

COLORADO ENVIRONMENTAL COALITION

IBLA 92-315

Decided February 26, 1993

Appeal from a record of decision of the Colorado State Director, Bureau of Land Management, accepting the Final Oil and Gas Leasing Environmental Impact Statement and Forest Plan Amendment 23 of the Pike-San Isabel National Forests and Comanche National Grasslands.

Appeal dismissed.

1. Administrative Procedure: Standing--Appeals: Generally--Rules of Practice: Appeals: Standing to Appeal

A party will not be accorded standing to appeal from a BLM decision where it does not demonstrate that it has a legally cognizable interest which has been adversely affected by that decision. Where the party appeals a BLM record of decision that, by itself, has no consequences, actual or threatened, so far as the environment and any members of the public are concerned because no activity can take place until after preparation of site-specific environmental analyses; and where any adverse consequences would occur, if at all, only if BLM decides to lease particular parcels, the party lacks standing to appeal the ROD because it has not yet been adversely affected by such decision, that is, its appeal is premature.

APPEARANCES: Paul Zogg, Esq., Denver, Colorado, for appellant; Glenn F. Tiedt, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Colorado Environmental Coalition (CEC) has appealed from a record of decision (ROD) of the Colorado State Director, Bureau of Land Management (BLM), dated February 12, 1992, accepting the Final Oil and Gas Leasing Environmental Impact Statement (EIS) and Forest Plan Amendment 23 of the Pike-San Isabel National Forests and Comanche National Grasslands. 1/

1/ CEC's supplementary statement of reasons, filed Apr. 17, 1992, identifies as "co-appellants" the Colorado Mountain Club and the Sangre de Cristo Group of the Sierra Club. CEC's notice of appeal, filed on or about Mar. 19, 1992, makes no mention of the latter two

The Pike-San Isabel National Forests and Comanche National Grasslands are administered by the Forest Service, U.S. Department of Agriculture. The State Director described this EIS as a "compliance document" satisfying the National Environmental Policy Act of 1969 with respect to BLM oil and gas leasing decisions on lands within the administrative boundaries of these areas.

In the ROD, the State Director concurred with the preferred alternative (Alternative III) identified in the EIS, which calls for leasing for oil and gas approximately 829,000 acres using standard lease terms, 1,272,000 acres using supplemental stipulations, and discretionary removal by the Forest Service of approximately 100,000 acres from leasing. For certain split-estate lands within Forest Service administrative boundaries, the State Director modified Alternative III by providing that cultural and visual resources would be protected by management under standard lease terms.

Leasing in the Pike-San Isabel National Forests and Comanche National Grasslands is governed by the Federal Onshore Oil and Gas Leasing Reform Act of 1987, 30 U.S.C. § 226 (1988). This Act calls for lands to be leased by the Secretary of the Interior upon receipt of competitive bids. At least 45 days prior to conducting a competitive auction, lands to be offered for competitive sale are required to be posted in the appropriate BLM office. 43 CFR 3120.4-2. Lands offered competitively, but for which no qualified bid has been received, are then available for noncompetitive lease. 43 CFR 3110.1(b). When lands are leased, BLM must post the identity of the applicant and the lands to be drilled at least 30 days before granting an application for permit to drill (APD) on Federal lands. 43 CFR 3162.3-1(g).

At the time that CEC filed its notice of appeal, no notice of competitive lease sale (or list of lands available for competitive nominations) had been posted pursuant to 43 CFR 3120.4-2 for any lands described in the EIS. <sup>2/</sup> No lands were available for noncompetitive leasing. No leases had

fn. 1 (continued)

organizations, and no notices of appeal have been independently filed. The Colorado Mountain Club and the Sangre de Cristo Group of the Sierra Club are strangers to this appeal and are hereby denied the status of appellants.

<sup>2/</sup> On Sept. 28, 1992, the Colorado State Office, BLM, issued a Notice of Competitive Lease Sale which stated that 82 parcels of Federal lands would be offered for lease on Nov. 12, 1992, by competitive oral auction. Among these parcels was COC 52417, which appellant alleges is located within the Pike/San Isabel boundaries on the Comanche National Grassland. Appellant further states that it filed with BLM a protest, dated Nov. 6, 1992, against the proposed sale and lease issuance of this and other parcels.

On Feb. 17, 1993, BLM provided us with a copy of its decision dated Feb. 10, 1993, upholding appellant's protest against offering parcel COC 52417 on the grounds that the filing of the instant appeal had suspended BLM's authority to issue a lease. BLM did not rule on the merits of that protest. With the issuance of this order, BLM is now free to

been issued and no APDs had been posted. These facts caused us to state in an order, dated October 20, 1992, that CEC's appeal may be premature. 3/ CEC responded to this order with further pleadings addressing this issue.

In its response, CEC states that it had not been able to find any significant Board precedent concerning the "ripeness" doctrine that would authorize the Board to dismiss an appeal in its discretion because of prematurity. CEC maintains that its appeal was not premature because BLM's decision:

is a final decision of a high-ranking BLM officer who explicitly placed it into immediate effect, it affects specifically identified parcels of land, it immediately forecloses opportunities for comment and participation by CEC and its members and it is being rapidly implemented by BLM, even as this response is being written. CEC's appeal also deserves immediate review by IBLA because, if this appeal is dismissed as premature, CEC would be required to endure substantial, unnecessary hardship in filing repetitive protests and appeals of every specific leasing decision taken in furtherance of the BLM decision, along with requests for stays, which may or may not be granted, and BLM and potential lease purchasers would be forced to endure the unnecessary hardship of contending with these protests, appeals and requests for stays.

(CEC Response at 2-3).

The issue of prematurity is discussed at some length in Salmon River Concerned Citizens, 114 IBLA 344 (1990). At issue there was whether appellant, who objected to the use of herbicides on the public lands, was "adversely affected" by BLM's issuance of an ROD which approved such use with certain management constraints. That ROD had been preceded by a programmatic EIS assessing the general environmental consequences of herbicide use. The programmatic EIS stated that it was intended to be supplemented by site-specific environmental analyses, which would be prepared later with further public involvement when considering specific vegetation control projects.

[1] We held in Salmon River Concerned Citizens that an appellant will not be accorded standing to appeal from a BLM decision where it does not demonstrate that it has a legally cognizable interest which has been adversely affected by that decision. We found that appellant lacked standing because, by itself, the ROD did not have any consequences, actual or threatened, so far as the environment and any members of the public were

fn. 2 (continued)

proceed to consider the protest on its merits. If BLM decides to allow leasing, its decision will be subject to appeal. If an appeal is filed, it appears that all matters, including the adequacy of the underlying EIS, will be ripe for adjudication. 3/ In the same order, we also decided to expedite consideration of the appeal.

concerned. That was because no activity could take place until after preparation of site-specific environmental analyses, and any adverse consequences would occur, if at all, only if BLM decided to engage in herbicide spraying at particular sites. 114 IBLA at 348.

We find Salmon River Concerned Citizens sufficiently similar to CEC's appeal to compel a similar result. We hold, accordingly, that CEC lacks standing to appeal the Colorado State Director's ROD because it has not yet been adversely affected by such decision, that is, its appeal is premature.

The EIS accepted by the State Director examined the effects of three related decisions (the leasing analysis) by the Forest Supervisor: Forest Plan amendment, land availability decision, and specific lands decision (EIS at IV-1). The land availability decision is a programmatic, rather than a site-specific or project level, determination required by 36 CFR 228.102(d) (Forest Service ROD at 4). When this decision has been made, the Forest Plan is amended to incorporate this decision and thereby ensure that future actions made on the basis of the EIS will be consistent with the Forest Plan (EIS at I-23). The specific lands decision identifies, subject to subsequent monitoring, specific lands authorized for leasing. Monitoring will occur at the time that a specific lease parcel has been proposed to the Forest Service through BLM (EIS at IV-1).

CEC filed its appeal prior to Forest Service receipt of specific lease parcels from BLM (and subsequent monitoring). At the time of filing, no specific parcel had been advertised for sale. Although the possibility that oil and gas will be leased has been advanced by issuance of the EIS and ROD, the decision to grant a lease remains within BLM's discretion. 43 CFR 3101.7-2. As in Salmon River Concerned Citizens, *supra*, the ROD did not, by itself, have any consequences, actual or threatened, so far as the environment or members of the public were concerned. <sup>4/</sup> Appellant is not, therefore, adversely affected by the State Director's issuance of the ROD.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

David L. Hughes  
Administrative Judge

I concur:

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Gail M. Frazier  
Administrative Judge

<sup>4/</sup> Further site-specific environmental analyses are planned before any ground-disturbing activities are authorized by issuance of an APD. In this respect too, the instant case is similar to Salmon River Concerned Citizens.