



WYOMING COALITION OF LOCAL GOVERNMENTS

188 IBLA 356

Decided September 27, 2016



United States Department of the Interior
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Interior Board of Land Appeals
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WYOMING COALITION OF LOCAL GOVERNMENTS

IBLA 2014-75

Decided September 27, 2016

Appeal from a Record of Decision by the State Directors, Wyoming and Idaho State Offices, Bureau of Land Management, approving the grant of rights-of-way for an electrical transmission line project. WYW-174598 & IDI-35849.

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Rights-of-Way;
National Environmental Policy Act of 1969: Environmental
Statements

Granting a right-of-way under the Federal Land Policy and Management Act is a discretionary decision that must have a rational basis, which is not only stated in the decision but also supported by the record. An appellant has the burden to demonstrate, by a preponderance of the evidence, that BLM committed a material error in its factual analysis, or that the decision generally is not supported by a record showing that BLM gave due consideration to all relevant factors, and acted on the basis of a rational connection between the facts found and the choice made. In addition, if an appellant is raising a challenge to a decision based on an EIS, it must carry its burden to demonstrate by a preponderance of the evidence, with objective proof, that BLM failed to adequately consider a substantial Environmental question of material significance to the proposed action, or otherwise failed to abide by section 102(2)(C) of the National Environmental Policy Act.

2. Federal Land Policy and Management Act of 1976:
Coordination with State and Local Governments;

Federal Land Policy and Management Act of 1976:
Rights-of-Way

BLM is not required by section 202(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1712(c) (2012), to ensure that its decision approving rights-of-way for an electrical transmission line and related facilities is consistent with State and local land use plans, but it is required to coordinate management activities and its land use decisions with State and local governments so as to reasonably involve them in its decisionmaking.

3. National Environmental Policy Act of 1969: Environmental Statements

BLM is required by the National Environmental Policy Act and applicable implementing rules to provide an opportunity for public comment only on an environmental impact statement, including a supplemental environmental impact statement.

APPEARANCES: Constance E. Brooks, Esq., and Danielle Hagen, Esq., Denver, Colorado, for the Wyoming Coalition of Local Governments, *Et Al.*; Martin K. Banks, Esq., Lauren E.C. Hosler, Esq., and Aaron C. Courtney, Esq., Salt Lake City, Utah, for PacifiCorp, d/b/a Rocky Mountain Power, and Idaho Power Company; Philip C. Lowe, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE JACKSON

The Wyoming Coalition of Local Governments (Coalition), on behalf of the Lincoln County Board of Commissioners (County), the Lincoln County Conservation District (LCD), and individually named landowners, has timely appealed from the November 12, 2013, Record of Decision (ROD) by the State Directors, Wyoming and Idaho State Offices, Bureau of Land Management (BLM).¹ The ROD approved right-of-way (ROW) grants to PacifiCorp d/b/a Rocky Mountain Power and Idaho Power Company (collectively, Proponents) for the Gateway West Transmission Line Project (Project), based on an environmental impact statement (EIS) prepared

¹ See also *Western Watersheds Project*, 188 IBLA 277 (2016); *Erick W. and Jeanne M. Esterholdt*, 188 IBLA 290 (2016).

pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2012). These ROWs, WYW-174598 and IDI-35849, were granted pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (2012), and authorize the construction, operation, maintenance, and termination of transmission lines in an east-west corridor stretching from the Windstar Substation near Glenrock in western Wyoming to the Hemingway Substation near Murphy in eastern Idaho. We granted Proponents' motion to intervene by Order dated March 5, 2014.

The Coalition claims BLM was required by FLPMA to resolve alleged inconsistencies between this ROD and local land use plans, but we find no such obligation in FLPMA. It also claims BLM was required by NEPA to solicit comments from landowners along a portion of the selected ROW route that was different from what was considered in its final environmental impact statement (FEIS), but we find no such requirement in NEPA or its implementing rules. The Coalition also claims BLM failed to consider its comments, but we find its claim unsupported in fact. Consequently, we affirm the decision on appeal.

Background

Proponents jointly proposed the Project, which includes ROW grants under FLPMA for constructing, operating, maintaining, and terminating their Gateway Transmission Line.² Its transmission line ROWs would be for renewable 30-year terms and vary in width from 125 feet to 250 feet, depending on type of service.³ The Project corridor is nearly 1,000 miles long and runs across State lands (73.4 miles), private lands (434.9 miles), public lands (451.1 miles), and Federal, non-public lands (21 miles).⁴ Due to its large size, the Project was divided into segments for ease of analysis (e.g., Segments 1 through most of Segment 4 were in Wyoming, with the remaining segments located in Idaho). The Project area is covered by multiple, Federal land-use plans.⁵

² See ROD at 1; see also 43 C.F.R. Part 2800 - Rights-of-Way Under FLPMA.

³ See EIS at 2-3, 2-4.

⁴ See *id.* at 2-2 (Table 2.1-1).

⁵ See *id.* at 1-34 (Resource Management Plans (RMPs) for Morley Nelson Snake River Birds of Prey National Conservation Area, the Casper, Rawlins, Pocatello, Monument, Cassia, Owyhee, Green River, Kemmerer, and Jarbidge resource areas, plus Management Framework Plans (MFPs) for Bruneau, Bennett Hills/Timmerman Hills, Twin Falls, and Kuna).

BLM published a Notice of Intent (NOI) to prepare an EIS, which initiated a public-scoping period for the Project.⁶ It then issued a Draft EIS (DEIS) and its FEIS with an additional public comment period. BLM also prepared a Biological Assessment to assess impacts on threatened species, endangered species, and critical habitat pursuant to section 7 of the Endangered Species Act of 1973 (ESA), 16 U.S.C. § 1536 (2012); Fish and Wildlife Service (FWS), U.S. Department of the Interior, responded by preparing a Biological Opinion.⁷ The Project area includes habitat for the Greater sage-grouse (*Centrocercus urophasianus*). The Greater sage-grouse was determined proper for listing as a threatened and endangered species under the ESA, but after reexamining its status and efforts by Federal and State agencies to conserve the species, FWS concluded that listing was no longer warranted.⁸ BLM required surveys of Greater sage-grouse and other special status species and specified that any of their populations or occupied habitat should be avoided.⁹

BLM considered the Project proposed by Proponents, its preferred alternative (an amalgam of BLM preferences for each route segment), and the no action alternative.¹⁰ It also considered design alternatives, underground alternatives, and 36 route and substation alternatives to avoid or minimize environmental impacts.¹¹ BLM addressed direct and indirect impacts on 22 environmental resources within a 2-mile corridor on either side of the Project's centerline, as well as cumulative impacts from past, present, and reasonably foreseeable future actions.¹² The County and others submitted comments on the DEIS and FEIS, which BLM responded to in the FEIS and ROD.¹³

After the EIS was finalized, Proponents determined its transmission lines needed to be re-routed in the vicinity of Cokeville which is in Lincoln County, Wyoming, where above-ground structures were prohibited (Buck Ranch) or where

⁶ 73 Fed. Reg. 28425 (May 16, 2008).

⁷ 76 Fed. Reg. 45609 (July 29, 2011); FEIS, Appendix L (Response to Comments on Draft EIS); 78 Fed. Reg. 24771 (Apr. 26, 2013); ROD, Appendix A (Response to Comments on FEIS); ROD at 46, 50, 53, 86; ROD, Appendix H (BiOp).

⁸ See 80 Fed. Reg. 59858 (Oct. 2, 2015); 75 Fed. Reg. 13910 (Mar. 23, 2010).

⁹ See EIS at 2-158 to 2-160, 2-164 to 2-166.

¹⁰ EIS at ES-7 to ES-8 (Preferred Routes by Segment), 2-1 to 2-11, 2-12, 2-32 to 2-49, 2-52 to 2-86, 2-118 to 2-125; ROD at 23-33, 41-45.

¹¹ See EIS at 2-32 to 2-37, 2-52 to 2-86, 2-125 to 2-138.

¹² See *id.* at 2-178 to 2-204, 3.1-1 to 3.23-20, 4-1 to 4-92; ROD at 10.

¹³ See, e.g., EIS at L-189 to L-193; ROD at A-144, A-163 to A-165, A-227, A-263 to A-273.

they would be in an area prone to landslides.¹⁴ In order to consider potential solutions, BLM commissioned the Lincoln County Reroute Report (LCRR), which analyzed re-routing impacts and concluded that any environmental issues from crossing public lands had already been “adequately addressed in the existing EIS.”¹⁵ Rather than reinitiate the environmental review process, BLM held a meeting to address re-routing issues and discuss a draft LCRR on August 1, 2013, which the County attended and at which it submitted comments. However, no private landowners or members of the general public were invited to that meeting or given an opportunity to submit comments on the LCRR.¹⁶ BLM then finalized the LCRR and responded to County comments on the draft LCRR by letter dated September 30, 2013.

BLM considered its Preferred Alternative, which followed existing transmission lines south of Cokeville, and a route that would depart from the Preferred Alternative at MP (Mile Post) 121.9, pass north of Cokeville, and rejoin the Preferred Alternative at MP 130.7, commonly referred to as the Cokeville Re-Route.¹⁷ Like the Preferred Alternative, the Cokeville Re-route would primarily cross private land and require obtaining private land access.¹⁸ BLM approved the use of public lands for both its Preferred Alternative and the Cokeville Re-route but specified that its approval would be withheld until Proponents obtained necessary private land access.¹⁹ However, the

¹⁴ See ROD at 18-19, 26-29.

¹⁵ ROD at 18; *see id.* at 27 (“Public and private land resources affected by the reroutes are of the same nature and type, and the effects are of the same scope and intensity as those analyzed in the EIS[.]”); *id.*, Appendix I (LCRR); LCRR at 7, 10 (Table 3 (Cokeville Reroute Compared to BLM’s FEIS Preferred Alternative)), 11-12, 14, 15, 16-17, 17, 18, 19, 22-23.

¹⁶ See LCRR, Attachment A at A-2 to A-5, A-7, A-8; SOR, Ex. A (Declaration (Decl.) of Jonathan Teichert, Senior Planner, Lincoln County), at ¶¶ 30, 31, at 10-11.

¹⁷ See ROD at 19, 27-28, 62; ROD, Appendix J, at Figures J-1 (Project Overview), Figure J-5 (Segment 4-WY).

¹⁸ See ROD at 19, 28; EIS at 1-36 (“The Proponents would negotiate details regarding needed land acquisition across privately owned lands, either in fee or as an easement, for the transmission line and associated facilities (substations, etc.) with each landowner. . . . If a fee ownership or an easement cannot be negotiated with the landowner, the Proponents may acquire the rights needed under eminent domain laws prevailing in the affected [S]tates.”); LCRR at 7, 10 (Table 3), 11-12, 14, 15, 16-17, 17, 18, 19, 22-23.

¹⁹ See ROD at 18 (“[A]ctions concerning non-public lands are needed before a final alignment can be determined”), 19 (“The transmission line’s final location will primarily be determined by the Proponents’ ability to acquire private land access”), 28, 88; Letter to County from Wyoming State Director, dated Sept. 30, 2013, at 4.

State Directors deferred approving ROW Segments 8 and 9 (roughly 300 miles in Idaho) until siting differences were reconciled by and between Federal, State, and local parties.²⁰ The Project generally conforms to applicable land-use plans, but since it did not entirely conform to the Green River and Kemmerer RMPs, BLM proposed RMP amendments, which were protested. After those protests were denied by the BLM Director, the RMP amendments were approved in the ROD.²¹

Discussion

[1] The granting of an ROW under FLPMA is a discretionary decision that must have a rational basis stated in the decision and supported by the record.²² An appellant challenging such a decision has the burden “to demonstrate, by a preponderance of the evidence, that BLM committed a material error in its factual analysis, or that the decision generally is not supported by a record showing that BLM gave due consideration to all relevant factors, and acted on the basis of a rational connection between the facts found and the choice made.”²³ In addition, an appellant challenging an ROW decision based on an EIS “must carry its burden to demonstrate by a preponderance of the evidence, with objective proof, that BLM failed to adequately consider a substantial environmental question of material significance to the proposed action, or otherwise failed to abide by section 102(2)(C) of NEPA.”²⁴

The Coalition argues that BLM violated NEPA and/or FLPMA when it approved the Cokeville Re-route because it failed to (1) “coordinate” with Coalition members and “resolve the inconsistencies” between the ROD and local land use plans; (2) “notify” and offer an opportunity for comment to private landowners along the Cokeville Re-route before it was adopted in the ROD; and (3) “consider” comments by Coalition members regarding alternatives for the area around Cokeville, Wyoming.²⁵ For ease of analysis, we will address each of these issues separately below.

²⁰ See ROD at 19-21.

²¹ See ROD at 22, 33-35; ROD, Appendix K (Protest Resolution Report); *see also* ROD at 35-37 (Governor identification of “inconsistencies” between the RMP amendments and Wyoming, Idaho, or local plans, policies or programs under 43 C.F.R. § 1610.3-2(e)).

²² *See, e.g., Mark Patrick Heath*, 175 IBLA 167, 175-76 (2008); *Wyoming Outdoor Council*, 170 IBLA 130, 144 (2006); *Dona Jeanette Ong*, 149 IBLA 281, 284 (1999).

²³ *Backcountry Against Dumps*, 179 IBLA 148, 177 (2010); *see Santa Fe Northwest Information Council*, 174 IBLA 93, 104 (2008).

²⁴ *Backcountry Against Dumps*, 179 IBLA at 161, and cases cited; *see Arizona Zoological Society*, 167 IBLA 347, 357-58 (2006).

²⁵ SOR at 15.

1. *Whether BLM Violated FLPMA by Failing to Resolve Inconsistencies with Local Land Use Plans and Coordinate with Local Government.*

The Coalition claims BLM violated section 202(c) of FLPMA because it failed to resolve inconsistencies between the ROD and local land use plans and to coordinate with Coalition members, noting that BLM lands in Lincoln County “directly” affect County residents, businesses, and the local economy because a “majority” of the land in the County “is federally owned.”²⁶ The Coalition claims the Cokeville Re-route “directly conflicts with the Lincoln County and LCD land use plans that call for protection of private lands, property values, and the tax base for the County.” The Coalition brought these inconsistencies between the re-route and the land use plans to BLM’s attention during the environmental review process, but BLM failed to make any effort to resolve them.²⁷

[2] Section 202(c) of FLPMA provides in pertinent part:

[T]he Secretary shall []coordinate the land use inventory, planning, and management activities of or for [the public] lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located In implementing this directive, *the Secretary shall*, to the extent [s]he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; *assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands.* . . . Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent [s]he finds consistent with Federal law and the purposes of this Act.^[28]

²⁶ *Id.* at 23; *see id.* at 23-28.

²⁷ *Id.* at 26; *see id.* at 26-27; *id.*, Ex. A-2 (Lincoln County Public Lands Policy) at 3-11, 3-27 (“There shall be no net loss of the private land base”), 3-37 to 3-40; *id.*, Ex. 1 (LCD Land Use and Natural Management Long Range Plan (2010-2015)) at 1, 28-34.

²⁸ 43 U.S.C. § 1712(c) (2012) (emphasis added).

To the extent section 202(c) of FLPMA directs BLM to seek consistency with local land use plans, it applies only to Federal land use planning, not to land use management decisions:

While it is true that under FLPMA BLM must coordinate with and confer with States, Indian tribes, and local governments in order to ensure consistency with State and local plans at the land use planning phase, . . . this provision does not require such policy coordination with respect to individual decisions implementing actions authorized under an existing [land use] management plan.^[29]

Issues of consistency with local land use plans may be raised when BLM adopts, amends, or modifies a land use plan, but those plans and that process are exclusively subject to protest to the BLM Director, not to review by this Board.³⁰

BLM was not bound by a “consistency” directive in this case because this appeal does not involve land use planning under section 202(a) of FLPMA, 43 U.S.C. § 1712(a) (2012). Nonetheless, section 202(c) of FLPMA requires BLM to coordinate its management of public lands with State and local governments and to provide for their “meaningful public involvement . . . in . . . land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands.” The record shows BLM included State and local agencies as cooperating agencies to prepare the EIS, invited them to attend the meeting that addressed the Cokeville Re-route on August 1, 2013, and engaged in extensive efforts to involve the public throughout the NEPA process, including State and local agencies.³¹ We do not find BLM failed to provide the County or LCD with a meaningful opportunity to be involved in its decisionmaking for the Project³² and,

²⁹ *Biodiversity Conservation Alliance*, 174 IBLA 174, 183-84 (2008); *accord Owyhee County, Idaho*, 179 IBLA 18, 29 (2010); *see Town of Crestone*, 178 IBLA 79, 87 (2009).

³⁰ *See* 43 C.F.R. § 1610.5-2; *Powder River Basin Resource Council*, 180 IBLA 32, 50 (2010); *Rainer Huck*, 168 IBLA 365, 396 (2006); *see also* ROD at 35-37 (Governor’s Consistency Review); BLM Answer at 10-11.

³¹ *See* EIS at 5-1 to 5-37; ROD at 55, 83-87; LCRR, Attachment A at A-2 to A-5.

³² *See* 43 C.F.R. § 2801.2(d) (BLM to coordinate with State and local governments, “to the fullest extent possible,” when granting ROWs); *see also Santa Fe Northwest Information Council, Inc.*, 174 IBLA at 117-18.

therefore, conclude that the Coalition has not met its burden to show BLM violated its obligations under section 202(c) of FLPMA.³³

2. *Whether BLM Violated NEPA by Failing to Provide Affected Landowners with an Opportunity to Comment on the Cokeville Re-route.*

[3] The Coalition claims BLM violated section 102(2)(C) of NEPA by failing to notify affected landowners and provide an opportunity for public comment on re-routing alternatives that were considered after the FEIS and before the Cokeville Re-Route was selected in the ROD.³⁴ However, rules implementing NEPA require Federal agencies, after “preparing a draft environmental impact statement and before preparing a final environmental impact statement,” to provide an opportunity for public comment and “affirmatively solicit[] comments from those persons or organizations who may be interested or affected.”³⁵ These requirements also apply to an SEIS, but “Appellants have not argued that a supplemental FEIS is necessary” and this Board has held that no SEIS was required for the Project.³⁶

The Coalition broadly asserts “BLM failed to follow the purposes and procedures of NEPA by failing to notify the public of this change in the preferred alternative’s route location and allowing for public comment on the new alternative or on the report that adopted the new alternative” and that private landowners along the Cokeville Re-route should have been provided with an opportunity to comment on that route because “they were now persons impacted by the [Preferred Alternative] route’s new location.”³⁷ We are unpersuaded.

BLM is required by NEPA and its implementing rules to solicit public comments on a DEIS and SEIS, but it need not solicit public comment on an FEIS or a document

³³ See *Owyhee County, Idaho*, 179 IBLA at 31 (BLM satisfied FLPMA coordination requirements by meeting, consulting and communicating with the County but never reaching consensus on how best to proceed).

³⁴ See SOR at 15-19 (citing *International Snowmobile Manufacturers Association (ISMA) v. Norton*, 340 F. Supp. 2d 1249, 1263-65 (D. Wyo. 2004)), 24; Reply at 11-13; Reply to Proponents at 7-11, 16-17.

³⁵ 40 C.F.R. § 1503.1(a)(2), (4).

³⁶ Reply at 9; see 40 C.F.R. 1502.9(c)(4); *Erick Esterholdt*, 188 IBLA at 297-300 (quoting *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 373-74 (1989)).

³⁷ SOR at 17 (citing *ISMA v. Norton*, 340 F. Supp. 2d at 1263-65), 18.

accompanying the FEIS that compares alternatives.³⁸ Members of the Coalition availed themselves of the opportunity to comment on the DEIS, but unless and until an SEIS must be prepared, there is no obligation on BLM to solicit further comment from them or anyone else. Since Appellant does not claim an SEIS is required and we have held an SEIS is not required in this case, we do not find BLM was required to afford landowners along the Cokeville Re-Route with yet another opportunity to comment.³⁹ In any event, they will have another opportunity to comment on this route during State and local deliberations on the siting of the transmission line.⁴⁰ We therefore conclude that BLM did not violate the public participation requirements of section 102(2)(C) of NEPA when it considered and adopted the Cokeville Re-route in the ROD.

3. *Whether BLM Failed to Consider Coalition Comments on Alternative Routes.*

The Coalition claims BLM violated section 102(2)(C) of NEPA by not considering alternatives proposed by Coalition members before issuance of the FEIS, specifically a “cut-over” route south of town and burying 8 miles of transmission line near Cokeville.⁴¹ However, the record shows these proposals were considered in the FEIS, as required by 40 C.F.R. § 1502.9(b), as well as in the ROD and at the meeting on August 1, 2013.⁴² We therefore find BLM complied with applicable NEPA rules for considering and responding to comments.⁴³

Appellant asserts that if “BLM had considered the[ir] comments and alternatives in good faith, then it would have deferred its decision on Segment 4 to allow a consensus agreement among Federal, State, and local governments for the siting of this route,” as it had for Segments 8 and 9 in Idaho.⁴⁴ BLM could have so acted, but we

³⁸ See 40 C.F.R. §§ 1503.1(b) (public comments on an FEIS “may” be requested), 1505.1(e) (encouraging making a document available to the public before the decision is made if it accompanies an FEIS to the decisionmaker and relates to its comparison of the alternatives).

³⁹ See ROD at 18-19, 27-28, 87; BLM Answer at 17-18.

⁴⁰ See EIS at 1-18 to 1-19.

⁴¹ See SOR at 19-23; Reply at 9 (“From the initial scoping comments and on, the Coalition members and the public objected to locating the transmission line near the town of Cokeville, Wyoming, and private lands”), 12.

⁴² See 40 C.F.R. § 1502.9(b) (“Final environmental impact statements shall respond to comments as required in part 1503 of this chapter.”); EIS, Appendix L at L-192 to L-193; ROD at 27-28; ROD, App. A at A-233 to A-241, A-246 to A-247; ROD, Appendix K at 7-8; LCRR at A-7, A-8.

⁴³ See 40 C.F.R. §§ 1502.9(b), 1503.4(a) (Response to comments).

⁴⁴ SOR at 22.

know of no law or rule requiring it to do so. Nor do we find BLM acted without a rational basis or contrary to law because, as explained in the ROD, these Idaho segments could be deferred because they had independent utility and could be pursued separately from the rest of the Project.⁴⁵

We find BLM provided a cogent explanation for why it chose not to review the burial or cut-over alternatives in detail. BLM rejected the Coalition's burial option because it was prohibitively expensive, not economically feasible, and would not have a lesser environmental impact than an overhead line.⁴⁶ The Coalition has not shown BLM erred in assessing the costs or environmental impacts of burying the line or that burial is economically feasible and less environmentally disruptive than overhead lines.⁴⁷ It has therefore failed to show BLM erred in considering the burial option.

As to the cut-over route, BLM found that since it would traverse a "Sage-Grouse Core Area" outside a designated utility corridor for avoiding or minimizing adverse impacts to the Greater sage-grouse,⁴⁸ this route would require an exception from Wyoming's sage-grouse core area policy, whereas the Cokeville Re-route does not cross a Sage-grouse Core Area and would be consistent with that policy.⁴⁹ As explained in responding to comments on the cut over route in the FEIS:

The Governor's executive order (EO) does not list avoiding private land as a justification for routing through core habitat outside a designated [sage-grouse] corridor. As required by the Governor's policy, the

⁴⁵ ROD at 19-20; *see* EIS at 1-25 to 1-26.

⁴⁶ *See* EIS at 2-138 (burial option not feasible "because of the high cost of an underground line compared to overhead [lines]"); ROD, Appendix A at A-235; LCRR at 5 ("[P]lacing an 8-mile section of the transmission line underground would cost between \$112 and \$208 million, compared to \$16 million for an aboveground line."); LCRR, Attachment A at A-7 ("Per comments and request by Lincoln County to underground a portion of the line, [BLM] explained that underground high-voltage transmission lines have significant disadvantages, most notably related to environmental effects . . . and increased cost.").

⁴⁷ Reply to Proponents at 12 (citing EIS at 2-138).

⁴⁸ *See* ROD at 27, 28 ("A 'cutover' route . . . did not present an alternative alignment that minimized impacts to a greater extent or in a different manner than other alternatives already considered in the EIS").

⁴⁹ *See* ROD at 28 ("The Selected Alternative [Cokeville Re-route] generally follows an established utility corridor on BLM-managed lands and complies with the Wyoming Governor's Greater Sage-grouse EO [Executive Order].").

existing disturbance and the additional project disturbance cannot exceed 5 percent in a core area outside the designated corridor. A disturbance calculation was completed for the County's proposed reroute in July 2013. The existing disturbance was over 23 percent.^[50]

Appellant disputes whether its cut-over route would exceed the 5% disturbance threshold by proffering post-decision documents, but since these documents were prepared after the FEIS and ROD issued, its proffer does not show BLM erred in its discussion of that route in the ROD or its FEIS.⁵¹

In sum, the Coalition claims the burial and cut-over options should have been considered in detail, but they fail to show by evidence or argument that BLM violated NEPA by not doing so in its FEIS for the Gateway West Transmission Line Project.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

/s/
James K. Jackson
Administrative Judge

I concur:

/s/
Christina S. Kalavritinos
Administrative Judge

⁵⁰ ROD, Appendix A at A-237; *see* Proponent Answer, Ex. A, E-mail from Rocky Mountain Power dated Oct. 23, 2013 (“[D]isturbance within the [Density/ Disturbance Calculation Tool] examination area was calculated to be 23.04% excluding the cutover route and 23.33% including the cutover route, which is well above the 5% disturbance threshold.”); *see also* ROD at 18; LCRR, Attachment A at A-8.

⁵¹ *See* Reply to Proponents at 12-13; *id.*, Ex. B, E-mail from Wyoming Game and Fish Department dated Dec. 19, 2013; *id.*, Ex. C, Greater Sage-Grouse Habitat Assessment Report: Gateway West Transmission Line Project Kemmerer Reroute, Tetra Tech. Inc., Nov. 26, 2013, at 1.