

SOUTHERN UTAH WILDERNESS ALLIANCE  
UTAH CHAPTER OF THE SIERRA CLUB

IBLA 91-330

Decided December 31, 1991

Appeal from a decision of the Deputy State Director, Utah State Office, Bureau of Land Management, affirming a Record of Decision and Finding of No Significant Impact issued by the Area Manager, San Juan Resource Area, approving six Applications for Permits to Drill. SDR No. UT-91-12.

Affirmed.

1. Environmental Policy Act--Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact--Oil and Gas Leases: Drilling

A determination that approval of an application for permit to drill exploratory wells will not have a significant impact on the quality of the human environment will be affirmed on appeal if the record establishes that a careful review of the environmental problems has been made, relevant areas of environmental concern have been identified, and the final determination is reasonable. The party challenging the determination must show that the determination was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance. Mere differences of opinion provide no basis for reversal if BLM's decision is reasonable and supported by the record on appeal.

2. Environmental Policy Act--Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact--Oil and Gas Leases: Drilling

The Bureau of Land Management is not required to provide for public review of an environmental assessment of applications for permits to drill exploratory wells before making a finding of no significant impact and

deciding to approve the applications when the proposed action is not closely similar to one which normally requires the preparation of an environmental impact statement.

3. Endangered Species Act of 1973: Mitigation--Environmental Policy Act--National Environmental Policy Act of 1969: Generally--Oil and Gas Leases: Drilling

The Bureau of Land Management does not violate sec. 7 of the Endangered Species Act, 16 U.S.C. § 1536 (1988), by approving applications for permits to drill before receiving a belated response from the U.S. Fish and Wildlife Service to a request for consultation when it plans to require the lessee to take an action that obviates the need for formal consultation.

APPEARANCES: Scott Groene, Esq., Moab, Utah, for Southern Utah Wilderness Alliance; Christine Osborne, Salt Lake City, Utah, for Utah Chapter of The Sierra Club; A. Scott Loveless, Esq., Office of the Regional Solicitor, Salt Lake City, Utah, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE IRWIN

The Southern Utah Wilderness Alliance (SUWA) and the Utah Chapter of the Sierra Club (UCSC) have appealed the May 23, 1991, decision of the Deputy State Director, Mineral Resources, Utah State Office, Bureau of Land Management (BLM), affirming the April 4, 1991, Record of Decision (ROD) and Finding of No Significant Impact (FONSI) issued by the Area Manager, San Juan Resource Area, BLM, approving six Applications for Permits to Drill (APD's) exploratory wells in the White Canyon area of San Juan County, Utah, submitted by Ampolex (Texas), Inc. (Ampolex).

Administrative review of BLM's decisions concerning these APD's has resulted in two Board decisions on procedural matters. In October 1989, Notices of Staking were submitted by Ampolex to the Moab District Office, BLM, for five proposed exploratory wells on Federal leases U-51619, U-62889, U-62994, U-62995, and U-62997 in San Juan County. A Notice of Staking for a sixth well on U-62994 was submitted on November 30, 1989. In addition to these wells, Ampolex's exploratory drilling plan included four wells on adjacent State lands. The APD's for the six proposed wells were submitted on December 21, 1989. Public notice of the applications to drill the wells was published in the San Juan Record and the Salt Lake Tribune in January 1990 and public comment was invited until February 9. An environmental assessment (EA) for the six-well proposal, EA No. UT-069-90-14, was completed by the San Juan Resource Area Office, BLM, on February 9, 1990. 1/

1/ As a general matter, APD approval for exploratory drilling prior to the first confirmation drilling is an action categorically excluded from the National Environmental Policy Act (NEPA) process. 516 Departmental Manual

A ROD concurring with the approval of the APD's and a FONSI were signed by the San Juan Area Manager on February 12, 1990. The six APD's were approved by the Moab District Manager on February 15, 1990. An appeal to the Board of the Area Manager's decision was dismissed and the case was remanded to the Utah State Director, BLM, for administrative review in accordance with 43 CFR 3165.3(b). Utah Chapter Sierra Club, 114 IBLA 172 (1990).

By decision dated May 31, 1990, the Deputy State Director reversed the Area Manager's ROD and FONSI determinations, set aside the approval of the APD's, and remanded the EA to the Moab District Office and the San Juan Resource Area "to review \* \* \* in conjunction with current Bureau requirements and the comments presented in [the appellant's] appeal, and to revise and/or clarify the document where it is deficient" 2/ (Decision in SDR No. UT 90-3 (May 31, 1990) at 3).

On July 12, 1990, the BLM Area Manager wrote UCSC to state BLM was reanalyzing the EA, and added: "If you have any concerns, and would like to have input into the EA, we would like to know of these concerns. You have 10 days from receipt of this notice to send your comments to this office." UCSC responded on July 19, 1990, summarizing its concerns and referring to its appeal of the earlier version of the EA for a more thorough analysis.

BLM's Area Manager responded to this letter on October 9, 1990.

The resulting revision of the EA was completed on April 4, 1991. The Area Manager issued a new ROD and FONSI concurring with an approval of the APD's:

fn. 1 (continued)

(DM) Chapter 6, Appendix 5.4D(2)(d); Utah Chapter Sierra Club, 120 IBLA 229, 232 (1991). We note the Department's proposed revision of the Departmental Manual does not include APD approval as a categorical exclusion. 54 FR 47832-35 (Nov. 17, 1989).

Under 40 CFR 1508.4, the effect of a categorical exclusion is to eliminate the necessity for preparation of an EA. Glacier-Two Medicine Alliance, 88 IBLA 133, 140 (1985). Individual actions within a categorical exclusion may, however, require preparation of an environmental document under certain circumstances. Colorado Open Space Council, 73 IBLA 226, 231 (1983); 516 DM Chapter 2.3A(3) and Appendix 2. Although 43 CFR 3162.5-1(a) requires the authorized officer to prepare either an environmental record of review or an EA, the record does not indicate why BLM decided to prepare an EA for these APD's. It contains only a "Confirmation/Report of Telephone Conversation" prepared by Kimberly Jones, Applications Examiner, dated Jan. 11, 1990, that states: "DM [District Manager] asked for an EA & public review period. APD approval will be delayed until after review period. Should be some time in early Feb. '90."

2/ "Current Bureau requirements" include BLM Handbook H-1790-1, the National Environmental Policy Act Handbook, Release 1-1547, dated Oct. 25, 1988.

## DECISION RECORD

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### Rationale:

The surface use plan of the APD and the attached stipulations will prevent significant impacts and would not lead to unnecessary and undue degradation of the environment.

### Environmental Considerations:

I have considered the environmental consequences of this decision as documented in the accompanying environmental assessment referenced above. All environmental considerations have been adequately addressed in the accompanying document.

### STIPULATIONS

This decision incorporates by reference the attached stipulations. The stipulations have been developed to mitigate adverse environmental impacts which may result from the action permitted by this decision.

### FINDING OF NO SIGNIFICANT IMPACT

Based on the analysis of potential environmental impacts contained in the accompanying environmental assessment, referenced above, I have determined that impacts are not expected to be significant. Therefore, an environmental impact statement is not required.

EA No. UT-069-90-14, ROD and FONSI, Apr. 4, 1991.

On May 7, 1991, SUWA and UCSC requested that the State Director review and reverse the Area Manager's ROD and FONSI. <sup>3/</sup> After presenting their view of the facts, they argued (1) that BLM violated the National Environmental Policy Act (NEPA) by refusing to allow public participation; (2) that the EA was inadequate because it did not consider either cumulative impacts

<sup>3/</sup> The April 4, 1991, decision was mailed to appellants on April 5, 1991. 43 CFR 3165.3(b) requires that a request for State Director review be filed within 20 business days of receipt of the decision to be reviewed. Han-San, Inc., 113 IBLA 361 (1990). BLM's April 4, 1991, decision was not mailed by certified mail, return receipt requested, however, so there is no record of when appellants received the decisions. Although appellants' request for review was not received until May 7, 1991, we will not dismiss their appeal without evidence in the record that establishes their request for review was untimely filed. Mobil Oil Exploration & Production Southeast, Inc., 90 IBLA 173, 174-75 (1986).

or direct impacts on recreational, visual, and environmental values and on Bighorn sheep; (3) that the EA improperly failed to consider either a no-action alternative or other reasonable alternatives; (4) that issuance of three of the leases without considering a no-surface-occupancy stipulation violated NEPA; and (5) that approval of the APD's was a major Federal action that would significantly affect the quality of the human environment and therefore an environmental impact statement (EIS) should be prepared. See 42 U.S.C. § 4332(C) (1988).

In his May 23, 1991, decision, the Deputy State Director "addressed for clarification" several of appellants' factual statements and addressed each of their five primary arguments. He held (1) BLM complied with the public notice requirements of 43 CFR 3162.3-1(g) and 40 CFR 1501.4 and 1506.6 in October 1989 and January 1990 respectively and neither condition for public review of the EA and FONSI set forth in 40 CFR 1501.4(e) was applicable; (2) the EA and the 1987 Final EIS for the San Juan Proposed Resource Management Plan, to which the EA is tiered, 4/ address cumulative impacts and direct impacts on recreation, visual, and environmental values and Bighorn sheep; (3) the no-action alternative as well as the alternative of imposing no-surface-occupancy stipulations in the leases are not available because the leases were issued in accordance with the "open" leasing category established in the Management Framework Plan (MFP) and the rights under these leases may not be restricted in accordance with the current RMP until the leases are re-issued; 5/ (4) the three leases issued without

4/ Tiering is a technique of NEPA compliance encouraged by the CEQ. 40 CFR 1502.20, 1508.28. It is proper to only summarize the issues discussed in the broader statement by reference in order to concentrate on the issues specific to the instant action. Id. BLM's EA states it is tiered to the 1975 Programmatic Environmental Analysis Record (EAR), since the EAR provided for the present leases on the area of the project (EA No. UT-069-90-14 (1991), at 2). The EAR presented the environmental impacts associated with oil and gas exploration activities, focusing on the environmental impacts associated with petroleum exploration, development, production, and abandonment operations which follow the issuance of a lease. Id.

The EA is also tiered to the Final Environmental Impact Statement of September 1987 that was written for the San Juan Resource Area Resource Management Plan (RMP). Id. The RMP was approved on Mar. 18, 1991, and allows oil and gas lessees to exercise their valid existing rights in exploring for and developing oil and gas resources under the stipulations in effect when issued. "The leases have been issued under the 1975 EAR and these are in the open category. This means that there are no special requirements concerning the activities associated with the exploration, production, and abandonment of oil and gas activities in this area" (EA at 2).

5/ The EA provides the following additional explanation:

"The involved leases were issued in accordance with the now outdated Management Framework Plan (MFP) and the 1975 Programmatic Environmental Analysis that established the leasing categories. All the leases and locations are within the 'open category', except lease number U-62997

no-surface-occupancy stipulations were issued under the MFP open category, before the current RMP that would allow such stipulations was effective; and (5) the plans for the proposed APD's and the conditions of their approval provide sufficient mitigation so that they will not significantly affect the environment. The Deputy State Director concluded:

We find no reason to doubt the scope of the analysis of the EA. Therefore, we have determined to affirm the San Juan Resource Area Manager's Decision Record and Finding of No Significant Impact. An environmental impact statement is not required. The decision is consistent with the San Juan RMP and the terms and conditions of the six leases involved.

(SDR No. UT-91-12 at 6).

SUWA and UCSC timely appealed the Deputy State Director's May 23, 1991, decision. On June 6, 1992, appellants filed a request for a stay of the decision to approve the APD's. In its answer, BLM argued that

fn. 5 (continued)

which does contain some area of no surface occupancy and some area with seasonal restrictions for Bighorn sheep. However, location 21-26 on lease U-62997 does not contain any of these restrictions. This portion of the lease is in the open category portion of the lease.

"The Resource Management Plan (RMP) for the San Juan Resource Area is now final and provides for an Area of Critical Environmental Concern (ACEC) requiring a no surface occupancy (NSO) stipulation on the areas involving locations 33-24, 21-26, and 21-12. However, the leases involving these locations were issued prior to approval of the RMP and do not contain the NSO stipulation. Once a lease is issued it is subject to the rights conveyed at the time of issuance. Further decision affecting activity on these leases cannot abrogate rights granted upon issuance. The provisions provided in the RMP would be imposed upon reissuance of these leases. Therefore, this environmental assessment (EA) is being written to conform to the provisions of the current leases (EA at 1)."

We note that we cannot be sure this quotation from the EA is accurate. Although we requested the original of the EA and its appendices in our order dated August 12, 1991, BLM did not provide it. The copy in the record is difficult to read. We remind BLM that "it is essential to the proper functioning of the Department's administrative review process that all agencies whose decisions are subject to appeal to the Board \* \* \* forward the complete, original administrative record to the Board within ten business days of receipt of a notice of appeal." Utah Chapter Sierra Club, supra at 175 (emphasis supplied). See also BLM Manual 1841.15 A., Release 1-1571, Dec. 4, 1989: "If an appeal is filed \* \* \*, the office in which the appeal is filed \* \* \* will forward the official case file to the Board within 10 business days of receipt of the appeal. \* \* \* It is recommended that a dummy file be created and retained for interim use and as assistance to the field solicitor." (Emphasis supplied.)

the authority for a stay cited by appellants in their request, 43 CFR 3165.4(c), was not appropriate. We re-examined the regulations dealing with appeals of orders and decisions under the oil and gas operations regulations and decisions applying those provisions in Utah Chapter of the Sierra Club, 121 IBLA 1 (1991). After holding that the Deputy State Director's decision affirming the approval of the APD's was suspended by appellants' appeal, we recognized special circumstances exist in this case and granted BLM's motion to expedite our review of the merits. 121 IBLA at 25.

Appellants filed a statement of reasons (SOR) on July 1, 1991; BLM filed an answer on August 30, 1991, and errata on September 3, 1991. On September 20, 1991, appellants filed a reply; BLM filed a response to this reply on December 11, 1991. Appellants substantially iterate the arguments made to the State Director. Among other things they argue that, by approving the APD's before receiving notice from the U.S. Fish and Wildlife Service that formal consultation on the effect of the proposed action on threatened or endangered species would not be necessary, BLM violated section 7 of the Endangered Species Act, 16 U.S.C. § 1536 (1988).

BLM responds that there was sufficient public notice and involvement, the EA is adequate, it properly did not analyze the alternatives of not granting the APD's and of conditioning them with no-surface-occupancy stipulations, the FONSI is supported by the record, the Endangered Species Act was not violated, and the Deputy State Director's May 23, 1991, decision should be affirmed.

[1] A determination that a proposed action will not have significant impact on the quality of the human environment will be affirmed on appeal 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 in light of the environmental analysis. The party challenging the determination must show it was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. Mere differences of opinion provide no basis for reversal if BLM's decision is reasonable and supported by the record on appeal. Nez Perce Tribal Executive Committee, 120 IBLA 34, 37 (1991); Glacier-Two Medicine Alliance, 88 IBLA 133, 140-41 (1985). In reviewing whether BLM's decision not to prepare an EIS is reasonable, we examine whether it made a convincing case that the impacts of the proposed action are insignificant or, if they are potentially significant, that changes in the project have reduced them to insignificance. Nez Perce Tribal Executive Committee, *supra* at 38; see Cabinet Mountains Wilderness v. Peterson, 685 F.2d 678, 681-82 (D.C. Cir. 1982).

In this case we have no reservations in concluding that BLM's decision fulfills these standards. The EA itself was carefully revised, is an adequate review of the impacts of granting the six APD's in this specific locale, and is appropriately tiered to earlier comprehensive evaluations of the impacts of oil and gas leasing in this area.

The cumulative impact of the proposed drilling, i.e., the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions, 40 CFR 1508.7, is taken into account in the EA. It describes the visible effects of previous uranium mining, exploration, and drilling, acknowledges the four proposed wells on State leases, analyzes the potential development from the proposed exploration, and evaluates the impacts on soils, vegetation, wildlife, water resources, recreation and visual resources, wilderness, cultural resources, and grazing from both the proposed exploration and the potential development (EA at 7-8, 11-14, Appendix C, and 14-18). Additional consideration of cumulative impact of oil and gas leasing may be found in the 1975 Programmatic EAR and the 1987 Final EIS; see BLM Answer at 11-15.

Concerning direct impacts, the EA states there will be both visual impacts and increased safety risks from traffic associated with the pro-posed drilling. As a mitigating measure, Stipulation 7 requires Ampolex to contact the Utah Division of Transportation "to provide for warning signs at danger points along highway U-95 of heavy truck entrance, etc." The effects of spills, leaks, explosions, fires, and blowouts are discussed in the 1975 Programmatic EAR, e.g., at pages 286, 288-89, and were determined not to be significant in the Deputy State Director's May 23, 1991, decision at page 2. The locations of the proposed drilling are outside recognized wilderness study areas, the White Canyon wild and scenic river study area, and the crucial habitat for Bighorn sheep (EA at 11-12; BLM Exh. 3-A).

Because the leases were issued without no-surface-occupancy conditions for lands in the open category in accordance with the MFP, neither denial of the APD's nor imposition of no-surface-occupancy stipulations when approving the APD's for the three leases in the subsequently designated area of critical environmental concern was an available alternative that BLM was required to analyze in the EA. Sierra Club v. Peterson, 717 F.2d 1409, 1411 (D.C. Cir. 1983); Powder River Basin Resource Council, 120 IBLA 47, 55 (1991). 6/

Thus, we conclude appellants' arguments about the adequacy of the EA are without merit.

6/ In Sierra Club v. Peterson, supra at 1411, the court discussed the APD process for leases without NSO stipulations:

"[T]he lessee must file an application for a permit to drill prior to initiating exploratory drilling activities. The application must contain a surface use and operating plan which details the proposed operations including access roads, well site locations, and other planned facilities. On land leased without a No Surface Occupancy Stipulation the Department cannot deny the permit to drill; it can only impose "reasonable" conditions which are designed to mitigate the environmental impacts of the drilling operations." (Emphasis in original.)

[2] Appellants state: "The BLM refused to accept public comment on the second EA, and instead issued the document concurrently with a FONSI and ROD [on April 4, 1991]. The refusal to allow public comment on the second EA, after it was prepared, violates Council on Environmental Quality (CEQ) regulations" (SOR at 9; see also Reply at 3-4 and Exh. R). 40 CFR 1500.2(d) requires BLM "to the fullest extent possible [to] encourage and facilitate public involvement in decisions which affect the quality of the human environment," appellants observe, noting that the regulation is binding on all Federal agencies. See 40 CFR 1500.3, 1507.3(b)(1). Approval of these APD's is an action that is, or is closely similar to, one that requires preparation of an EIS and therefore public review for thirty days before making a final determination whether to prepare an EIS and before the action may begin is required in accordance with 40 CFR 1501.4(e)(2)(i), appellants argue (SOR at 10).

The Department has implemented 40 CFR 1500.2(d) in the Departmental Manual. 516 DM Chapter 1.6 provides that the various bureaus will "utilize procedures to insure the fullest practicable provision of public information and understanding of their plans and programs with environmental impacts \* \* \*. These procedures will include, wherever appropriate, provision for public meetings or hearings in order to obtain the views of interested parties." 516 DM Chapter 3.3 provides that public notification of an EA must be provided "and, where appropriate, the public involved in the EA process ([40 CFR] 1506.6)."

In this case, notice of the APD's was initially published in January 1990 and public comment was invited; the Deputy State Director's May 1990 decision directed that UCSC's comments on the EA be considered by the BLM District and Area offices in revising and clarifying the document; and BLM wrote UCSC in July 1990 and requested (and received) its input during the process of revision. In addition, there was extensive public involvement during the preparation of the 1987 EIS, to which the EA is tiered. Under the circumstances, we think BLM appropriately involved the public and reasonably decided not to hold a public meeting or hearing to obtain the views of interested parties before making the April 4, 1991, decision. Further, as discussed above, approval of APD's in general is categorically excluded from the NEPA process and approval of these specific APD's was not an action similar to one requiring an EIS, so the condition of 40 CFR 1501.4(e)(2)(i) is not met.

[3] Under the Endangered Species Act, 16 U.S.C. § 1536(c)(1) (1988), an agency is required to consult with the U.S. Fish and Wildlife Service (FWS) to determine whether any species that is listed or proposed to be listed as threatened or endangered "may be present" in the area of a proposed action of the agency. If any such species may be present, the agency must prepare a "biological assessment" to identify any species "which is likely to be affected" by the action. Id. In consultation with FWS, an agency shall insure that its action is not likely to jeopardize the continued existence of any such species or result in the destruction or adverse modification of its critical habitat. 16 U.S.C. § 1536(a)(2) (1988). After this consultation is initiated, the agency and the permit

applicant "shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate [16 U.S.C. § 1536(a) (2)]." 16 U.S.C. § 1536(d) (1988).

In this case BLM requested FWS consultation on November 29, 1990, "for the Colorado River endangered fishes and any other species of concern" in connection with the proposed drilling and the attendant removal of six acre feet of water from Lake Powell. FWS did not respond, and BLM sent a follow-up request on February 27, 1991, stating if it did not receive a response by April 1, 1991, it would assume "that this is a 'will not impact' situation." The EA reports that since FWS did not respond by April 1 "it is determined that the proposed action presents a 'will not impact' situation on threatened and endangered fishes" (EA at 10). After deciding to approve the APD's on April 4, 1991, BLM received a March 28, 1991, memorandum from FWS that listed six species (four fish, two raptors) that may occur and stated that BLM must request formal consultation if its review indicated the proposed action may affect a listed species. BLM responded to FWS on April 11, stating it had "determined that this action is a 'may effect' for endangered fish because there will be a small depletion," requesting FWS to expedite its consideration, and stating it would "wait for [FWS'] response before allowing drilling to begin." On June 10, 1991, FWS responded:

We do have a concern for the possible impact to the endangered fish in the lake from pumps or other methods of removing the water. If stipulations are implemented by the company to prevent the loss of any fish from the water removal, we do not feel there would be any impact to any listed species. Therefore, no formal section 7 [16 U.S.C. § 1536 (1988)] consultation would be required.

Appellants argue:

The BLM approval of the APD's prior to receiving notice from the USFWS that formal consultation would not be required violated the ESA. See Thomas v. Peterson, 753 F.2d 754, 763 (9th Cir. 1985). The BLM's failure to implement the stipulations required by the USFWS as to avoid the need for formal section 7 consultation is a violation of the ESA and the approval of the APD's should accordingly be set aside.

(Reply at 3).

We cannot agree. In Thomas v. Peterson, supra, the U.S. Forest Service failed to prepare a biological assessment before deciding to build a timber road and the court enjoined construction of the road pending compliance with the Endangered Species Act. BLM committed no "substantial procedural violation" of the Act, Thomas v. Peterson, supra at 764, in this case. BLM requested FWS consultation, waited the 90 days provided by the

statute (16 U.S.C. § 1536(b)(1)(A) (1988)), requested consultation a second time and stated it would assume no response by April 1 meant FWS believed the project would not affect any listed species, and approved the APD's on that assumption on April 4. When it received FWS' belated response, BLM promptly prepared a biological assessment and said it would delay drilling. BLM has not "fail[ed] to implement the stipulations required by the USFWS," nor has it made any irreversible commitment of resources that forecloses implementation of measures which would not violate 16 U.S.C. § 1536(a)(2) (1988) because it is "now consulting with its own biologists as to the size of the screen mesh necessary at the pump intakes to prevent the taking of any of the listed species, and will issue a written order to lessee requiring that the pump intakes be appropriately screened before drilling commences" (Response at 3). BLM may issue such an order under 43 CFR 3162.5-1(a), and we find this action to be appropriate. We do not think it necessary to amend the Deputy State Director's May 23, 1991, decision to ensure that BLM will follow through.

Without further belaboring this decision with additional references to contentions of appellants regarding errors and omissions in the preparation of the EA, and other errors of fact and law, except to the extent they have been expressly or impliedly addressed in this decision, they are rejected on the ground they are, in whole or in part, contrary to the facts and law or are immaterial. National Labor Relations Board v. Sharples Chemicals, Inc., 209 F.2d 645, 652 (6th Cir. 1954).

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

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Will A. Irwin  
Administrative Judge

I concur:

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R. W. Mullen  
Administrative Judge