash road. (SOR at 2.) Appellant urges the Board to modify the DR to provide for appropriate compensation. Id. at 4. As noted above, BLM filed a motion to dismiss the Ute Mountain appeal for lack of standing, asserting that it had not shown it was adversely affected by the decision. Rather, BLM contended the Tribe is focused on harm from alleged past trespass from use by BLM and others of a portion of the Cottonwood Wash Road within Indian lands and contamination of Indian lands by past mining operations on Federal lands. Noting that the Tribe claims a right to compensation for past wrongs, BLM asserted that it failed to establish that it has been adversely affected by the DR/FONSI approving the reclamation project. Regarding the Tribe's assertion of an obligation on the part of BLM to obtain a right-of-way from it prior to reclaiming mine sites on FS lands, BLM indicated that it is negotiating a right-of-way with the Tribe and the Bureau of Indian Affairs and, hence, any assertion of an adverse affect is premature. The motion to dismiss was opposed by the Tribe, noting that BLM has an obligation to protect the interest of Indian allottees with respect to access across Indian lands. Under the circumstances, we found that the Tribe had made a sufficient assertion of adverse affects to overcome the motion to dismiss, and, accordingly, we denied the motion. (Order of May 23, 2002, at 1-2.)

In a petition for reconsideration of our Order denying the motion to dismiss, BLM argues that we should dismiss the appeal for lack of subject matter jurisdiction. In particular, BLM points out that this Board has no jurisdiction to award

^{4/} (...continued)

Assessment (1997), cited as FS South Cottonwood Assessment. This document is referred to by appellants Severance and SUWA and portions of it have been submitted as an attachment to the SOR filed by Severance.

^{5/} A recent check with BLM has disclosed that the road improvements at issue have not been constructed pending negotiation of a right-of-way for that portion of the road which crosses the Ute Indian allotments. Thus, although a stay of the BLM decision was previously denied, this appeal is not moot as to the planned upgrades to the Cottonwood Wash road.

compensation for trespass or to award monetary damages. In noting that virtually all of Ute Mountain's claims for relief relate to monetary damages or compensation for past trespasses relating to mining, BLM essentially points out that appellant has not been adversely affected by the BLM DR, but rather wishes to pursue a claim for damages.

The Ute Mountain appeal, unlike the other appeals in this consolidated case, does not challenge the BLM decision on grounds of NEPA compliance.^{6/} It is beyond doubt that the jurisdiction of this Board is limited to the authority delegated by the Secretary of the Interior as generally set forth in the regulations regarding appeals at 43 CFR Part 4. See 43 CFR 4.1. As noted by BLM, the Board is not a court of general jurisdiction. Thus, we have held that “[a]wards of compensation in the form of monetary damages for breach of contract or other potentially actionable conduct are beyond the scope of the jurisdiction delegated to the Board. George H. Ruth, 121 IBLA 31, 36 (1991); see Exxon Corp., 95 IBLA 374, 376 (1987). Any claim to relief in the form of compensation which is sought by Ute Mountain must, accordingly, be rejected by this Board for lack of jurisdiction. We further find that appellant has not been adversely affected by the BLM decision which simply does not address the compensation issue. Standing to appeal requires that there be a decision of BLM announcing or prohibiting a specific action before an appeal can be brought by a party adversely affected. Joe Trow, 119 IBLA 388, 392 (1991). In this case, the issue of compensation is outside the scope of the BLM decision. Standing to appeal is limited generally to the issues resolved by the decision under appeal. See Wyoming Independent Producers Association, 133 IBLA 65, 70-71 (1995) (appeal from BLM right-of-way dismissed to the extent the issue raised related to a FERC finding of public convenience and necessity for the gas pipeline). Accordingly, we grant the motion to reconsider our Order denying the motion to dismiss the Ute Mountain appeal and we now dismiss that appeal.

In its answer, BLM contends the lack of consideration of an alternative including mine reclamation without upgrading the Cottonwood Wash road did not constitute a failure to consider a reasonable range of alternatives. It is argued by BLM that it found the road was a mining-related disturbance, a major contributor to watershed degradation, and, thus, a key part of the project. (Answer at 8-9.) Regarding indirect and cumulative effects, BLM asserts that the road improvement has independent utility apart from other roads in the area and does not automatically

^{6/} The need for a right-of-way from the individual and tribal allotment owners to secure access cannot establish standing to appeal the decision in view of the fact it was conditioned upon obtaining a right-of-way (DR at 2) and it is clear from the record that BLM is negotiating a right-of-way with Ute Mountain and the Bureau of Indian Affairs.

trigger other FS road improvements. *Id.* at 13, 15. Regarding the cumulative effects of this project together with anticipated FS road improvements, BLM contends that FS found no basis for the assertion that visitor use would likely increase.^{7/} *Id.* at 16-17. It is argued by BLM that we should defer to those findings. Counsel also suggests that BLM has previously responded to appellant Severance's arguments and that the reiteration of those arguments fails to establish error in the BLM decision.^{8/}

The Board has recently summarized its legal precedents on the issue of the sufficiency of BLM's environmental review under section 102(2) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4332(2) (2000), and its related determination to approve an action based on an EA and a FONSI:

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 220, 234-35 (2003); Southern Utah Wilderness Alliance, 158 IBLA 212, 219 (2003); Colorado Environmental Commission, 142 IBLA 49, 52 (1997); Owen Severance, 118 IBLA 381, [392] (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

^{7/} In support, BLM provides a copy of the decision on administrative appeals filed by Severance and by SUWA with the FS of the May 11, 2001, decision notice (DN) of the District Ranger, Moab-Monticello Ranger District, approving the project and the associated FONSI.

^{8/} BLM's argument is without basis in that the BLM letters cited did not address any substantive comments proffered by Severance, but merely dealt with procedural questions. (BLM Answer at 6, citing letters dated June 4 and June 13, 2001; BLM Response to Stay Petition dated June 27, 2001, at 13.) To the extent that BLM refers to the Response to Comments attached to the May 11, 2001, BLM DR/FONSI, there are no responses to comments accompanying the DR/FONSI in the record provided to the Board.

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. Great Basin Mine Watch, 159 IBLA at 353; 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 [Trials] Association, 156 IBLA 64, 71 (2001).

Great Basin Mine Watch, 159 IBLA 324, 352-53 (2003).

The adequacy of a FONSI for a particular action is ordinarily evaluated on the basis of the potential impacts of the action which BLM has decided to implement, in the absence of a finding (a) that the action is a part of several connected actions which depends on the connected actions for its justification or (b) that the impact of the action must be considered together with the impact of other past, present, or reasonably foreseeable future actions which will have a cumulative impact. Emerald Trail Riders Association, 152 IBLA 210, 214 (2000); see Larry Thompson, 151 IBLA 208, 213 (1999). Regulations implementing NEPA, however, require that a Federal agency consider the potential cumulative impacts of a planned action together with other past, present, and reasonably foreseeable future actions. 40 CFR 1508.7. A cumulative impact is defined as:

[T]he impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 CFR 1508.7; Wyoming Outdoor Council, 158 IBLA 155, 172 (2003).

The cumulative impacts section of the EA in this case noted under possible future actions that the remaining portions of the Elk Ridge and Causeway roads “would be graveled to enhance recreation opportunities.” (EA at 179, 180, Table 4.13-1.) The Elk Ridge and Causeway roads surround the South Cottonwood watershed on the west and north sides, respectively, and connect with the Elk Mountain and the Cottonwood Wash roads which traverse the watershed. Id. at Inset Map 1. The cumulative impacts discussion in the EA, however, contained no discussion of the impacts of the Cottonwood Wash road upgrade when coupled with the anticipated upgrades of the other roads.

In his comments on the EA, appellant Severance cited FS projections that as tourism increases at an annual rate of 10 percent, usage on the Elk Ridge road is expected to at least double in the next decade. (Feb. 9, 2001, comment letter at 4, citing FS South Cottonwood Assessment ^{2/} at 24.) Also noted by Severance are FS projections of strong growth in visitation to the area especially if the roads are improved for passenger cars and the fact that improving facilities will lead to increased use and changes in the type of use. *Id.*, citing FS South Cottonwood Assessment at 27-28. In his comments on the EA, Severance also noted the FS proposal to establish the Bears Ears interpretive loop described above. *Id.* at 6, citing FS South Cottonwood Assessment at 79. Plans to establish a northern interpretive loop in the area were also cited in Severance's comments on the EA. *Id.*, citing FS South Cottonwood Assessment at 80.

The DR/FONSI also made no analysis of cumulative impacts of the project. The March 29, 2001, "Comment Analysis" contains a catalog summarizing the nature of the concerns raised in the comments. The analysis notes that of 72 comment letters received, 26 addressed the proposed changes to the South Cottonwood road and all but one opposed the upgrade, citing concerns about increased use of the area. (Comment Analysis at 8.) In his comments on the EA, Severance raised concerns acknowledged by the FS in its South Cottonwood Assessment, including lack of analysis of the recreation capacity of the area, the threat of continued degradation of heritage resource sites, disturbance of wildlife species and their habitat, and impacts to visual qualities including vegetation damage and litter. (Severance comments on EA at 4-5.) Comments submitted by SUWA cited cumulative impacts including vegetation loss, increased visual intrusion, greater habitat fragmentation, and interference with other recreational users resulting from increased traffic speeds. (SUWA comments on EA at 1-2.) SUWA also contended that road upgrades would lead off-road-vehicle enthusiasts to create new routes through adjacent lands in the watershed that will aggravate the impacts that the road improvements are designed to alleviate. *Id.* at 2.

Despite these concerns, the Comment Analysis in the record forwarded to the Board contains no analysis of the significance of these impacts or of any cumulative impacts. Cumulative impacts associated with road improvements were also raised as an issue in administrative appeals of the project submitted to the FS. Under the heading of cumulative impacts, the FS appeal reviewing officer found that use of the Cottonwood Wash road is currently light, citing San Juan County Road Department estimates of 20-30 vehicles per day and FS estimates of 8-10 vehicles per day.

^{2/} Appellant Severance indicates that this document, referred to previously, is not a NEPA document. See 40 CFR 1508.10 (defining "environmental document" to include an EA, EIS, FONSI, and notice of intent to prepare an EIS).

(Memorandum of Aug. 16, 2001, at unnumbered p. 3.) He further found that use is not expected to increase significantly, noting low regional populations. Id. Although he was unable to accept the finding that the road would not be easier to use as a result of the upgrades, he made no analysis of cumulative impacts. Id. Based on the appeal reviewing officer's memorandum, the appeal deciding officer affirmed the DN/FONSI issued by the District Ranger. While BLM asserts the Board should defer to the FS decision on appeal,^{10/} we find the decision contains no analysis of the cumulative impacts of the upgrades to the road which can be relied on to support the BLM DR/FONSI.

[1] In reviewing the sufficiency of a FONSI under NEPA, the issue is whether BLM took a "hard look" at the problems associated with a project, identified the relevant areas of environmental concern, and, as to the problems identified, whether BLM made a convincing case either that the impact was insignificant or that potential impacts have been reduced to insignificance by changes in the project. Cabinet Mountains Wilderness v. Peterson, 685 F.2d 678, 681-82 (D.C. Cir. 1982); Wyoming Outdoor Council, 158 IBLA 155, 160 (2003); Powder River Basin Resource Council, 120 IBLA 47, 56 (1991); Nez Perce Tribal Executive Committee, 120 IBLA 34, 37-38 (1991). The Board has held that a FONSI may be set aside when BLM fails to consider the indirect and cumulative impacts of increased visitor use to the public lands with respect to a proposal to build a visitor center. Southern Utah Wilderness Alliance, 150 IBLA 158, 167-69 (1999). Similarly, a decision to proceed with a road improvement project based on a FONSI is properly set aside when the record, including the EA and comments on the EA, discloses the existence of other planned road improvement projects which, together with the proposed road upgrade, will have cumulative impacts on the environment which have not been analyzed in the EA or FONSI. See Wyoming Outdoor Council, 158 IBLA at 172-74; Southern Utah Wilderness Alliance, 124 IBLA 162, 169 (1992). While it may be that BLM was influenced in its decision by the positive impacts to the watershed promised by reclamation of the mine disturbances, including dumps, workings, and roads, impacts may be both beneficial and adverse and a significant effect may exist even if on balance the effect will be beneficial. 40 CFR 1508.27(b)(1). Thus, the existence of positive impacts of a project does not negate the necessity of considering whether the impacts of the project will significantly affect the environment. Upon the record before us, we are unable to find that BLM has taken a hard look at the environmental impacts of that part of the project involving the upgrades to the Cottonwood Wash

^{10/} The jurisdiction of this Board extends to deciding appeals from decisions of BLM, but does not include decisions of FS which is an agency of the U.S. Department of Agriculture. See 43 CFR 4.1.

road and established a rational basis for its FONSI.^{11/} Accordingly, we set aside the DR/FONSI as it relates to the road upgrades and remand the case to BLM for further review and analysis of the impacts, including any cumulative impacts, of that part of the project involving the planned upgrades to the Cottonwood Wash road.

The BLM DR/FONSI has also been challenged on the ground that it failed to consider a reasonable range of alternatives to the proposed action. Appellants claim that the EA should have considered alternatives which would allow performance of the mine-related reclamation work without undertaking the upgrades to the Cottonwood Wash road. Section 102(2)(E) of NEPA, 40 U.S.C. § 4332(E) (2000), and the implementing regulations at 40 CFR 1502.14(a) and 1508.9 require an agency preparing an environmental analysis to analyze all reasonable alternatives. Thus, a “rule of reason” approach applies to both the range of alternatives and the extent to which each alternative must be addressed. Sierra Club Uncompahgre Group, 152 IBLA 371, 378 (2000); Southern Utah Wilderness Alliance, 152 IBLA 217, 223-24 (2000). Therefore, BLM is required to consider alternatives that are feasible and reasonably related to the purpose of the proposed action. Howard B. Keck, Jr., 124 IBLA 44, 53 (1992).

It appears from the record that upgrades to the Cottonwood Wash road are a critical part of the watershed improvement plan because the water quality studies conducted by the State identified sedimentation attributed to the road as a contributor to watershed degradation. While the range of alternatives considered was quite restricted, we are unable to find on the record before us that it is legally insufficient. The alternative favored by appellants, *i.e.*, undertaking all of the mining-related reclamation activities without upgrading the Cottonwood Wash road, would not have accomplished the improvement on sedimentation BLM sought to achieve in this project. Thus, the impact of graveling the road is expected to reduce the sediment load from 0.67 tons per acre per year to 0.03 tons per acre per year. (EA at 143, Table 4.2-1; see also Table 2-5.) Hence, excluding this component of the project would have compromised the objective of the project and we need not remand the case on this basis. We note, however, that BLM’s cumulative analysis,

^{11/} The record contains no cumulative impacts analysis regarding the recreational plans for the vicinity, including the establishment of interpretive loop roads, in the 1997 FS South Cottonwood Assessment, nor does BLM respond to appellants’ comments on this point. In its answer (at 20), BLM argues that appellants’ reliance on a document that “apparently was never finalized is inappropriate.” This statement in its legal pleading is neither a response to comments nor an explanation of the record before us. In fact, the cited document contains analysis of various options for use of an improved Cottonwood Wash road. The record does not indicate the status of the document, and FS does not repudiate it in its own administrative decision.

properly considered, might generate other alternatives or modifications to the Cottonwood Wash road improvement project not previously analyzed.

To the extent that appellants have made arguments which have not been specifically addressed in this opinion, they 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 appeal by Ute Mountain (IBLA 2001-309) is dismissed and the BLM DR/FONSI is set aside in part as to the planned upgrades to the Cottonwood Wash road and remanded for consideration of the cumulative impacts of the road improvements.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Lisa Hemmer
Administrative Judge