

SOUTHERN UTAH WILDERNESS ALLIANCE

IBLA 2000-327, 2001-13

Decided September 3, 2004

Appeals from decisions of the Utah State Office, Bureau of Land Management, denying protests against including certain parcels in competitive oil and gas lease sales. UT-932.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Land Use Planning--Federal Land Policy and Management Act of 1976: Wilderness--Oil and Gas Leases: Generally--Wilderness Act

When parcels nominated for inclusion in a competitive oil and gas lease sale encompass lands that have not been included in a wilderness study area or found to possess wilderness characteristics in a BLM wilderness inventory, BLM may administer those lands for other purposes, including oil and gas leasing, even though the lands were determined to have wilderness characteristics in a citizens' group wilderness inventory and were included in an area proposed for wilderness designation in legislation introduced in Congress.

2. Federal Land Policy and Management Act of 1976: Inventory and Identification--Federal Land Policy and Management Act of 1976: Land Use Planning--Federal Land Policy and Management Act of 1976: Wilderness--Oil and Gas Leases: Generally--Wilderness Act

BLM is not required to re-inventory lands that have not been included in a wilderness study area or found to possess wilderness characteristics in a BLM inventory for wilderness suitability even though the lands were determined to have wilderness characteristics in a citizens' group wilderness inventory and were included in an area proposed for wilderness designation in legislation introduced in Congress. The Federal

Land Policy and Management Act of 1976, 43 U.S.C. § 1711(a) (2000), controls the Secretary's wilderness inventory authority and grants the Secretary the discretion to determine the manner and time of implementation of the statutory mandate to keep a current inventory of the public lands and their resources.

3. Federal Land Policy and Management Act of 1976: Land Use Planning--Oil and Gas Leases: Generally

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1712 (2000), does not require BLM to revise a land use plan at any specific time, nor does it require BLM to cease actions authorized under an existing land use plan, including oil and gas leasing, in order to consider a wilderness proposal from a citizens group.

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

BLM's determination that existing environmental documents adequately analyze the effects of the inclusion in a competitive oil and gas lease sale of parcels located on lands that have not been included in a wilderness study area or found to possess wilderness characteristics in a BLM inventory will be affirmed where the appellant bases its objection to the adequacy of those documents on the fact that the lands were determined to have wilderness characteristics in a citizens' group wilderness inventory and were included in an area proposed for wilderness designation in legislation introduced in Congress.

APPEARANCES: W. Herbert McHarg, Esq., Moab, Utah, for appellant; David K. Grayson, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Southern Utah Wilderness Alliance (SUWA) has appealed six decisions issued by the Utah State Office, Bureau of Land Management (BLM), denying its protests against the inclusion of various parcels as available for leasing in six separate competitive oil and gas lease sales. The parcels are located within lands congressionally proposed for wilderness designation in the America's Redrock Wilderness Act, H.R. 1732, which has never been enacted.

The following background is not in dispute. The Federal Land Policy and Management Act of 1976 (FLPMA), as amended, 43 U.S.C. §§ 1711, 1782 (2000), required the Secretary of the Interior to conduct an inventory for various resource values, including wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131-1136 (2000). The Secretary was obligated under FLPMA to submit recommendations to the President as to the suitability of areas for wilderness designation. 43 U.S.C. § 1782(a) (2000).

The Secretary conducted a wilderness inventory of public lands between the years 1978 and 1985, and made recommendations for wilderness study areas (WSAs) in 1980 for public lands within the State of Utah. Under section 603 of FLPMA these lands are managed so as not to impair their suitability for preservation by Congress as wilderness. 43 U.S.C. § 1782(c) (2000).

Subsequent to the Departmental inventory, the Utah Wilderness Coalition (UWC) introduced its own study of lands within the State of Utah, proposing that public lands in Utah comprising 5.7 million acres be included within the Wilderness Preservation System. This proposal was introduced by Congressman Owens in 1989 to the 101st Congress as H.R. 1500, see also S. 773, and reintroduced for a number of years but never enacted.

Subsequently, beginning in 1996, BLM undertook a comprehensive examination of certain public lands within Utah, and in particular of the lands within H.R. 1500. BLM completed this evaluation on February 4, 1999 (the 1999 Utah Wilderness Inventory). Thereafter, BLM undertook a statewide planning effort to determine whether to establish additional WSAs within Utah based upon the 1999 Utah Wilderness Inventory. See 64 FR 13439 (Mar. 18, 1999). On April 15, 1999, the Solicitor of the Department of the Interior issued a memorandum to the Utah State Director, BLM, with regard to the 1999 wilderness inventory lands:

While the planning process is being completed on lands found to have wilderness characteristics in the 1999 Wilderness Inventory, the management prescriptions of existing land management plans do not change. For example, if current land management plans have designated lands open for mineral leasing, they remain open for leasing. Management prescriptions may be changed only through amendment of the land management plans, following the procedures of section 202 of FLMPA and implementing regulations at 43 CFR Subpart 1610.

In or before 1999, the UWC conducted another “citizens” inventory of public lands within Utah, adding 2.8 million acres of land in the State to the lands it had claimed should be included as wilderness within Utah in H.R. 1500. This additional

acreage was added to the lands in H.R. 1500 for a total of 9.1 million acres, and introduced as proposed legislation in Congress as H.R. 1732 and S. 861 (referred to in this decision as H.R. 1732), identified as the America's Redrock Wilderness Act.^{1/} At issue here are lands identified in H.R. 1732 which were not included within BLM's 1999 Utah Wilderness Inventory.

BLM undertook, for purposes relevant here, six oil and gas lease sales on public lands within Utah, dated February 25, 1999, November 29, 1999, February 28, 2000, June 19, 2000, September 7, 2000, and November 27, 2000. SUWA protested decisions for each of these sales.^{2/} BLM denied each protest, and SUWA appealed with respect to each protest denial decision. The Board denied SUWA's request for a stay of BLM's decisions by order dated February 2, 2001.

SUWA's six protests were submitted to challenge the inclusion of a number of parcels SUWA claimed were located on lands with potential wilderness characteristics.^{3/} In accordance with 43 CFR 3120.1-3, BLM suspended the offering of the protested parcels while it considered SUWA's protests. In each protest SUWA objected to the inclusion of the identified parcels in the lease sales to the extent they fell within lands proposed for wilderness designation in the congressionally proposed America's Redrock Wilderness Act. SUWA argued that, in accordance with BLM policy, no leases should be offered within congressionally proposed wilderness areas or on lands identified by BLM as possessing wilderness characteristics in its 1999 Utah Wilderness Inventory; that BLM had the authority to exclude parcels from

^{1/} The most recent version of this Act was introduced in the 108th Congress as H.R. 1796 and S. 639.

^{2/} The case file does not contain a copy of the protest of the February 25, 1999, lease sale, although it does include a supplemental memorandum to the protest, dated Feb. 22, 1999, specifically identifying the protested parcels

^{3/} The parcels are: UT-002, UT-003, UT-006, UT-007, UT-009, UT-016, UT-021, UT-037, UT-042, UT-044, UT-049, UT-050, UT-052, UT-053, UT-059, UT-062, UT-066, and UT-067 (Feb. 25, 1999, competitive oil and gas lease sale); UT-029, UT-037, UT-038, UT-040, UT-041, UT-042, UT-058, UT-059, UT-073, UT-079, UT-080, UT-081, and UT-097 (Nov. 29, 1999, sale); UT-045, UT-076, UT-077, UT-079, UT-080, UT-081, UT-082, UT-083, and UT-088 (Feb. 28, 2000, sale); UT-077, UT-080, and UT-082 through UT-087 (June 19, 2000, sale); UT-003, UT-012, and UT-014, UT-010 (formerly (as designated in the Feb. 28, 2000, sale) UT-045), UT-023 (formerly UT-076), UT-024 (formerly UT-077), UT-025 (formerly UT-079), UT-026 (formerly UT-080), UT-027 (formerly UT-081), UT-028 (formerly UT-082), UT-029 (formerly UT-083), and UT-039 (formerly UT-088) (Sept. 7, 2000, sale); UT-014, UT-017, UT-018, UT-019, UT-020, UT-024, and UT-026 (Nov. 27, 2000, lease sale).

leasing and the duty to take action to prevent unnecessary or undue degradation of the resources in the H.R. 1732 areas; and that BLM was required either to prepare a document pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332 (2000), before leasing the disputed parcels or to lease the parcels with a no surface occupancy (NSO) stipulation. See, e.g., Protest of Nov. 29, 1999, lease sale at 2-8.

BLM issued three of the challenged decisions on June 6, 2000, denying SUWA's protests of the February 25, 1999, February 28, 2000, and June 19, 2000, competitive oil and gas lease sales. BLM issued two additional decisions on August 25, 2000, denying SUWA's protests of the November 29, 1999, and September 7, 2000, competitive oil and gas lease sales.^{4/} BLM issued the final appealed decision on November 20, 2000, denying SUWA's protest of the November 27, 2000, competitive oil and gas lease sale. In each protest decision, BLM differentiated those parcels falling within the proposed H.R. 1732 wilderness area but outside recognized wilderness units from those parcels lying outside the proposed area.^{5/} SUWA has stated that its intent at this time is to confine its appeal to

^{4/} The appeal of these two decisions was initially docketed as IBLA 2001-13. By order dated Feb. 2, 2001, the Board stated that it would "consider all six sales dates within IBLA 2000-327." (Feb. 2, 2001, Order at 1.)

^{5/} (1) BLM's June 6, 2000, decision regarding the Feb. 25, 1999, lease sale noted that BLM had deleted parcel UT-059 from the sale because the lands were within the Flume Wilderness Inventory Unit identified by BLM in the 1999 Utah Wilderness Inventory, and dismissed the protest as to parcels UT-003, UT-006, UT-009, UT-049, and UT-052 because those parcels were not within the additional 2.8 million acres included in H.R. 1732 or in H.R. 1500. (Feb. 25, 1999, lease sale protest decision at 1, 2, 4.)

(2) BLM's June 6, 2000, decision regarding the Feb. 28, 2000, lease sale conceded that all or parts of the lands included in the challenged parcels lay within the proposed H.R. 1732 lands. (Feb. 28, 2000, lease sale protest decision at 2, 3.)

(3) BLM's June 6, 2000, decision addressing the June 19, 2000, lease sale denied the protest as to parcel UT-077, parts of which encompassed lands within the proposed wilderness area, and dismissed the protest as to the remaining parcels because SUWA had failed to provide documentation supporting its contentions regarding their status as Forest Service lands. (June 19, 2000, lease sale protest decision at 1, 2, 3.)

(4) BLM's Aug. 25, 2000, decision regarding the Nov. 29, 1999, lease sale noted that BLM had deleted parts of parcels UT-029 and UT-058 from the sale because those lands were within the Cedar Mountain and Lost Springs Wilderness Inventory Units identified in the 1999 Utah Wilderness Inventory. (Nov. 29, 1999, lease sale protest decision at 2.) The decision further found that remaining lands in parcel UT-029 and

(continued...)

portions of specific parcels that fall within the areas proposed for designation in the America's Redrock Wilderness Act and that it therefore will dismiss its appeal with respect to parcels and portions of parcels outside those areas following BLM's confirmation that they in fact are not within the proposed wilderness areas. See Supplement to the Notice of Appeal, Statement of Standing, Request for Stay, and Argument (Supplement), dated Sept. 25, 2000, at 2-3. Although no confirmation appears in the record beyond the information provided in the individual decisions, SUWA has not in any way objected to or offered proof against those particularized findings to show error in BLM's determinations that various parcels or parts of parcels are outside the proposed wilderness areas. We therefore affirm BLM's decisions as to those parcels without further discussion. The remainder of this decision covers only those parcels within each lease sale which in whole or in part lie within the proposed H.R. 1732 lands.

With respect to that topic, each BLM protest denial decision contains virtually identical legal analysis supporting the denial of the protest. BLM notes that none of the parcels within the proposed wilderness area was found to have wilderness characteristics when BLM conducted its wilderness inventory between 1978 and 1985, as required by section 603 of FLPMA, 43 U.S.C. § 1782 (2000), nor were any of those parcels found to have wilderness characteristics when BLM completed its 1999 Utah Wilderness Inventory under section 201 of FLPMA, 43 U.S.C. § 1711(a) (2000). See Feb. 25, 1999, lease sale protest decision at 2; Nov. 29, 1999, lease sale protest decision at 2; Feb. 28, 2000, lease sale protest decision at 1-2; June 19, 2000, lease sale protest decision at 2; Sept. 7, 2000, lease sale protest decision at 1; Nov. 27, 2000, lease sale protest decision at 1-2. The following discussion typifies the analysis found in all six of the appealed decisions:

SUWA contends that it has been BLM's policy to refrain from issuing new oil and gas leases that fall within areas proposed for wilderness which are included in legislation introduced in the House (H.R. 1500 in the past, now H.R. 1732) and Senate (S. 773 in the past,

^{5/} (...continued)

the lands in parcels UT-038, UT-040, UT-073, UT-079, UT-080, UT-081, and UT-097 were located outside the H.R. 1732 lands, and that all of parcel UT-097 was under fee surface ownership. Id.

(5) The Aug. 25, 2000, decision addressing the Sept. 7, 2000, lease sale, noted that parcel UT-003 fell outside the proposed wilderness area and then denied the protest as to all of the parcels, including nine previously protested parcels from the February 28, 2000, lease sale. (Sept. 7, 2000, lease sale protest decision at 2, 3.)

(6) The Nov. 20, 2000, decision regarding the Nov. 27, 2000, lease sale found that all or parts of the lands in all the protested parcels encompassed lands within the proposed wilderness area. (Nov. 27, 2000, lease sale protest decision at 2, 3.)

now S. 861) and requests that this “be careful” policy be extended to include approximately an additional 2.8 million acres that the UWC believes, as a result of their recent re-inventory, possess[] wilderness character. SUWA requests that the protested lease parcels be withheld from the * * * lease sale and subsequent sales, until the BLM has inventoried those lands, completed its wilderness review process, and until such time as Congress has an opportunity to consider these lands for wilderness designation. In the alternative, SUWA demands that a “no surface occupancy” stipulation cover each of the subject parcels, or that the BLM prepare an Environmental Impact Statement (EIS) that addresses the direct, indirect, and cumulative impacts of the decision to lease the parcels.

SUWA’s description of BLM’s policy with regard to oil and gas leasing within lands currently identified in H.R. 1732 is not accurate. It is not, and never has been, BLM policy to refrain from issuing new oil and gas leases on lands not designated as a BLM WSA. Secretary of the Interior Bruce Babbitt had instructed the BLM to pay careful attention to development proposals that could limit Congress’ ability to designate certain BLM lands in Utah (i.e., those previously identified in the former H.R. 1500) as wilderness, even though these areas have not formally been designated as WSAs. As SUWA mentioned in their protest, State Director Mat Millenbach elaborated on this policy in his letter of March 29, 1995, to Representative James V. Hansen. However, in the Department of the Interior, Solicitor Office’s memorandum dated April 15, 1999, to this office, concerning Land Use Planning and BLM’s Utah 1999 Wilderness Inventory, it is indicated that this policy will continue, but the area covered will be modified to conform with the public lands identified as having wilderness characteristics in the BLM’s Utah 1999 Wilderness Inventory. BLM will not, therefore, provide lands within H.R. 1732 (which includes lands within the former H.R. 1500 areas), excluding lands within BLM WSAs and lands identified in the Utah 1999 Wilderness Inventory as having wilderness characteristics, special consideration or attention beyond our standard practices for proposals affecting public lands.

SUWA points out in their protest that BLM has authority to exclude parcels from lease sales and must take actions in order to prevent unnecessary or undue degradation of the wilderness resources. BLM’s decision to lease is based on existing land use plans. The Interior Board of Land Appeals (IBLA) has ruled that BLM is not strictly bound by the terms of a Resource Management Plan (RMP) when considering whether or not to offer a particular parcel of land for oil and gas

leasing. Leasing decisions set out in an RMP are subject to modification based on site-specific study, and BLM has authority to eliminate specific parcels from leasing even where they have been designated in an RMP as generally suitable for leasing. Marathon Oil Co., 139 IBLA 347 (1997). However, BLM is not required to undertake a site-specific environmental review prior to issuing an oil and gas lease when it previously analyzed the environmental consequences of leasing the lands, and declined to designate the land for further study and protection as a WSA under section 603 of FLPMA. See Colorado Environmental Coalition, et al., 149 IBLA 154 (1999). As stated above, BLM has already inventoried these lands for wilderness characteristics and determined that they do not possess wilderness characteristics.

SUWA argues that BLM is required to prepare a [NEPA] document prior to leasing the protested parcels. BLM prepared Documentation of NEPA Adequacy (DNA) with respect to these parcels in accordance with BLM, Washington Office (WO) Instruction Memorandum (IM) No. 99-149, Documentation of Land Use Plan Conformance and NEPA Adequacy, and WO IM No. 99-204, Documentation of NEPA Adequacy for Oil and Gas Leasing and Other Similar Actions. BLM's DNA concluded that existing environmental analysis adequately addresses the potential impacts of leasing and that no further NEPA analysis is required to support a decision on the leasing proposal. The only change in circumstances pointed to in the protest is the contention that the subject parcels are in an area found to have wilderness characteristics by the UWC. No other information or evidence of potential significant effects on the human environment are noted in the protest. Therefore, absent any new information relative to the environmental consequences of the proposed action, BLM's conclusion that an EIS is not required must be affirmed. BLM may not arbitrarily impose a "no surface occupancy" stipulation if the protection stipulation is not required under the land use plan.

Section 102(2)(C) of NEPA requires Federal agencies to "include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official..." The detailed statement is an EIS. An EIS would be required only if the proposed leasing would result in significant effects in the quality of the human environment not already analyzed in existing NEPA documents; rather than the fact that there would be a commitment of resources or the potential for disturbing the environment as stated in the [protest].

In addition, BLM is not required to include in such assessment consideration of a subsequent inventory by a citizens' group concluding that the area possesses wilderness characteristics. Southern Utah Wilderness Alliance, 150 IBLA 263 (1999). As previously mentioned, State Director Mat Millenbach's policy will continue, but the area covered is modified to conform with public lands identified as having wilderness characteristics in BLM's Utah 1999 Wilderness Inventory.

(Nov. 27, 2000, lease sale protest decision at 2-3; see also Nov. 29, 1999, lease sale protest decision at 2-4; Feb. 28, 2000, lease sale protest decision at 2-3; June 19, 2000, lease sale protest decision at 2-3; Sept. 7, 2000, lease sale protest decision at 2-3).^{6/}

SUWA objects to this conclusion in its Notice of Appeal, Statement of Standing, Request for Stay, and Argument (Argument), addressing BLM's February 25, 1999, February 28, 2000, and June 19, 2000, lease sale protest decisions.^{7/} SUWA contends that BLM's decision to lease parcels within congressionally proposed wilderness areas is erroneous because BLM policy in Utah has been to refrain from issuing oil and gas leases within lands publicly proposed for wilderness designation. SUWA relies on a November 1, 1993, memorandum from the Secretary of the Interior to the Director of BLM which it characterizes as asking the Director to give careful attention to actions which could limit Congress' ability to designate lands within the UWC's 1989 wilderness proposal as wilderness.^{8/} SUWA avers that Utah State Director Mat Millenbach elaborated on this policy in a March 29, 1995, letter to Congressman James V. Hansen (Millenbach letter), stating that the Utah State Office would not offer parcels within the proposed wilderness area identified in H.R. 1500 for oil and gas leasing. (Argument at 3-4.) SUWA maintains that this 1993 policy, allegedly to refrain from leasing in proposed

^{6/} BLM's Feb. 25, 1999, lease sale protest decision contains somewhat different language. The salient points in the analysis, however, are the same. See Feb. 25, 1999, lease sale protest decision at 2-3.

^{7/} In its Supplement dated Sept, 25, 2000, SUWA added appeals of the Nov. 29, 1999, and Sept. 7, 2000, lease sale protest decisions to pending appeal. In a Supplement to the Argument dated Dec. 18, 2000, SUWA joined its appeal of the Nov. 27, 2000, lease sale protest decision to the other appeals.

^{8/} The Nov. 1, 1993, memorandum states in its entirety:

"I am generally aware of the debate that has, for well over a decade, swirled around the adequacy of the [BLM's] inventory of wilderness study areas in Utah under [FLPMA]. I want you to make sure that any BLM management decisions affecting potential wilderness on BLM lands in Utah, whether within formally designated WSA's or not, are given your careful attention."

wilderness lands, must now be extended to apply to all lands proposed for wilderness included in 1999 within H.R. 1732 which added an additional 2.8 million acres to the 5.7 million acres of proposed wilderness contained in the H.R. 1500. See Answer at 7 and n.2. SUWA asserts that BLM's decision to ignore this policy for lands outside BLM's 1999 wilderness inventoried areas contravenes the intent of the policy to prevent unnecessary and undue degradation of the public lands, including their wilderness values, and thus violates section 302 of FLPMA, 43 U.S.C. § 1732 (2000).

SUWA contends that BLM erred in relying on the original wilderness inventory conducted between 1978 and 1985 and the 1999 Utah Wilderness Inventory in concluding that the protested parcels do not have wilderness characteristics. SUWA avers that, as BLM itself has acknowledged, the original inventory, which was one of the first wilderness inventories conducted by BLM, was totally flawed. (Argument at 6.) According to SUWA, the 1999 wilderness inventory to correct the flawed initial inventory was not comprehensive and was limited to the 5.7 million acres identified in H.R. 1500. (Argument at 7.) SUWA argues that the version of the America's Redrock Wilderness Act introduced as H.R. 1732, was based on a comprehensive inventory of all BLM lands in Utah, and that the additional 2.8 million acres of wilderness proposed in H.R. 1732 have never been properly inventoried by BLM. (Argument at 7-8.)

SUWA argues that BLM was required to undertake an RMP revision, and further review under section 102 of NEPA, 42 U.S.C. § 4332 (2000), before making any decision to offer lease parcels within H.R. 1732. Specifically, SUWA contends that section 201 of FLPMA, 43 U.S.C. § 1711 (2000), directs BLM to inventory public lands and protect those lands that qualify for wilderness; section 202 of FLPMA, 43 U.S.C. § 1712 (2000), requires BLM to develop, maintain, and revise land use plans; and section 302 of FLPMA, 43 U.S.C. § 1732 (2000), mandates that BLM take any action necessary to prevent unnecessary or undue degradation of the public lands. (Argument at 10-11.) These provisions, SUWA submits, direct BLM to use inventories to revise RMPs periodically to ensure that management decisions and planning are based on current assessments of resource values. (Argument at 11-12.)

SUWA disputes BLM's conclusion that new NEPA documentation need not be prepared because no new information relevant to the environmental consequences of the leasing has been presented. BLM's reliance on DNAs to support the conclusion that no additional NEPA analysis is required fails, SUWA maintains, because the proposed wilderness designation means that resource concerns have changed. Because protection of wilderness values subsumes protection of many other resource values, SUWA dismisses BLM's contention that the wilderness proposal is the only changed circumstance raised by SUWA and asserts that BLM must take a hard look at many facets of the current RMPs. (Argument at 13-14.)

Finally, SUWA contends that BLM erroneously failed to determine whether NSO or other stipulations were required. According to SUWA, BLM was incapable of establishing that the existing site-specific analysis was adequate because meeting this burden requires an adequate inventory of the lands for wilderness characteristics and amendment of the RMPs where necessary to retain BLM's full authority to protect wilderness resources. (Argument at 16-17; see also Dec. 18, 2000, Supplement to Argument at 2-4.)

In its answer,^{2/} BLM denies that it was required to consider wilderness in its DNAs because the affected lands were neither included in a WSA established pursuant to section 603 of FLPMA, 43 U.S.C. § 1782 (2000), and required to be managed so as not to impair their suitability for designation by Congress as wilderness, nor identified as areas with wilderness characteristics in the 1999 Utah Wilderness Inventory. BLM asserts that FLPMA and the Wilderness Act, not NEPA, control BLM's evaluation of the wilderness characteristics of an area, and that lands not included within a WSA may be administered for other purposes, including oil and gas activities. (Answer at 2-3.)

BLM disputes the assertion that it cannot make management decisions in the areas in dispute until it does a re-inventory of those areas for wilderness characteristics. BLM differentiates between the mandatory wilderness inventory provisions of section 603 of FLPMA, 43 U.S.C. § 1782 (2000), which it complied with by 1985, and the discretionary authority to inventory public lands on a continuing basis set out in section 201 of FLPMA, 43 U.S.C. § 1711 (2000). According to BLM, the Secretary exercised his discretionary inventory authority in directing BLM to re-inventory the lands identified in H.R. 1500 which did not include the lands at issue here. (Answer at 10.) BLM submits that the decision on which lands to re-inventory and for what values is committed to the discretion of the Secretary and thus falls outside the Board's jurisdiction. (Answer at 4.) Moreover, BLM contends that, in accordance with section 201 of FLPMA, 43 U.S.C. § 1711 (2000), an inventory does not affect management or use of public land and that, therefore, even if the Secretary had ordered a re-inventory of the lands at issue, that would not have affected the management of those lands. (Answer at 5.)

Finally, BLM asserts that it complied with NEPA because it took the requisite hard look at the environmental consequences of holding the lease sales and because SUWA's delineation of proposed new wilderness areas does not constitute the discovery of a new, substantial environmental problem of material significance. SUWA's reliance on the alleged impacts on the proposed wilderness areas as the basis

^{2/} BLM filed two answers: the first, filed on Sept. 6, 2000, addressed SUWA's initial Argument while the second, filed on Jan. 16, 2001, dealt with all six lease sale protest decisions. Our discussion follows the Jan. 16, 2001, answer.

for its attacks on the adequacy of BLM's NEPA documentation fails, BLM submits, because areas proposed for wilderness designation by citizen groups, even when included in bills before Congress, have no legal significance in the context of BLM decisionmaking but simply represent an untimely attempt to revisit decisions made by BLM in the late 1970s and early 1980s pursuant to section 603 of FLPMA. (Answer at 5-6.)

SUWA's arguments focus on the protested parcels' locations on lands included in the proposed wilderness area identified in the 1999 version of the America's Redrock Wilderness Act, H.R. 1732. That fact alone, SUWA insists, requires at a minimum that BLM refrain from leasing those parcels until the lands are re-inventoried for their wilderness values, applicable land use plans are revised to reflect those values, and new NEPA documentation, preferably an EIS, is prepared to analyze the impacts of oil and gas leasing on those values. We disagree.

[1] To the extent SUWA's appeal in this matter can be construed to be a challenge to BLM's 1980 Utah wilderness inventory for failure to include the H.R. 1732 areas within a WSA, the time for challenging that determination has long passed and it is well settled that BLM may administer lands not included in a WSA for other purposes, including oil and gas activities. Southern Utah Wilderness Alliance, 160 IBLA 225, 230-31 (2003); Southern Utah Wilderness Alliance, 158 IBLA 212, 214 (2003); Southern Utah Wilderness Alliance, 151 IBLA 338, 341-42 (2000); Southern Utah Wilderness Alliance, 150 IBLA 263, 266-67 (1999); Southern Utah Wilderness Alliance, 128 IBLA 52, 66 (1993); Southern Utah Wilderness Alliance, 123 IBLA 13, 18 (1992). Because BLM inventoried the disputed areas and found them unsuitable for potential wilderness designation, BLM is not now required to consider how oil and gas leasing may affect their suitability as wilderness areas. Colorado Environmental Coalition, 149 IBLA 154, 159 (1999); see also Wyoming Outdoor Council, 147 IBLA 105, 111 (1998).

The fact that the lands are included within a congressionally proposed wilderness area does not change this result. As we stated in Southern Utah Wilderness Alliance, 150 IBLA at 266-67:

SUWA has presented no authority which requires that before BLM authorizes any use of lands previously inventoried and excluded as a WSA, it must consider in its [NEPA documents] findings by a citizens' group contradicting such exclusion.

Moreover, we held in Southern Utah Wilderness Alliance, [128 IBLA at 66,] that BLM may administer for other purposes lands excluded from wilderness consideration. In that case, SUWA challenged a BLM Decision Record and Finding of No Significant

Impact approving an application for permit to drill (APD) a natural gas well on a Federal lease along the north canyon rim of the White River, approximately 30 miles south of Vernal, Utah. Therein we stated at pages 65-66:

Appellants also argue that the EA violated NEPA in failing to consider any potential adverse impacts APD approval might have on the area's eligibility for designation as a wilderness area within the National Wilderness System. Specifically, appellants argue that approval of the APD allows development within a potential wilderness area, as proposed by Utah Congressman Wayne Owens [(H.R. 1500)], and that under such circumstances, NEPA requires preparation of an EIS.

First, NEPA does not contain directives which BLM must observe in evaluating the wilderness characteristics of an area. That evaluation was conducted pursuant to relevant provisions of [FLPMA] and the Wilderness Act. The Wilderness Society, 119 IBLA 168 (1991).

Second, as we have stated on a number of occasions, final administrative decisions relating to the designation of lands as WSA's in Utah were completed in the 1980's. Southern Utah Wilderness Alliance, 123 IBLA 13, 18 (1992); Southern Utah Wilderness Alliance, 122 IBLA 17, 21 n.4 (1992). The lands in question were not included in a WSA. Therefore, BLM may administer them for other purposes, including the approval of drilling for oil and gas. Id.

(Footnote omitted.) See also Southern Utah Wilderness Alliance, 158 IBLA at 214; Southern Utah Wilderness Alliance, 151 IBLA at 341-42. Thus, BLM may administer the H.R. 1732 parcels by offering them for competitive oil and gas leasing.

[2] SUWA's assertion that BLM had a statutory obligation to conduct a re-inventory of the lands claimed to possess wilderness characteristics before offering the parcels for leasing similarly fails. Section 201(a) of FLPMA, 43 U.S.C. § 1711(a) (2000), provides:

The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions

and to identify new and emerging resource and other values. The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change of the management or use of public lands.

While this section clearly requires the Secretary to keep a current inventory of the public lands and their resource values, it commits the manner and timing of implementation of this statutory mandate to the discretion of the Secretary. See Great Basin Mine Watch, 159 IBLA 324, 344 (2003), citing Southern Utah Wilderness Alliance, 158 IBLA at 216-17. This authority has been delegated to BLM. Southern Utah Wilderness Alliance, 158 IBLA at 216. We reject the notion that citizens' groups may undermine this discretion by establishing their own inventory and then arguing that BLM must reconsider its inventories when it attempts to undertake land use decisionmaking.

In any event, the Board has no supervisory authority over BLM and cannot compel BLM to perform a re-inventory. Southern Utah Wilderness Alliance, 159 IBLA 220, 244 (2003); Southern Utah Wilderness Alliance, 158 IBLA at 216-17. Furthermore, the inventory mandated by section 201(a) of FLPMA is not a land use plan, nor does it make any decisions concerning management or use of the public lands. State of Utah v. Babbitt, 137 F.3d 1193, 1209 (10th Cir. 1998); Great Basin Mine Watch, 159 IBLA at 343. We therefore find no basis in FLPMA for requiring BLM to conduct a new inventory of the wilderness potential of the affected lands before offering the parcels for oil and gas leasing. Southern Utah Wilderness Alliance, 158 IBLA at 217.

[3] Nor does existing precedent support SUWA's claim that inclusion of the affected lands in the congressionally proposed wilderness area requires BLM to alter existing land use authorizations under the existing land use plans. See, e.g., Southern Utah Wilderness Alliance, 160 IBLA at 229-232, and cases cited. Although SUWA insists that BLM must revise its "outdated" and inadequate land use plans to reflect the wilderness values uncovered in the citizens' wilderness inventory before it can offer the parcels for oil and gas leasing, FLPMA's land use planning provisions authorize BLM to

continue to manage public lands according to existing land use plans while new information (e.g., in the form of new resource assessments, wilderness inventory areas or "citizen's proposals") is being considered in a land use planning effort. During the planning process and concluding with the actions after the planning process, BLM will not manage those lands under a congressionally designated non-impairment standard, nor manage them as if they are or may become congressionally designated wilderness areas, but through the planning

process BLM may manage them using special protections to protect wilderness characteristics.

(IM 2003-274 (Sept. 29, 2003), at 2, quoted in Colorado Environmental Coalition, 161 IBLA 386, 396 (2004).) ^{10/} These principles reflect the statutory requirements in effect since FLPMA was enacted in 1976 and govern the resolution of this appeal. Id.; see also Colorado Environmental Coalition, 149 IBLA at 156; Sierra Club Legal Defense Fund, Inc., 124 IBLA 130, 140 (1992) (“Acceptance of appellants’ position that once BLM has decided to prepare a new land use plan for an area, it must suspend action in conformance with the prevailing plan would seriously impair BLM’s ability to perform its management responsibilities.”).

[4] SUWA’s challenges to the adequacy of BLM’s site-specific environmental review of the leasing of the challenged parcels under NEPA documented in the DNAs rest on its contention that location of the parcels on lands found to have wilderness values in the citizens’ inventory and included in the congressionally proposed wilderness area constitutes new information undermining the sufficiency of BLM’s existing land use plans and environmental documents. According to SUWA, this new information required BLM to re-evaluate the wilderness characteristics of the parcels and to re-inventory the lands and revise the applicable land use plans to reflect the wilderness values of the lands before offering the parcels for oil and gas leasing. SUWA claims that these deficiencies render inappropriate BLM’s use of DNAs to support the leasing decisions. Our rejection of the arguments underlying SUWA’s NEPA arguments, *i.e.*, that BLM was required to consider the areas’ inclusion in the proposed wilderness area, re-inventory the areas, and revise the land use plans before offering the parcels for leasing, mandates rejection of SUWA’s NEPA arguments as well. Accordingly, we conclude that SUWA has not shown that BLM erred in finding in the DNAs that existing land use plans and NEPA documents adequately analyzed the impacts of leasing the disputed parcels. See Southern Utah Wilderness Alliance, 159 IBLA at 235 (burden is on challenging party to show error in BLM’s NEPA

^{10/} As we explained in that decision, 161 IBLA at 393, IM 2003-274 implements nationwide the terms of the settlement reached in Utah v. Norton, No. 96-C-870 B (D. Utah Apr. 14, 2003). The IM is entirely consistent with the Apr. 15, 1999, Solicitor’s memorandum on the topic which expressly stated: “[I]f current land management plans have designated lands open for mineral leasing, they remain open for leasing. Management prescriptions may be changed only through amendment of the land management plans * * *.” See Southern Utah Wilderness Alliance, 159 IBLA at 234. For this reason, we reject SUWA’s argument that BLM’s “policy” is otherwise, or that prior statements cited by SUWA with respect to H.R. 1500, upon which BLM based its 1996 wilderness inventory, can be construed to be relevant to the 2.8 million acres added by the UWC’s subsequent inventory.

analysis). ^{11/} For the same reasons, we reject SUWA's arguments that BLM was required to conduct a re-inventory of the leased parcels to determine whether to employ NSO stipulations.

To the extent not specifically addressed herein, SUWA's additional arguments have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Lisa Hemmer
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

^{11/} Although SUWA asserts that wilderness values include protection of other resource values, it has not specifically identified any other resource value ignored in BLM's existing NEPA documents or land use plans. Its conclusory allegation that other values will be adversely impacted by offering the parcels for leasing fails to establish error in the DNAs. See Sierra Club, Angeles Chapter, Santa Clarita Group, 156 IBLA 144, 168 (2002), and cases cited.