

NORTHWEST PIPELINE CORP.

IBLA 95-225

Decided August 11, 1998

Appeal from a decision of the Area Manager, Book Cliffs Resource Area, Utah, directing removal of a buried pipeline and reclamation of the surface prior to acceptance of relinquishment of a right-of-way within the Winter Ridge Wilderness Study Area. U-53945.

Set aside and remanded.

1. Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

A Wilderness Study Area is subject to the protection of section 603(c) of FLPMA, which directs the Secretary to "manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness." That same section provides an exception to the nonimpairment standard for mineral uses in existence on Oct. 21, 1976, allowing those uses to continue in the same manner and degree as they were conducted on Oct. 21, 1976, even if it would impair the wilderness suitability of the land. Such grandfathered uses are to be regulated to prevent undue and unnecessary degradation of public lands and their resources or to afford environmental protection.

2. Federal Land Policy and Management Act of 1976: Wilderness--National Environmental Policy Act of 1969: Generally--Wilderness Act

A BLM decision directing removal of a buried pipeline in a Wilderness Study Area as a condition precedent to accepting the relinquishment thereof will be set aside where BLM failed to consider a reasonable alternative.

APPEARANCES: David Lof, Salt Lake City, Utah, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Northwest Pipeline Corporation (Northwest) has appealed from the December 20, 1994, Decision Record and Finding of No Significant Impact (DR/FONSI) for the Proposed Relinquishment and Reclamation of Portions of Northwest Pipeline Corporation's Buried Gas Pipeline Within the Winter Ridge Wilderness Study Area (WSA), Environmental Assessment (EA) 1994-115, issued by the Area Manager, Book Cliffs Resource Area, Utah, Bureau of Land Management. The DR/FONSI concluded that Northwest must remove 543.6 linear feet of the Coseka-Pine Springs 6-7-14-22 buried pipeline and associated above-ground improvements and reclaim all disturbed areas as a condition precedent to the United States' acceptance of the relinquishment of the pipeline, which was authorized pursuant to right-of-way grant U-53945.

The right-of-way originally was granted to Coseka Resources, Limited (Coseka), on August 24, 1984. It authorized Coseka to construct, operate, and maintain approximately 9 miles of buried, 4.5 inch natural gas pipeline on public land, including 7.6 miles of pipeline within the Winter Ridge WSA. Coseka operated a number of oil and gas units that predated the enactment of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 (1994), as a consequence of which, discussed more fully *infra*, issuance of the right-of-way within the WSA was allowed. See Coseka's July 27, 1984, Application for Transportation and Utility Systems and Facilities on Federal Lands at 1. On January 10, 1986, BLM approved a right-of-way assignment from Coseka to Northwest.

Northwest submitted a request for partial relinquishment of right-of-way grant U-53945 on November 9, 1992, on the ground that the eight properties identified therein no longer were needed. ^{1/} The request stated that metering facilities and dehydrators had been removed, but the well-connect pipelines were still in the ground. On December 29, 1992, Northwest revised its request, amending the description of the land and the pipeline facilities to be relinquished, ^{2/} and inquired whether, in light

^{1/} The properties are: the Lateral A-21 pipeline, ext. #2 (R/W 811070); Coseka-Pine Springs 2-16-14-22 (R/W 79832); Coseka 8-20-14-22 (R/W 810196); Coseka-Pine Springs 7-21-14-22 (R/W 800261); Coseka-Pine Springs 16-19-14-22 (R/W 820992); Coseka-Pine Springs 12-18-14-22 (R/W 820991); Coseka-Pine Springs 6-7-14-22 (R/W 820233); and the Coseka-Main Canyon 9-12-14-21 (R/W 811069).

^{2/} The properties to be relinquished were identified as follows: Coseka-Pine Springs 2x-16-14-22 (R/W 79832); Coseka-Pine Springs 15-21-14-21 (R/W 79895); Coseka-Pine Springs 7-21-14-22 (R/W 800261); Coseka-Pine Springs 16-19-14-22 (R/W 820992); Coseka-Pine Springs 6-7-14-22 (R/W 820233); and the drip pit on the Lateral A-21 (R/W 810196). Northwest indicated that it wanted to retain the following: Coseka-Main Canyon 9-12-14-21 (R/W 811069); Coseka-Pine Springs 12-18-14-22 (R/W 820991); Coseka-Pine Springs 8-20-14-22 (R/W 810196); and the Lateral A-21 (R/W 79842). Northwest's request noted that one of the pipelines (R/W 79895) had never been built.

of its location within a WSA, it would be necessary to remove the unused buried pipeline. The pipelines had served Coseka gas wells 6-7-14-22 and 6-19-14-22, both of which had been plugged and abandoned.

By letter of January 12, 1993, BLM acknowledged receipt of Northwest's December 29, 1992, request and informed Northwest that BLM could not accept the partial relinquishment of the right-of-way until the lines had been properly abandoned and rehabilitation completed in a manner determined satisfactory by an authorized officer of BLM. The letter also stated that BLM intended to require Northwest to remove the unneeded pipelines and, because they are located within the WSA, that it would be necessary to prepare an environmental analysis in accordance with the Interim Management Policy and Guidelines for Lands Under Wilderness Review (IMP) to ensure protection of the wilderness characteristics of the WSA. ^{3/} Finally, in an April 27, 1993, letter to BLM, Northwest again revised its request, identifying only three segments of the right-of-way to be relinquished, ^{4/} which included the 543.6 feet associated with the Coseka-Pine Springs 6-7-14-22 facility that is the subject of this appeal.

[1] Before proceeding to the merits of this appeal, it would be useful to briefly examine the IMP and its statutory bases. As stated, the pipeline right-of-way is on land within the Winter Ridge WSA and as such is subject to the protection of section 603(c) of FLPMA, 43 U.S.C. § 1782(c) (1994). In section 603(c), the Secretary is expressly directed to "manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness." 43 U.S.C. § 1782(c) (1994); Howard G. Booth, 134 IBLA 300, 303 (1996), and cases cited therein. However, that same section provides an exception to the nonimpairment standard for mineral uses in existence on October 21, 1976, allowing such uses to continue in the same manner and degree as they were conducted on October 21, 1976, even if it would impair the wilderness suitability of the land. These

^{3/} In furtherance of the statutory directive in section 603(c) of FLPMA, 43 U.S.C. § 1782(c) (1994), the Department adopted the IMP, which governs BLM's management of WSA's pending ultimate congressional determination regarding whether the study areas should be included in the permanent wilderness system. See Nevada Outdoor Recreation Association, 136 IBLA 340, 342 (1996); Oregon Natural Resources Council, 114 IBLA 163, 167 (1990); The Wilderness Society, 106 IBLA 46, 55 (1988). The IMP was originally published at 44 Fed. Reg. 72014 (Dec. 12, 1979), and was amended at 48 Fed. Reg. 31854 (July 12, 1983). It is now contained in BLM's Manual as a handbook, H! 8550! 1 (Rel. 8! 67 (July 5, 1995)). Page references in the text are to the Handbook edition.

^{4/} These were: the Coseka-Pine Springs 7-21-14-22 (R/W 800261); Coseka-Pine Springs 16-19-14-22 (R/W 820992); and the Coseka-Pine Springs 6-7-14-22 (R/W 820233).

grandfathered uses are to be regulated "to prevent undue and unnecessary degradation of public lands and their resources or to afford environmental protection." 43 U.S.C. § 1782(c) (1994). A mineral lease and its associated right-of-way grant constitute valid existing rights that are to be recognized. (BLM Manual, H-8550-1, at 13-15.)

Given Northwest's arguments, we will also set out section 2(c) of the Wilderness Act of 1964, 16 U.S.C. § 1131(c) (1994), in its entirety:

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; and (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

In general, the IMP declares that WSA's are to be managed according to criteria designed to ensure that the area's suitability for designation as wilderness is not impaired. (BLM Manual, H-8550-1, at 9.) The BLM Manual articulates these so-called "nonimpairment criteria" as follows:

a. The use, facility, or activity must be temporary. This means a temporary use that does not create surface disturbance or involve permanent placement of facilities may be allowed if such use can easily and immediately be terminated upon wilderness designation. "Temporary" means the use or facility may continue until the date of wilderness designation, at which time the use must cease and/or the facility must be removed. "Surface disturbance" is any new disruption of the soil or vegetation, including vegetative trampling, which would necessitate reclamation. * * *

b. When the use, activity, or facility is terminated, the wilderness values must not have been degraded so far as to significantly constrain the Congress' prerogative regarding the area's suitability for preservation as wilderness. The wilderness values to be considered are those mentioned in Section 2(c) of the Wilderness Act of 1964 * * *.

The only permitted exceptions to the above rules are:

* * * * *

(3) Uses and facilities which are considered grandfathered or valid existing rights under the IMP, * * *.

(BLM Manual, H-8550-1, at 9.)

With respect to valid existing rights, the BLM Manual notes that "[a]ctivities must satisfy the nonimpairment standard if possible, unless this would unreasonably interfere with the enjoyment of the benefit of the rights. Activities under VERs [valid existing rights] also must be regulated to prevent unnecessary or undue degradation of the lands." (BLM Manual, H-8550-1, at 13.)

Thus, as indicated in its January 1993 letter to Northwest, BLM initiated EA 1994-115 to "determine if non-impairment of wilderness values would or would not occur and to provide an impact analysis to any related resources" as a result of the proposed relinquishment and reclamation. (EA at 1.) The EA, which was submitted for public comment in October 1994, presented two alternatives. Under the proposed alternative, prior to accepting relinquishment, "pipeline connections to the abandoned wells and the main pipeline would be severed and capped and all buried and above ground improvements (e.g., valve assemblies, metal pipe barriers, etc.) would be removed from the R/W [right-of-way]." (EA at 1.) To accomplish this, the area would be excavated to a depth of 3 or 4 feet to allow physical removal of the pipe and severance and capping of all connections between the plugged wells and Northwest's Grand Valley Collecting System. (EA at 2.) It was estimated that surface disturbance of previously disturbed portions of Northwest's existing right-of-way grant to a width of 30 to 40 feet would occur.

Northwest would also be required to recontour the newly disturbed areas to blend with adjacent undisturbed areas, replace topsoil and reseed the disturbed areas using a specified seed mixture and method of seeding. The stated goal of this reclamation was to make the existing impacts "substantially unnoticeable." (EA at 2.) The EA concluded that the proposed alternative would return the land to "substantially natural conditions," and more specifically, that successful reclamation would result in the elimination of noxious weeds and introduced plant species, leading to the restoration of native vegetation and an increase in forage for wildlife. (EA at 4, 5.) Finally, the EA determined that the proposed action would "conform with the IMP because it would meet the standards of the BLM's non-impairment criteria." (EA at 5.)

The other alternative considered was a no action alternative in which the pipelines and associated improvements would not be removed and the current land management would continue, and the relinquished area would not be returned to a "natural condition." (EA at 5.) The EA determined that

this alternative would conflict with the IMP because the sites would not be returned to a "condition where the intrusions would be substantially unnoticeable." (EA at 5.)

In a letter dated December 13, 1994, in which Northwest acknowledged a meeting with BLM on December 6, 1994, to comment on and discuss the EA, Northwest advised BLM that further investigation had revealed that there were no pipeline facilities associated with the Coseka-Pine Springs 6-19-14-22 to be removed. Northwest also stated that there was still some pipe left in the ground for the Coseka-Pine Springs 6-7-14-22, but at that point it was unable to state with certainty how much remained, except that there was no more than 543.6 feet. In this letter, Appellant argued that it was unnecessary to remove the Coseka-Pine Springs 6-7-14-22 pipeline to meet the wilderness criteria established by Congress and BLM in the Statewide Wilderness Final Environmental Impact Statement prepared for Utah, and also challenged BLM's articulation of those criteria. Despite Northwest's assertion that this third, viable alternative should be considered, as noted, on December 20, 1994, the Area Manager signed the DR/FONSI selecting the proposed alternative.

Lastly, in response to Northwest's December 13, 1994, letter BLM acknowledged in a January 4, 1995, letter that the focus of the relinquishment was the 543.6 feet of pipeline associated with abandoned gas well 6-7-14-22 (R/W 820233). The letter enclosed the final EA, required removal of the pipeline, and discussed the reclamation measures to be completed before the relinquishment was accepted. ^{5/} On February 2, 1995, Northwest filed its Notice of Appeal, attaching a copy of its December 13, 1994, letter to BLM.

On appeal, Northwest argues that it is not necessary to remove the pipeline in order to successfully reclaim the area. While Northwest agrees that the proposed alternative would conform with the IMP, it contends that BLM should have considered the third alternative of leaving the pipeline in place and performing all the reclamation specified in the DR/FONSI, and that this alternative also conforms to the IMP. As noted, this third alternative evidently was suggested by Northwest at the December 6, 1994, meeting with BLM and was reiterated in Northwest's December 13, 1994,

^{5/} The DR/FONSI signed by the Area Manager on Dec. 20, 1994, states that Northwest is to remove the 543.6 linear feet of buried pipeline and associated above-ground improvements. However, BLM's Jan. 4, 1995, letter to Northwest specifies the removal of the pipeline and the severance and capping of all connections between the plugged gas well (#6-6-14-22) and Northwest's existing gathering line. In its Notice of Appeal, Northwest states that it is unaware of any above-ground improvements. Although it is unclear that there are any above-ground improvements to be removed as part of the reclamation process, it is plain that the only part of the DR/FONSI Northwest objects to is excavating the pipeline and it is to that issue that we direct our attention.

letter. Northwest notes that the 4.5-inch diameter pipeline is buried approximately 5 feet below the ground surface and argues that as such it is "substantially unnoticeable" as defined in the Glossary of the IMP. The Glossary defines "substantially unnoticeable" as "something that either is so insignificant as to be only a very minor feature of the overall area or is not distinctly recognizable by the average visitor as being manmade or man-caused because of the age, weathering or biological change * * *." (Notice of Appeal at 1, BLM Manual, H-8550-1, Glossary at 4.) Northwest maintains that "removal of the pipeline will not enhance the reclamation of the site and, if left in the ground, it will not be distinctly recognizable by the average visitor as being manmade or man-caused." (Notice of Appeal at 2.)

Northwest contends that the alternative of leaving the pipeline in place fulfills the requirements in the IMP as described in the DR/FONSI's Rationale and as set forth in the wilderness criteria of the Wilderness Act. This argument is more fully developed in Northwest's December 13, 1994, letter to BLM. In particular, Northwest argues that the level of reclamation is not properly established by reference to returning the WSA to a "substantially natural condition." The correct standard, Northwest argues, is whether man-made impacts are "substantially unnoticeable." Thus, Northwest contends that if the surface is properly reclaimed, the presence of a pipeline buried 5 feet below the ground will be "substantially unnoticeable" and fully comply with the requirements of the Wilderness Act. (Notice of Appeal at 2, Dec. 13, 1994, letter at 2.)

Northwest further contends that removal of the pipeline will not enhance the reclamation of the site and that "the potential for the pipeline to be exposed by erosion prior to its [sic] return to mother earth as iron oxide is very unlikely." (Dec. 13, 1994, letter at 1.) Northwest also avers that "the cost and impact of removing the buried pipeline would be much higher than the surface reclamation of the site because of the additional heavy equipment and manpower necessary to remove it." Id. It claims that "[r]eclamation could probably be accomplished with just a dozer and seeding equipment; whereas, pipe removal would require a backhoe, welding crews, pipe truck(s), and a side-boom tractor in addition to the dozer." Id. According to the IMP, Northwest notes, "reclamation includes the recontouring of the topography to a natural appearance, replacement of the topsoil, and restoration of plant cover approximating the species composition and cover existing prior to disturbance." (Statement of Reasons (SOR) at 3.) 6/ It thus asserts that these reclamation procedures do not require the pipeline be removed and that successful reclamation can be achieved without doing so.

Northwest's SOR reiterates the arguments made in its December 13, 1994, letter to BLM and its Notice of Appeal. The heart of Northwest's

6/ Northwest cites Chapter II, Part B.2.b of the IMP as the source of this statement.

objection is that the EA erroneously assumes that successful reclamation necessarily requires the removal of the buried pipeline to render man-made impacts "substantially unnoticeable." Northwest argues that a pipeline buried 5 feet down per se is substantially unnoticeable, and that requiring removal thus is arbitrary and capricious when compared to other, unrelated decisions by which underground structures and improvements are allowed to remain below ground when wells and mines are abandoned. In short, Northwest's arguments are premised upon a view of section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1994), that focuses on the phrase "substantially unnoticeable" without acknowledging the language and substance of the sentence that introduces the phrase. In addition, Northwest raises arguments alleging lack of opportunity to comment on the EA. In view of our disposition of this appeal, we need not decide the merits of these contentions at this time.

With relinquishment of the right-of-way, BLM is required to manage the lands to ensure compliance with the nonimpairment criteria of the IMP. Consistent with the IMP, BLM would require Northwest to restore the land to a condition that made it a candidate for wilderness preservation when FLPMA was enacted. (BLM Manual, H-8550-1, at 3-4; see also San Juan County Commission, 123 IBLA 68, 72 (1992).) In addition, however, BLM is required by the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4332 (1994), to describe "appropriate alternatives to recommended courses of action" and to consider reasonable alternatives to a proposed action, that is, alternatives that can be accomplished and that also fulfill the purpose to be achieved by the action. See 40 C.F.R. §§ 1502.14 and 1508.9; Methow Valley Citizens Council v. Regional Forester, 833 F.2d 810, 815 (9th Cir. 1987) rev'd on other grounds, 490 U.S. 332 (1989). This ensures that the BLM decisionmaker "has before him and takes into proper account all possible approaches to a particular project." Calvert Cliffs' Coordinating Committee, Inc. v. United States Atomic Energy Commission, 449 F.2d 1109, 1114 (D.C. Cir. 1971) (emphasis added).

[2] In this case, however, it is clear that BLM always intended to have the pipeline removed. In addition to BLM's letter of January 12, 1993, in which this intention was stated, the September 27, 1994, Special Status Plant Species Report prepared by the District T&E Plant Specialist as part of the EA process discussed only the proposed action of removing the pipeline. Furthermore, the EA failed to even note the alternative advanced by Northwest, let alone consider it. Northwest's assertion that excavation would require the use of a great deal heavy of equipment that would cause more disturbance than its proposed alternative is persuasive, and as the record now stands, we find no basis for failing to consider the alternative proposed by Northwest, in the course of which BLM could have articulated the reasons, if any, that the alternative was not feasible or acceptable. 7/ The Decision therefore must be set aside.

7/ For example, the terms and conditions or stipulations in the mineral lease(s) may affirmatively require the removal of buried pipeline when relinquished. (BLM Manual, H-8550-1, Chapter I, B.9.b. at 15.) It may be that the EA prepared in association with the construction of these

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 set aside and the case is remanded for further consideration.

T. Britt Price
Administrative Judge

I concur.

James L. Burski
Administrative Judge

fn. 7 (continued)

facilities imposed a duty to remove the pipeline as a mitigating measure that supported a finding of no significant impact. Indeed, in considering the alternative proposed by Appellant, BLM may well conclude that Northwest's construction of section 2(c) of the Wilderness Act is drawn too narrowly, or that requiring removal is a matter within its discretion. We intimate no opinion or expectation as to the outcome, so long as the alternative is seriously considered and the rationale for BLM's decision is fully explained.

