United States Department of the Interior
OFFICE OF HEARINGS AND APPEALS
Interior Board of Land Appeals
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January 31, 2011

IBLA 2010-137	)	UTU-74631
	)	
URANIUM WATCH and	)	Mining Plan of Operations
RED ROCK FORESTS	)	
	)	Affirmed

ORDER

Uranium Watch and Red Rock Forests have appealed the March 31, 2010, decision on State Director Review (SDR), Utah State Office, Bureau of Land Management (BLM), that affirmed a May 26, 2009, Finding of No Significant Impact and Decision Record (FONSI/DR). This FONSI/DR was issued by the Monticello Field Office (MFO), BLM, which approved the Daneros Uranium Mine Project (Daneros Mine) Plan of Operations, UTU-74631, based on Environmental Assessment (EA) UT-090-07-43 (May 2009), prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2006). Administrative Record (AR) 603.[1] Appellants contend the EA is inadequate because it failed adequately to consider cumulative impacts and identify specific emission standards for the reclamation of the Daneros Mine. For the reasons discussed below, we affirm the State Director's decision on the issues here raised on appeal.[2]

Background

The Daneros Mine is to be in NE¼SW¼ and NW¼SE¼, sec. 6, T. 37 S., R. 16 E., Salt Lake Meridian, San Juan County, Utah, approximately four miles southwest of the town of Fry Canyon in Bullseye Canyon. EA at 2. White Canyon

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[1] MFO prepared an Administrative Record (AR) consisting of groups of documents numbered 101 to 758. Additional documents related to SDR and the decision by the Utah State Director are numbered 1001 through 1021.

[2] An appeal of a related decision was filed by the Southern Utah Wilderness Alliance and is docketed as IBLA 2010-138. Both appeals concern the Daneros Mine, the EA, and the FONSI/DR, but since they challenge separate decisions on SDR and raise significantly different issues, we address each appeal separately.

Exploration LLC filed an initial mining plan of operations on September 10, 2007, which MFO reviewed but found insufficient to meet the requirements of 43 C.F.R. § 3809.401(b). AR 101; AR 301; *see* 43 C.F.R. §§ 3809.11, 3809.21. A considerably more detailed plan was thereafter submitted by the Utah Energy Corporation (UEC). AR 103. MFO informed UEC that its plan was complete in October 2008 and that a decision on its proposed plan of operations would be made after an EA was prepared. AR 303; *see* AR 106; AR 302; EA at 1.

MFO issued a scoping notice that was published in local newspapers and mailed to other agencies, interested parties, and various Native American tribes. AR 204, 206, 207, 208, 213, 214, 305; *see* EA at 5, 51-54. Uranium Watch commented on behalf of itself, Red Rock Forests, and others. AR 211. MFO issued a proposed EA with a 30-day public comment period on March 5, 2009; Uranium Watch again submitted comments on behalf of itself and others. AR 231, 601; *see* AR 225, 226, 602; EA at 48-50. The EA was revised in May, and the FONSI/DR was issued on May 26, 2009.

The proposed action is described in the EA as involving the drilling of development holes to delineate the ore body, excavating two portals for access to the ore, drilling forced-ventilation boreholes, and developing areas for a mine yard, stock pile, waste pile, office, and shop. EA at 7-8; *see* AR 103. Total surface disturbance would be 4.5 acres, including 3.5 acres disturbed by prior mining operations. EA at 7. Mining would be conducted using room-and-pillar extraction, with ore transported by truck to the White Mesa Uranium Mill in Blanding, Utah. EA at 10, 13, 29, 42, 47. Operations would occur on 6 of 65 mining claims owned by UEC, continue through 2016 at an average monthly production rate of 1,200 tons, and produce 100,000 tons of ore for processing at the White Mesa Mill over the anticipated 7-year life of the Daneros Mine. *Id.* at 7, 10-11; *see* EA, App. K at K-2.

The cumulative impacts section of the EA analyzes past, present, and reasonably foreseeable future actions. EA at 45-47 (Cumulative Impact Analysis). The Daneros Mine is within the 650 square-mile White Canyon mining area that produced nearly 2.3 million tons of ore between 1948 and 1987. It is in the Red Canyon watershed where uranium mining had occurred, including three small mines (less than 1 acre each) also in Bullseye Canyon. *Id.* at 45, 46. Since each produced ore from the same deposit and utilized similar ore controls, MFO stated their mine dumps "are expected to be very similar" and that it sampled the dump and nearby soils at one of them, concluding "it is unlikely that hazardous concentration of [radionuclide compounds] would significantly affect local watershed characteristics." *Id.* at 46. The EA also notes that certain uranium milling facilities in San Juan County are listed for cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675 (2006),

including the Fry Canyon Mill approximately 3.5 miles west of the Daneros Mine, and while remediation is necessary at some, it is "speculative to predict when BLM may begin that work under its CERCLA authority." EA at 45.

The EA reports that MFO received 9 notices for exploratory uranium drilling in the Red and White Canyon areas, a total of 15 acres were disturbed pursuant to those notices, and, except for the Tony M Mine where mining was suspended, "there are no other mine operations proposed at this time that would contribute to cumulative impacts." *Id.* at 45. MFO responded to appellants' comment that other UEC uranium projects should be considered by stating:

> As stated in the EA, there are no other mining operations proposed at this time that would contribute to cumulative impacts. Many companies, including UEC, have other properties in San Juan County or elsewhere in Utah that may or may not be developed. Cumulative impacts are based on reasonably foreseeable actions scenarios, not speculation.

EA, App. M at M-7; *see* AR 231[3]; *see also* EA, App. M at M-4 ("BLM has not identified any uranium mining, milling, or nuclear power plants that are connected actions in terms of contributing to cumulative impacts").

The EA identifies reclamation requirements for the Daneros Mine that include excavating the ore stockpile "to remove all radionuclide-bearing rock with values above background," either transporting that rock to the White Mesa Mill for treatment or placing it "within the mine workings," and then covering the excavated stockpile area. EA at 14. In analyzing radiation impacts from reclamation, the EA states:

> Based upon residual radiation modeling and a comparative study presented in Appendix I, the 12 inches of topsoil cover added during reclamation, combined with the inert waste rock used to cover the proposed waste rock pile prior to reclamation, would reduce the exposure rate to . . . 0.1 percent of the NRC [Nuclear Regulatory Commission] guideline of 100 mrem/yr (10 CFR 20.1301). A gamma

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[3] In commenting on the draft EA and reasonably foreseeable future development, Uranium Watch stated: "According to the website of White Canyon Uranium, the parent company of Utah Energy Corporation, the company has three additional proposed uranium projects in the vicinity of the Daneros project in San Juan County." AR 231 at 2.

> survey would be conducted on the covered waste rock pile when mining operations are complete to ensure less than 100 mrem/yr exposure for the general public.
>
> Therefore, under the Proposed Action, the impact to public health from radiation exposure is expected to be minimal based on the protective measures described in the MPO.

EA at 41-42. Appellants commented on the draft EA's discussion of reclamation by stating it failed to identify reclamation standards or guidelines for uranium mines and that the Daneros Mine (if approved) would have "no radiation-monitoring program, no reporting of radon emissions, no remediation standards, [and] no post-closure monitoring program." EA, App. M at M-11. BLM responded: "Reclamation standards for mines, including monitoring requirements, are based on site-specific impacts analyzed in the EA and mitigation proposed as a result. Specific reclamation and monitoring standards would be attached as conditions of approval to any BLM decision authorizing the action." *Id.* at M-8.

MFO's combined FONSI/DR is based on the above-described EA, which was tiered to the August 2008 Final Environmental Impact Statement for the MFO Resource Management Plan (FEIS/RMP). EA at 1; *see* AR 744. In making its FONSI, MFO states: "None of the environmental effects discussed in detail in the EA and associated appendices are considered significant, nor do the effects exceed those described in the [FEIS/RMP]." FONSI/DR at 2. Its DR authorizes mining operations under UEC's proposed plan but made that authorization contingent on implementing 43 mitigation measures and 7 monitoring requirements, including measures and requirements applicable to reclamation. FONSI/DR at 5-6, Attach. A & B. Appellants timely requested SDR, reiterated concerns expressed in their comments on the draft EA, and again identified projects that may be undertaken by UEC's parent company and raised concerns with radiation and the absence of appropriately protective reclamation standards. *See* AR 1001 at 5, 6, 8-9, 10-13. The State Director denied that request by decision dated March 31, 2010 (Decision); this appeal followed.

Discussion

Appellants contend BLM's decision on SDR should be reversed. They claim the EA fails adequately to address cumulative impacts of other mining activities that may be undertaken by UEC's parent company and continuing impacts to soils, water, and air from past uranium mining in the area, the State of Utah, and the Four Corners region. They also claim MFO failed to consider cultural resource impacts at the White Mesa Mill where Daneros ore will be processed or to identify adequate standards for reclaiming the Daneros Mine. As is true in any appeal to this Board, the

burden is on the appellants to show error in the decision on appeal, but as discussed below, appellants have failed to do so in this case.

Appellants claimed in their request for SDR that the EA failed adequately to address the cumulative impacts of mining that may occur in the future and had occurred in the past, as well as the adequacy of BLM reclamation standards. On appeal, they largely restate those claims, rely on the same "facts" earlier identified in their comments on the draft EA, make passing reference to the decision on appeal, but identify no specific error in that decision. *Compare* Statement of Reasons (SOR) *with* AR 1001; *see* AR 231. Under similar circumstances, we have held:

> The right of review provided by this Board is not intended to be a circular promenade in which the parties simply repeat their steps. We have repeatedly stated that an appellant is required to point out affirmatively why the decision under appeal is in error [and have] held this requirement is not satisfied if the appellant "has merely reiterated the arguments considered by the [decisionmaker below], as if there were no decision . . . addressing those points."

In Re Mill Creek Salvage Timber Sale, 121 IBLA 360, 362 (1991) (quoting *Shell Offshore, Inc.*, 116 IBLA 246, 250 (1990)[4]) (citations omitted); *accord Wyoming Outdoor Council*, 172 IBLA 289, 294 (2007); *BARK (In re Rusty Saw Timber Sale)*, 167 IBLA 48, 70 (2005); *Oregon Natural Resources Council*, 139 IBLA 16, 20 (1997). While the Board may summarily affirm the decision on appeal under such circumstances, it is not required to do so. *See In re North Trail Timber Sale*, 169 IBLA

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[4] To place our reliance on and quotation from *Shell Offshore, Inc.*, in proper context, we there stated:

> The Board has noted many times that "the failure on appeal to point out affirmatively why the decision appealed from is in error may be treated in the same manner as an appeal in which no statement of reasons has been filed." *United States v. De Fisher*, 92 IBLA 226 (1986), and cases cited. In this regard, we would point out that, before the Board, the decision under review is . . . of the Director, [Minerals Management Service]. Appellant has, as a general matter, not attempted to address any of the holdings in the Director's decision. Rather, it has merely reiterated the arguments considered by the Director, as if there were no Director's decision addressing those points. It seems clear that, in accord with our precedents, this appeal is subject to summary dismissal.

116 IBLA at 250.

258, 262 (2006); *Thelbert Watts*, 148 IBLA 213, 217 (1999); *In re Cedar Pot Thinning Sale*, 122 IBLA 53, 62-63 (1992); *J.W. Weaver*, 124 IBLA 29, 31 (1992). We have reviewed the record, appellants' request for SDR, and the State Director's decision against the claims raised on appeal and conclude that he properly denied their request for SDR. Each issue raised by appellants is addressed separately below.

I. The EA Adequately Considered the Cumulative Impacts of Proposed Mining Operations at the Daneros Mine.

Appellants aver that White Canyon Uranium Limited (WCU), UEC's parent company, intends to mine uranium ore at four sites in the vicinity of the Daneros Mine and that there are "thousands [of closed uranium mines] in Utah and in the region," claiming it was error for MFO not to include these future operations and those closed mines in its analysis of cumulative impacts. SOR at 3, 6. As noted, BLM addressed these issues in the EA and in responding to appellants' comments on the draft EA. EA at 45, 46, App. M at M-4, M-7. In their request for SDR, appellants identified over a dozen sites where they believe uranium mining is likely to occur and impact the environment in San Juan County, Southeastern Utah, Western Colorado, and Northern Arizona and asserted that several hundred closed uranium mines in the region continue to impact the regional environment. *See* Request for SDR at 4-8, AR 1001. They then claimed it was a dereliction of duty for BLM not to prepare an EIS to "assess and consider all of the cumulative impacts (past, current, and expected) associated with uranium mining in San Juan County and the region, as required by NEPA." *Id.* at 8.

In the Decision on appeal, the State Director found, with the exception of hauling stockpiled ore from the Tony M mine, that "there are no other mine operations proposed at this time that would contribute to cumulative impacts" and that the cumulative impacts from several inactive uranium mines in the Red Canyon watershed were identified and discussed in the EA, including three closed mines also located in Bullseye Canyon. Decision at 3 (quoting EA at 45, 46). He then stated:

> UW [Uranium Watch] contends that many more actions require analysis but provides no explanation of how dispersed individual actions, when combined with the proposed action, would cumulatively impact any particular watershed, airshed or other resource. Nor does UW make the case that any of these separate actions are reasonably foreseeable future actions that BLM should have studied for their cumulative impacts.

Decision at 4. The State Director concluded: "UW, thus, fails to show that BLM erred in its analysis of the potential cumulative impacts from past, present, and reasonably

foreseeable future actions or the associated activities of the Daneros Mine." *Id.* We agree.

NEPA requires a Federal agency to prepare a detailed statement addressing "the environmental impact of the proposed action" when approval of the action would constitute a "major Federal action[] significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C) (2006). Regulations promulgated by the Council on Environmental Quality allow an agency to decide whether to prepare such a statement, known as an environmental impact statement (EIS), by writing an EA and issuing a FONSI if it determines that an EIS is not required. *See* 40 C.F.R. §§ 1500.4(q), 1501.4, 1508.9, 1508.13. A BLM decision approving an action based upon an EA and FONSI generally will be affirmed when the record demonstrates that BLM (1) identified the relevant areas of environmental concern, (2) took a "hard look" at the potential environmental impacts of the proposed action, and (3) presented a convincing case that the action will not result in a significant environmental impact or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. *M.K. Resources Co.*, 179 IBLA 299, 302 (2010), quoting *Oregon Chapter Sierra Club*, 176 IBLA 336, 346 (2009). "The Board 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, relevant environmental concerns have been identified, and the final determination is reasonable." *Id.*

A party challenging BLM's decision to approve a proposed action must show that it was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider an environmental question of material significance to the proposed action. *Randy A. Green*, 177 IBLA 264, 280 (2009), and cases cited; *Wilderness Watch*, 176 IBLA 75, 87 (2008). When preparing an EA in order "to determine whether preparation of an EIS is required, it is necessary to consider whether it is reasonable to anticipate cumulatively significant impacts from the proposed project when direct impacts are added to the impacts of reasonably foreseeable future actions related to the proposed project." *Sierra Club*, 111 IBLA 122, 135 (1989), *aff'd sub nom. Sierra Club v. Hodel*, 737 F. Supp. 629 (D. Utah 1990), *aff'd sub nom. Sierra Club v. Lujan*, 949 F.2d 362 (10th Cir. 1991). A "cumulative impact" is defined as:

> the 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 C.F.R. § 1508.7. However, BLM is not required to consider cumulative impacts that are speculative, indefinite, or not otherwise reasonably foreseeable, future actions. *See* 43 C.F.R. § 46.30 (definition). As with other aspects of an EA, the Board applies a "rule of reason" when evaluating whether impacts have been adequately addressed. *Santa Fe Northwest Information Council, Inc.*, 174 IBLA 93, 107-108 (2008); *National Wildlife Federation*, 169 IBLA 146, 155 (2006); *Southern Utah Wilderness Alliance*, 161 IBLA 15, 19 (2004).

Appellants limit their early claims concerning reasonably foreseeable future actions on WCU's expectation that it may mine uranium at four sites in the vicinity of the Daneros Mine. *Compare* SOR at 3 *with* Request for SDR at 5, AR 1001. BLM acknowledges that uranium mining may occur in the future, as evidenced by recent exploratory drilling in the Red and White Canyon areas noted in the EA, and appellants are apparently correct in asserting that WCU may pursue uranium mining in San Juan County. Nonetheless and until plans of operation are submitted or other information is available to identify the potential scope and likelihood of future operations by WCU or others, such operations are not reasonably foreseeable, and any discussion of their potential environmental impacts would be based on speculation. *See Missouri Coalition for the Environment*, 172 IBLA 226, 247-48 (2007). We are unpersuaded that the State Director erred in rejecting appellants' claim that the EA failed adequately to consider the impacts of reasonably foreseeable actions, including the WCU projects here at issue that may or may not materialize in the future.

BLM does not contest appellants' assertion that "there are reclaimed and un-reclaimed uranium mines on public lands that continue to contribute to the contamination of soil, air, and water in the vicinity of the Daneros Mine and throughout the region." SOR at 6. It did not ignore continuing impacts from past mining activities in its consideration of cumulative impacts. To the contrary, as noted, the EA recognized there are several closed mines in the Red Canyon watershed and analyzed their impacts by focusing on the three closest to the Daneros Mine site, which are all in Bullseye Canyon (less than a half mile away) and produced uranium ore from the same deposits. *See* EA at 46.[5]

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[5] The EA also found that reclaiming "a part of the old McCarty-Coleman waste rock dump" under the proposed action "would result in minor beneficial cumulative impacts by reducing the total amount of radioactive materials or other compounds currently entering the Red Canyon watershed, reducing the total amount of airborne

(continued...)

Appellants contend BLM should also have analyzed "past uranium mining operations on BLM land in the area of the Daneros Mine and thousands in Utah and in the region." SOR at 6. The State Director rejected their earlier, similar claim because they failed to explain "how dispersed individual actions, when combined with the proposed action, would cumulatively impact any particular watershed, airshed or other resource." Decision at 4. BLM limited its analysis to the Red Canyon watershed and focused on the three mines closest to the Daneros Mine. Appellants believe more closed mines should have been considered but have not responded to the deficiency identified by the State Director or shown that his decision was premised on a clear error of law or a demonstrable error of fact. Nor have they shown that BLM erred in its consideration of the cumulative impacts of past uranium mining. *See Randy A. Green*, 177 IBLA at 280. We, therefore, affirm the State Director's decision on this issue. *See* Decision at 4.

II. Appellants Did Not Raise Potential Cultural Resource Impacts at the White Mesa Mill in their Request for SDR.

Appellants claim the EA is inadequate for failing to consider the expansion of "the White Mesa Mill to accommodate the uranium mill tailings produced from ore that has been, is being, and will continue to be mined on BLM land" because its new tailings impoundment "will result in the destruction of cultural resources at White Mesa." SOR at 4. In support, they refer to a 1985 "Cultural Resource Easement Agreement" for a land exchange between BLM and the mill's former owner and a 1980 archeological survey, which included those exchanged lands and identified prehistoric, two historic, and two paleontological sites within the eight-square mile area surveyed. SOR at 5. However, the only reference to the White Mesa Mill in their request for SDR is that several uranium mines, including the Daneros Mine, are sending or will send their ore to that mill for processing; no impacts associated with ore processing are identified and no mention is made of cultural resources. *See* Request for SDR at 5, AR 1001.

Our rule at 43 C.F.R. § 4.410(c) states:

> Where BLM provided an opportunity for participation in its decisionmaking process, a party to the case, as set forth in paragraph (a) of this section, may raise on appeal only those issues:

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[5] (...continued)
dust from the wast rock dumps, and reducing the public exposure to radiation in Bullseye Canyon." EA at 46-47.

> (1) Raised by the party in its prior participation; or
>
> (2) That arose after the close of the opportunity for such participation.

The Department explained that this rule neither expanded nor restricted any right of appeal, but codified existing precedent in cases such as *Henry A. Alker*, 62 IBLA 211, 212 (1982), under which "IBLA will not adjudicate issues raised for the first time on appeal, except in extraordinary circumstances." 68 Fed. Reg. 33794, 33795 (June 5, 2003). As explained in *Southern Utah Wilderness Alliance*, 128 IBLA 52, 59 (1993):

> The rationale for the approach taken in [both *Henry A. Alker*, 62 IBLA 211 (1982) and *Kenneth W. Bosley*, 99 IBLA 327, 333 (1987)] is that generally it is best to allow the initial decisionmaker to confront objections to proposed actions and to limit the Board's review to appeals of decisions addressing those objections because such a process follows the logical framework for decisionmaking within the Department, as it relates to BLM actions. *See California Association of Four Wheel Drive Clubs*, 30 IBLA 383, 385 (1977).
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> This case involves a process different from the standard protest/appeal procedure. Here, an intermediate appeal is available to the State Director. Nevertheless, the rationale for the limitation on review is the same. Accordingly, the Board may limit its review of an SDR decision to allegations of error in the disposition of the issues presented during SDR.

Accord Forest Guardians, 170 IBLA 253, 259 (2006); *Colorado Environmental Coalition*, 169 IBLA 137, 140 (2006).

In broad terms, a comment or request for SDR identifies concerns with or objections to a proposed action or inaction so that they can be considered, evaluated, and responded to (if appropriate) by the decisionmaker and result in better, more informed decisions for our review (if necessary). Neither a comment nor a request for SDR is a shibboleth that requires our review of any and all issues expressly, indirectly, or inferentially raised; nor does it create an immutable boundary beyond which no issue may be considered or error corrected by this Board. It is not possible to draw a bright line beyond stating hortatory principles (*e.g.*, there must be an appropriate degree of similarity with the issues on appeal or those issues must be the logical or legal outgrowth of an earlier-filed comment/request). Logic, common sense, and experience must necessarily inform and guide where we draw the line in any given appeal to determine whether an issue is above or below that line.

Beyond making what appears to be a passing reference to the White Mesa Mill, there is no indication in appellants' request for SDR that they were concerned with associated impacts at the mill or cultural resources in the area. We therefore conclude appellants are precluded from raising that issue for the first time here.[6] 43 C.F.R. § 4.410(c); *see Confederated Tribes of the Goshute Reservation*, 177 IBLA 171, 182 (2009).

III. BLM Identified Legally Sufficient Requirements for Reclamation.

Appellants contend that the reclamation standards for the Daneros Mine are inadequate, claiming there are neither "specific reclamation standards for radioactive and non-radioactive emission[s]" nor performance standards that address the "ongoing release of radon or other radionuclides from uranium mines." SOR at 6-7. Similar, but less focused, claims were raised in their comments on the draft EA and request for SDR. *See* AR 231 at 9; AR 1001 at 10. The State Director referred to 43 C.F.R. § 3809.420(b)(3)[7] and then responded to those claims by finding:

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[6] We note that appellants' proffered information does not show where the tailings impoundment at the White Mesa mill will be located or that its expanded facilities correspond to any of the prehistoric, historic, or paleontological sites identified in the 1980 archeological study. Absent more specific information, appellants' claim is based solely on supposition and speculation, which is insufficient to show error under NEPA.

[7] The rule at 43 C.F.R. § 3809.420(b)(3) (*Specific Standards–Reclamation*) states:

> (I) At the earliest feasible time, the operator shall reclaim the area disturbed, except to the extent necessary to preserve evidence of mineralization, by taking reasonable measurers to prevent or control on-site and off-site damage to the Federal lands.
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> (ii) Reclamation shall include, but shall not be limited to: (A) Saving of topsoil for final application after reshaping of disturbed areas have been completed; (B) Measures to control erosion, landslides, and water runoff; (C) Measures to isolate, remove, or control toxic materials; (D) Reshaping the area disturbed, application of the topsoil, and revegetation of disturbed areas, where reasonably practicable; and (E) Rehabilitation of fisheries and wildlife habitat.
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> (iii) When reclamation of the disturbed areas has been completed, except to the extent necessary to preserve evidence of mineralization, the authorized officer shall be notified so that an inspection of the area can be made.

> In the EA, specific reclamation and monitoring requirements were determined based upon the analysis of potential environmental impacts given the particular design elements of the Daneros Plan of Operations. Baseline site conditions were evaluated through on-site sampling and surveys of the biological and physical environments. The results of these baseline samplings and surveys are fully document in the EA (Appendices B, F, G, I and J). These results were integral in determining site-specific reclamation requirements for the proposed Daneros Mine. Refer to Sections 4.2.2 and 4.2.4 of the EA for specific reclamation requirement calculations. Finally, development of bureauwide regulations and policy guidance regarding the reclamation of uranium mines is well beyond the scope of this analysis.

Decision at 7. Appellants largely recast their earlier claims but fail to show that the State Director's decision was premised on an error of law or fact or otherwise failed properly to consider NEPA. In any event, we have independently reviewed the record and find no error in that decision.

The Conditions of Approval for the Daneros Mine include several that expressly address radiation emissions and reclamation, including:

> 2. All waste rock will be checked with a gamma meter prior to disposal to ensure that material placed on the dump does not exceed 0.015 percent U3O8. Any sub-ore material exceeding 0.015 percent U3O8 will be placed in an interim stockpile and mixed with ore and shipped to the mill, or placed back in worked-out areas of the mine.
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> . . . .
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> 15. Any solid wastes that qualify as low-level wastes for radiation contamination, per Nuclear Regulatory Commission (NRC) guidelines (i.e., not a product or a by-product of ore extraction or production), shall be handled in accordance with the Low-Level Radiation Waste Policy Amendments Act of 1985 at an NRC-approved facility.
>
> . . . .
>
> 25. As part of the site reclamation, UEC shall excavate the ore stockpile area to remove all radionuclide-bearing rock with values above background. The rock shall either be transported to the White Mesa Mill for treatment or shall be returned to the mine workings.

. . . .

> 34. The mine shall operate in accordance with federal regulations that are designed to protect the mine workers and general public from radiation exposure.

FONSI/DR, Attach. A. As to compliance and monitoring, it specifies:

> A gamma survey by a certified Radiation Safety Officer shall be conducted on the waste rock dump after application of cover material and prior to seeding. The survey report shall be submitted to BLM. If the gamma radiation dose, assuming a 14-day exposure period, is found to exceed 0.1 mrem/yr over background, then UEC shall apply additional cover material to meet this standard.

FONSI/DR, Attach. B (#6). Moreover, the need for additional radiation controls can be considered and addressed during permitting of the Daneros Mine by the Utah Division of Oil, Gas, and Mining and the Utah Division of Air Quality. *See* FONSI/DR at 6; EA at 3-5; *see also* Request for SDR, AR 1001 at 3 ("both radioactive and non-radioactive emissions that are regulated under federal and state statutes and regulations").

NEPA requires that a FONSI and its supporting EA must identify the relevant areas of environmental concern, take a "hard look" at environmental impacts, and present a convincing case that the proposed action will not result in a significant impacts. This EA and FONSI did so by identifying potential radiation emissions, analyzing their impacts, and specifying measures to mitigate those impacts. *See* EA at 34-35, 41-42. We find no merit to appellants' claim that the EA and FONSI/DR are deficient in their consideration of radiation impacts or radioactive emissions during reclamation at the Daneros Mine[8] and that the State Director's rejection of those claims was reasonable and is supported by the record.

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[8] To the extent appellants believe BLM should promulgate performance standards specifically applicable to uranium mines and the reclamation of uranium mines, they are free to raise their concerns with those in the Department who have the authority to initiate such a rulemaking (e.g., by filing a petition for rulemaking under the Administrative Procedure Act, 5 U.S.C. § 553(e) (2006)). It is not for this Board to require that BLM promulgate rules absent a statutory requirement that it do so; no such requirement is here identified by appellants.

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 State Director's decision on March 31, 2010, is affirmed.

James K. Jackson
Administrative Judge

I concur:

Christina S. Kalavritinos
Administrative Judge

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