

WESTERN COLORADO CONGRESS
SAN JUAN CITIZENS ALLIANCE

IBLA 92-582

Decided August 5, 1994

Appeal from a decision of the San Juan Resource Area Manager, Bureau of Land Management, approving applications for permits to drill coalbed methane gas wells. SDR-CO-92-12.

Affirmed.

1. Environmental Policy Act -- Environmental Quality: Environmental Statements -- National Environmental Policy Act of 1969: Generally -- Oil and Gas Leases: Drilling

A BLM record of decision adopting a drilling alternative set out in a FEIS and approving permits to drill coalbed methane wells will not be disturbed by an appeal alleging failure to present an adequate number of alternatives and failure to properly evaluate the impacts on aquifers and groundwater in an EIS when the FEIS addresses a sufficient range of alternatives, adequately discusses the viability of those alternatives, and the anticipated impacts on groundwater and aquifers have been thoroughly evaluated and found to be either inconclusive or rendered acceptable by imposition of mitigating measures.

APPEARANCES: Kathleen C. Zimmerman, Esq., Roger Flynn, Esq., Boulder, Colorado, for appellants; John F. Shepherd, Esq., Jane L. Montgomery, Esq., for Intervenor Amoco Production Company.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

On April 24, 1992, the San Juan Resource Area Manager, Bureau of Land Management (BLM), issued a Record of Decision (ROD) adopting Alternative B of the HD Mountains Coalbed Methane Gas Field Development Project Final Environmental Impact Statement (FEIS) and approving 15 Amoco Production Company (Amoco) applications for permits to drill (APD's) coalbed methane gas wells in the HD Mountains area of the San Juan National Forest. Western Colorado Congress (WCC) and San Juan Citizens Alliance (SJCA) sought State Director stay and review of the decision, contending that the FEIS was inadequate because it contained no "worst case analysis" of groundwater impacts, or analysis of a reasonable range of alternatives.

On July 6, 1992, the Deputy State Director, Colorado State Office, BLM, issued a decision denying the request for stay and upholding the San

Juan Resource Area Manager's April 24, 1992, decision. The Deputy State Director found that a worst case analysis was not required and stated that, even though ongoing studies might provide additional information about groundwater resources, the FEIS "contains ample and sufficient information to analyze reasonably foreseeable significant adverse impacts to groundwater"; the FEIS was more than adequate; and the conclusions reached in the FEIS were reasonable (Decision at 5).

WCC and SJCA appealed the Deputy State Director decision and sought a stay pending the Board's determination. Amoco, which holds the leases and drilling permits, appeared as an intervenor.

In a September 22, 1992, order the Board found that WCC and SJCA had failed to satisfy the regulatory criteria for a stay, set out at 43 CFR 4.21(b) (1), and denied a stay. In that order we observed that WCC and SJCA had failed to explain what a "worst case" analysis should entail, noting that under Robinson v. Methow Valley Citizens Council, 490 U.S. 332 (1989), a worst case analysis is not an essential element of an Environmental Impact Statement (Order at 7).

On appeal appellants allege that BLM erroneously concluded that it would not be necessary to consider impacts upon the groundwater resulting from the proposed drilling because the Fruitland formation is a closed system. Appellants assert that a report found in the Proceedings of the First International Symposium on Oil and Gas Exploration and Production Waste Management Practices, September 10-13, 1990, New Orleans, Louisiana, authored by Chris Shuey, Director, Community Water Quality Program, Southwest Research and Information Center, Albuquerque, New Mexico, "details the impacts to groundwater that can be expected from coalbed methane development in [the Fruitland formation] and raises many doubts about whether the Fruitland formation is, in fact, a 'closed' system." The report states in its conclusion:

The contamination of alluvial ground water in the Animas River valley of New Mexico and Colorado by thermogenic natural gas is related in part to the recent upsurge in the drilling for and production of coal-bed methane. Gas from the coal seams of the Upper Cretaceous Fruitland Formation has migrated nearly 3,000 feet into domestic water wells and cathodic protection holes and has charged up the surface casings and Bradenheads of producing gas wells. The gas has migrated upward via the uncemented portions of gas wells that penetrate the Fruitland. The extent to which leaks in the casings of either Fruitland wells or wells that produce from deeper, sandstone formations, or both, has [sic] not been determined.

Appellants assert that the FEIS does not include a reasonable range of alternatives, and argue that the alternative of delaying pending development of additional data was a reasonable alternative. In support of this position, appellants suggest that BLM improperly ignored a pending Geological Survey study of the effect of Fruitland formation coalbed methane development on groundwater.

Citing a June 16, 1992, letter from the Environmental Protection Agency's (EPA) Chief, Environmental Assessment Branch, to the Forest Supervisor, San Juan National Forest, appellants also contend that the FEIS lacks a meaningful "environmentally preferred" alternative. ^{1/} According to appellants, BLM should have proposed an alternative that carefully restricted drilling operations to fully mitigate potential adverse impacts.

The FEIS contains significant discussions of groundwater resources, potential impacts, and required mitigation. It also acknowledges that, although hydrocarbon contamination has been detected in some shallow groundwater wells in the Bondad-Cedar Hill area (35 miles from the study area), coalbed methane development "has not been clearly identified as the source." It is noted that there could be a number of causes for this contamination, such as: (1) methane gas leaking through Kirtland shale; (2) indigenous hydrocarbons in shallow formations; (3) leakage from old, inadequately cemented oil and gas wells; (4) disposal wells leaking into shallow aquifers; (5) improperly installed new oil and gas production wells; and (6) surface contamination of the well or aquifer by bacteria. In addition, methane contamination could be caused by septic system leachate or by introduction of bacteria during the drilling of water wells. The FEIS states that "[t]here was no conclusive evidence that properly cemented Fruitland coalbed methane gas wells could lead to the presence of Fruitland methane in near surface alluvial aquifers and domestic water wells" (FEIS at 3-30, 3-38; Agency Response 22-13 to Public Comment).

Agency responses to public comments included the following statement:

Based on data available at the writing of this document, no methane has been reported in water wells within the study area. Available information includes the publication of Mr. Chris Shuey which compiles anecdotal information about the Bondad-Cedar Hill area and the letter to the New Mexico Oil Conservation Division from Dudley Rice of the USGS [Geological Survey] dated June 25, 1990 which summarizes results of gas analyses for samples taken in the Cedar-Hill area. The minimal number of old wells present in study area combined with the stringent cementing requirements for newer wells, including Fruitland Coal wells, makes the potential risk of contamination by gas development wells very low; especially when compared to the long history and heavy development which has taken place in Bondad -Cedar Hill area. Further, studies indicate that the Fruitland Formation is a closed system and is isolated from the shallow groundwater aquifers which will preclude mixing of gas into shallow aquifers as well as preventing loss of surface waters to the dewatered Fruitland producing zone (see Section 3.2.2 of the EIS).

The USGS study of methane in water wells in the Bondad area underway at the writing of this document is incomplete; until the USGS releases that research in a report, the information is

^{1/} An excerpt from this letter is quoted on page 6 of appellants' SOR.

unavailable for incorporation into the EIS. Also, there ultimately remains the question of how applicable the problems of the Bondad-Cedar Hill area are to the HD Mountain area given the geologic and historical differences between the two areas. (See also response to comment 22-13).

(FEIS, Response 2-23 to Public Comment).

Protective steps, such as stipulations and other mitigating measures applicable to lessee operations in critical water resource areas are also addressed in detail at FEIS 4-20, 4-24, and 4-26.

[1] After review of the FEIS we are of the opinion that potential impacts to groundwater and aquifers were adequately considered. The report cited by appellants (which may have been published after the FEIS) does not contradict the FEIS with respect to impacts on groundwater and aquifers in any significant respect. In any event, the fact that ongoing research will produce new information, or that studies may be in progress when the an EIS is issued, does not render the EIS invalid or obsolete. This point was addressed in State of Alaska v. Andrus, 580 F.2d 465, 473-74 (D.C. Cir.), vacated in part on other grounds sub nom. Western Oil & Gas Ass'n v. Alaska, 439 U.S. 922 (1978). In that case the court stated that when a responsible decisionmaker weighs the alternatives and decides that, based on available information it is prudent to proceed with a project, "the courts may not substitute their judgment for that of the decisionmaker and insist that the project be delayed while more information is sought" (citing Kleppe v. Sierra Club, 427 U.S. 390 n.21 (1976)). Moreover, site-specific proposals and actions are subject to continuing review under the National Environmental Policy Act of 1969 (NEPA). Park County Resource Council, Inc. v. United States, 817 F.2d 609, 622 (10th Cir. 1987).

Appellants' contend that BLM failed to consider a sufficient range of alternatives, including the alternative of staged or delayed development, citing our holding in Powder River Basin Resource Council, 120 IBLA 47 (1991), that BLM had "no legal basis for failing to fully consider a wider range of alternatives, including the limitation or regulation of the manner and pace of development." Powder River, supra at 55.

NEPA, at 42 U.S.C. § 4332(2)(C) (1988), and Departmental regulations require consideration of alternatives in an EIS. All reasonable alternatives must be considered and obvious alternatives may not be ignored. North Slope Borough v. Andrus, 486 F. Supp. 326, 330 (D. D.C. 1979); California v. Berland, 483 F. Supp. 465, 488 (E.D. Cal. 1980). The case appellants rely upon involved a FONSI for drilling 1,000 wells, with as many as 500 wells being drilled in a single year. When BLM sought to reframe its proposal with only 50 wells being drilled, the Board noted that BLM had failed to raise that as an alternative because of its erroneous belief that development could not be legally limited. The scope of Amoco's proposal is much more limited than the "limited development alternative" that BLM failed to consider in Powder River, supra.

Alternative A in the FEIS is the no action alternative. Under this alternative, approval for Amoco's APD's for wells on Forest Service (FS) lands would not be considered. In the letter cited by appellants, EPA's Chief of the Environmental Assessment Branch noted that Alternative A was designated as "the Environmentally Preferred Alternative." He acknowledged, however, that Alternative A was not available because (as explained in the FEIS at 2-15 through 2-18), BLM and FS cannot deny the right to drill and develop the leasehold unless a nondiscretionary statute, such as the Endangered Species Act, prohibits drilling. Absent a ban, authority to completely deny development activities can only be granted by Congress. Union Oil Co. of California v. Morton, 512 F.2d 743, 750-51 (9th Cir. 1975). When this is the case, the agency's task is to impose measures that will mitigate the adverse impact of the surface disturbing activities. Thus, the no action alternative, referred to by appellants as a meaningful environmentally preferred alternative, is not available.

Alternative B was adopted by BLM. The FEIS addresses Alternative C, the "Current Direction Alternative," and five additional alternatives which were considered but not analyzed in great detail because of the low feasibility of implementation (FEIS at 2-35 through 2-41). A "rule of reason" approach applies to both the range of alternatives and the extent to which each alternative must be addressed. The range of alternatives should be sufficient to permit reasoned choice. California v. Bergland, supra at 488. Obvious alternatives may not be ignored, but the preparers of an EIS need not ferret out every possible alternative. The FEIS challenged by appellants met this standard.

Arguments advanced in support of their request to stay the Deputy State Director's decision were incorporated in appellant's SOR by reference. Certain of those arguments were addressed in the Board's September 22, 1992, order and will not be repeated. To the extent appellants have raised other arguments not specifically addressed in this decision, they have been considered and rejected.

Appellants have not shown that the FEIS was inadequate, or that BLM failed to comply with its NEPA responsibilities.

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

R. W. Mullen
Administrative Judge

I concur:
James L. Byrnes
Chief Administrative Judge

