



CENTER FOR NATIVE ECOSYSTEMS
FOREST GUARDIANS
THE WILDERNESS SOCIETY

174 IBLA 361

Decided June 23, 2008



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

CENTER FOR NATIVE ECOSYSTEMS
FOREST GUARDIANS
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IBLA 2007-59

Decided June 23, 2008

Appeal from a decision of the Colorado State Office, Bureau of Land Management, dismissing a protest to the inclusion of certain parcels in a May 11, 2006, Competitive Oil and Gas Lease Sale. CO922(MM).

Affirmed in part; set aside and remanded in part.

1. Environmental Policy Act--National Environmental Policy Act of 1969: Environmental Statements--Oil and Gas Leases: Discretion to Lease

In considering the potential impacts of oil and gas exploration and development when BLM proposes to lease public lands for oil and gas purposes, BLM may properly use a "Documentation of Land Use Plan Conformance and NEPA Adequacy" to assess and determine the adequacy of previous NEPA documents for BLM's proposed action. An appellant's burden is to show that existing environmental analyses are inadequate or that BLM otherwise erred in relying on previous NEPA documents in deciding to offer parcels for lease.

2. Environmental Policy Act--National Environmental Policy Act of 1969: Environmental Statements--Oil and Gas Leases: Discretion to Lease

The principal purpose of a "Documentation of Land Use Plan Conformance and NEPA Adequacy" is to identify the environmental documents considered in determining NEPA adequacy so that the decisionmaker can make a properly informed decision, cognizant of the relevant environmental analyses contained in those documents.

While an agency decisionmaker is free to consider NEPA documents not identified in a DNA in making his/her decision, this must be reflected and explained in the record. Where the record fails to demonstrate and explain that additional NEPA documents were reviewed and considered in making a decision, the Board will not consider those documents in determining whether the procedural requirements of NEPA have been satisfied.

3. Environmental Policy Act--National Environmental Policy Act of 1969: Environmental Statements--Oil and Gas Leases: Discretion to Lease--Endangered Species Act of 1972: Generally--Endangered Species Act of 1973: Section 7: Generally

When disagreeing with an expert sister agency's views that BLM action will have a significant impact on an issue of environmental significance in a decision based solely on a DNA, it is incumbent on BLM to point to a NEPA document showing that it adequately considered the relevant issue under NEPA and properly reached a conclusion contrary to that presented by its sister agency.

APPEARANCES: Mike Chiropolos, Esq., Western Resource Advocates, Boulder, Colorado, for appellants; Lance Wegner, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management; L. Poe Leggette, Esq., and William E. Sparks, Esq., Fulbright & Jaworski L.L.P., Washington, D.C., for Intervenor Bill Barrett Corporation.

OPINION BY ADMINISTRATIVE JUDGE JACKSON

The Center for Native Ecosystems (CNE), Forest Guardians, and the Wilderness Society (collectively "appellants") appeal from the November 13, 2006, decision by the Colorado State Office, Bureau of Land Management (BLM), dismissing their protest to the inclusion of 42 parcels in Moffat and Rio Blanco Counties, Colorado, in a May 11, 2006, Competitive Oil and Gas Lease Sale (Lease Sale): 27 of these parcels are within the White River Resource Area;¹ 14 are in the

¹ The White River parcels at issue are: COC69747, COC69751, COC69752, COC69753, COC69754, COC69761 through COC69774, COC69776, COC69777, COC69778, COC69780, COC69781, COC69783, COC69784, and COC69785.

Little Snake Resource Area;² and the remaining parcel (COC69673) is in the Grand Junction Resource Area. The White River and Little Snake parcels are within the Northwestern Colorado/Northeastern Utah Black-footed Ferret Experimental Population Area (ExPA) identified by the U.S. Fish and Wildlife Service (FWS) under the Endangered Species Act (ESA), 16 U.S.C. §§ 1531-1543 (2000). 63 Fed. Reg. 52824, 52825 (Oct. 1, 1998).³ Appellants claim that BLM's inclusion of these parcels in the Lease Sale violated section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2000), by failing to consider significant new information before deciding to offer the above-identified parcels for lease, to consider reasonable alternatives, and to adequately analyze cumulative impacts from ongoing mineral development in Colorado and Utah. As to the Grand Junction parcel, appellants separately contend that BLM failed to consider new information (*i.e.*, the Demaree Canyon Citizen Wilderness Proposals) before offering it for lease.

BACKGROUND

The black-footed ferret has been listed as endangered under the ESA and predecessor statutes since 1967. 50 C.F.R. § 1711(h). In response to the ESA's directive that departments and agencies "utilize their authorities in furtherance of the purposes of this Act and provide for the development and implementation of species recovery plans," 16 U.S.C. § 1531 (2000), FWS issued a Black-footed Ferret Recovery Plan in 1978, which was revised in 1988 following the successful captive breeding of black-footed ferrets.⁴ 63 Fed. Reg. at 52825. The 1988 recovery plan established national recovery objectives (*e.g.*, 1,500 free-ranging black-footed ferret breeding adults by 2010) and focused on increasing efforts to locate suitable reintroduction sites. *Id.*

² The Little Snake parcels at issue are: COC69725, COC69727 through COC69733, COC69786 through COC69790, and COC69792.

³ This rulemaking established the ExPA, which became the fifth such area designated by FWS for the reintroduction of a "nonessential experimental population" of black-footed ferrets. *See* 50 C.F.R. § 17.84(g)(9)(v).

⁴ Congress amended the ESA in 1982 to encourage species reintroduction by permitting the Secretary to designate a reintroduced listed species as either an "essential" or "nonessential" experimental population. 16 U.S.C. § 1539(j)(2)(B) (2000). An essential experimental population is treated as a listed threatened species; a nonessential experimental population is treated as a species proposed for listing as threatened. 16 U.S.C. § 1539(j)(2)(C) (2000); 50 C.F.R. § 17.81. Since reintroduced black-footed ferrets are a designated nonessential experimental populations, 50 C.F.R. § 17.84(g)(1), they are treated under the ESA as species proposed for listing as threatened.

Consistent with the 1988 recovery plan and in cooperation with BLM and the States of Colorado and Wyoming, FWS began work on a cooperative management plan for reintroducing black-footed ferrets into the Little Snake Resource Area in 1991; at the same time, BLM initiated action to amend the 1989 Little Snake Resource Management Plan (RMP) by convening public scoping meetings in September 1991. These parallel efforts culminated in FWS issuing and BLM approving a June 1995 Cooperative Management Plan for Black-footed Ferret, Little Snake Resource Area (Little Snake CMP), Ex. B,⁵ and in BLM issuing a final RMP amendment, finding of no significant impact, and environmental assessment in August 1995 (Little Snake RMPA/EA), Ex. C.

FWS also anticipated reintroducing black-footed ferrets into the White River Resource Area (*i.e.*, Wolf Creek and Coyote Basin). Because species reintroduction had yet to be addressed by BLM and because it was then operating under the 1975 White River Management Framework Plan, BLM held a series of public meetings and formal hearings between June 1990 and March 1995, issued a Final Environmental Impact Statement (FEIS) in June 1996, Ex. 5B, and approved the White River RMP as a replacement to its management framework plan on July 1, 1997, Ex. 5A. The White River RMP identifies two black-footed ferret recovery management areas, the 52,000-acre Wolf Creek Management Area (WCMA) and the Coyote Basin Management Area (6,740 acres), which would “be managed to enhance black-footed ferret survival and recruitment, and geared toward maintaining or enhancing the capability of the sites to achieve ferret recovery objectives” and protected by a Controlled Surface Use stipulation.⁶ White River RMP at 2-34 through 2-37. The RMP expressly recognized that the subsequent approval of a ferret reintroduction plan could “supersede or modify certain land use decisions and objectives included in this RMP,” and would allow area managers to “impose land use measures and limitations derived from” that plan. *Id.* at 2-35, A-9.

A plan for reintroducing and managing black-footed ferrets in the Wolf Creek and Coyote Basin recovery areas was issued and concurred in by BLM on November 13, 2001. Cooperative Plan for Black-footed Ferret Reintroduction and Management, Wolf Creek and Coyote Basin Management Areas at 1 (Wolf Creek CMP), Ex. 5C. Since it was implementing and “fully consistent with the RMP,” the

⁵ References to alphabetic exhibits are to those appended to BLM’s Answer (*e.g.*, Ex. B); numeric exhibit references are to those appended to appellants’ statement of reasons (*e.g.*, Ex. 5A).

⁶ Surface use may be authorized under this stipulation “if an environmental analysis, and associated biological assessment, finds that the activity . . . would not adversely influence ferret recovery, or conflict with the ferret reintroduction and management plan.” White River RMP at A-9.

Wolf Creek CMP concluded that the White River RMP need not be modified. Wolf Creek CMP at 9. The Wolf Creek CMP also represented that it “was explicitly designed to integrate ferret recovery as seamlessly as possible with present and foreseeable land uses and activities in the White River Resource Area,” and that “[l]and use activities within the Management Area will continue to be reviewed by the responsible authority to determine the project’s influence on reintroduction efforts and assess conformance with objectives established in [the White River RMP].” *Id.* at 39, 47. Beginning in 2001 and continuing through 2005, FWS reintroduced 189 black-footed ferrets into the WCMA and documented the first wild-born ferret in that area in the fall of 2005. Briefing for the FWS Regional Director dated March 10, 2006, Ex. 7.

In preparing for the Lease Sale, the Little Snake, White River, and Grand Junction BLM Field Offices each prepared a Documentation of Land Use Plan Conformance and NEPA Adequacy (DNA). For purposes of land use plan conformance, the Little Snake DNA identified the 1989 Little Snake RMP/EIS; it identified the 1991 Colorado Oil and Gas Leasing & Development Final EIS Plan Amendment (Leasing EIS) to document NEPA adequacy. Ex. 2G. As to NEPA, this DNA stated that the Field Office was “not aware of any new information or circumstances that would require modification of the analysis,” that “direct and indirect impacts of the current proposed action are substantially unchanged from those identified in the 1991 leasing EIS,” and that “the proposed action will not substantially change the cumulative impact analysis [in the Leasing EIS].” Little Snake DNA at 2, 3. The White River DNA, Ex. 2I, identified the 1997 White River RMP and its 1996 EIS to document conformance and adequacy, stating that “no new site specific studies or resource assessment information has been received regarding any of the listed parcels that would preclude leasing” and that direct and indirect impacts, as well as cumulative impacts, were “adequately addressed” in the 1996 EIS. White River DNA at 3, 4. It also stated that leases in the WCMA would have Controlled Surface Use (CSU) Stipulations⁷ and would include a lease notice containing cautionary language from the Wolf Creek CMP. *Id.* at 5. As to the Grand Junction DNA, Ex. 2H, it identified and discussed the 1987 Grand Junction RMP and BLM’s 1980 Intensive Wilderness Inventory - Final Wilderness Study Areas (WSA Inventory).

Appellants filed their protest to the Lease Sale on April 16, 2006, contending that significant new information is available and new circumstances have arisen concerning FWS’ reintroduction of black-footed ferrets, that a deferral of leasing or the inclusion of no surface occupancy (NSO) stipulations, as well as cumulative

⁷ This CSU stipulation appears in leases issued for the White River parcels, but no similar stipulation appears in leases for any of the Little Snake parcels at issue. See BLM Notice of Competitive Lease Sale dated Mar. 28, 2006 (Lease Sale Notice).

impacts on “imperilled species,” should have been considered, and that BLM must prevent degrading citizen-proposed wilderness areas. In denying their protest on November 13, 2006, the acting State Director noted that the Field Office DNAs “did not identify significant new information or circumstances” and that they had “confirmed that existing stipulations are adequate” and then dismissed appellants’ protest because they “failed to provide any evidence or proof that the existing NEPA analysis is flawed or inadequate.” See Little Snake Field Office Memorandum dated May 31, 2006, Ex. 2C; White River Field Office Memorandum dated July 28, 2006, Ex. 2D; Grand Junction Field Office Memorandum dated Aug. 8, 2006, Ex. 2E. This appeal then followed.⁸

DISCUSSION

[1] Confronting a NEPA case involving the use of DNAs necessarily focuses our analysis on the several DNAs prepared by BLM Field Offices. As recently stated in *Colorado Environmental Coalition*, 173 IBLA 362, 372 (2008):

[A] DNA is an acceptable method for BLM to assess the adequacy of existing environmental analysis for a proposed action, but it is not a NEPA document and may not be used to supplement existing environmental analysis or address site-specific environmental effects not previously considered. *The Coalition of Concerned National Park Service Retirees*, 169 IBLA 366, 370 (2006); *Southern Utah Wilderness Alliance*, 166 IBLA [270,] 282-83 [(2005)]; see *Pennaco Energy Inc. v. U.S. Department of the Interior*, 377 F.3d 1147, 1151, 1162 (10th Cir. 2004). Here, BLM prepared the cited environmental documents to analyze the environmental impacts of various land use planning decisions, including whether or not particular areas of land were to be subject to mineral leasing. See 43 C.F.R. §§ 1601.0-2, 1601.0-5(n). Consequently, the question before us is whether the documents identified in the DNA adequately considered the environmental impacts of oil and gas leasing. Those analyses may be held to be deficient either

⁸ Intervenor Bill Barrett Corporation (BBC) filed an answer and requested that CNE be dismissed as a party because it has not demonstrated that the Lease Sale likely caused injury to a legally cognizable interest. BBC Answer at 4-8, citing 43 C.F.R. § 4.410(d). Based upon our review of the pleadings, we find that CNE identified a legally cognizable interest which was likely injured by the Lease Sale and therefore deny BBC’s request. See *Colorado Environmental Coalition*, 171 IBLA 256, 260-61 (2007); Declaration of Erwin Robertson (use of some and intended use of other parcels within the Little Snake Resource Area and WCMA to promote ferret reintroduction), Ex. 22C; Declaration of Kurt E. Kunkle (use of the Grand Junction parcel), Ex. 22A.

because they failed to adequately address a relevant environmental concern or because significant new circumstances or information require that it be supplemented. *See* 40 C.F.R. § 1502.9(c)(1)(ii); *Forest Guardians*, 170 IBLA 80, 96 (2006). Appellants' burden on appeal is to show that existing environmental analyses are inadequate or that BLM otherwise erred in relying upon those documents in deciding to offer the parcels for lease sale. *See Wyoming Outdoor Council*, 164 IBLA 84, 94, 104 (2004).

It is against these principles that we gauge appellants' several claims of error.

Appellants claim that BLM violated NEPA by failing to consider new information before deciding to offer these parcels for lease (*i.e.*, the 2001 reintroduction of the black-footed ferret on the Little Snake and White River parcels and Demaree Canyon Citizen Wilderness Proposals which included the Grand Junction parcel). Statement of Reasons (SOR) at 18-25, 28-31. They also claim that BLM failed to consider a reasonable range of alternatives (*i.e.*, either a deferral of leasing or a NSO stipulation for the Little Snake and White River parcels) and to adequately analyze cumulative impacts to FWS' ferret recovery program from ongoing mineral development in Colorado and Utah. SOR at 25-28.

I. Determinations of NEPA Adequacy Concerning New Information and Changed Circumstances.

In preparing the DNAs at issue, it was necessary for BLM to identify the environmental documents relied on to determine NEPA adequacy, including whether significant new circumstances or information exist and should be considered by the BLM decisionmaker. *See Center for Native Ecosystems*, 170 IBLA 331, 346-47 (2006) ("That the DNA cited prior NEPA documents does not mean there has been NEPA compliance if the cited documents themselves do not address an issue of significance."); *Wyoming Outdoor Council*, 159 IBLA 388, 410 (2003) (a "rule of reason" is used to determine whether significant new circumstances or information exists which would require a new NEPA document). Each DNA is discussed separately below.

A. Little Snake DNA

The Little Snake DNA documented NEPA adequacy by referring to the 1989 Little Snake RMP/EIS and the 1991 Leasing EIS. Little Snake DNA at 2-3. Our review of those documents identified only one reference to the black-footed ferret in

the RMP and a few isolated references in the Leasing EIS.⁹ The RMP states that “black footed ferret habitat (some prairie dog towns), will have no-surface-occupancy stipulations applied to new oil and gas leases.” Little Snake RMP at 13. The Leasing EIS states that special lease notices would be used to minimize adverse affects to black-footed ferret recovery efforts and that conditions of approval (COAs) could be applied in approving applications for permits to drill (APDs) on an as needed basis. Leasing EIS at 4-8, E-12 (special lease notice), F-1 (COAs); *see also* response to comments, *id.* at 5-46 (disregarding FWS’ concern that development could compromise ferret reintroduction on the grounds that anticipated development would be “highly dispersed” and not have a significant impact on ferret reintroduction efforts), 5-50 (rejecting FWS’ NSO recommendation because FWS did not recommend NSO stipulations in earlier draft ferret reintroduction guidelines).¹⁰

Under strikingly similar circumstances, we set aside BLM’s rejection of protests to a lease sale in the Utah portion of the ExPA. Here, as in *Center for Native Ecosystems*, ferret reintroduction had not yet begun when the RMP was approved, FWS recommended NSO stipulations, and BLM did not determine that its lease stipulations could mitigate to insignificance potentially adverse impacts to ferret reintroduction.¹¹ Compare 170 IBLA at 333-34, 338, 339, 349-50 with Leasing EIS at 5-50, E-12, and Lease Sale Notice at 54, 143. BLM attempts to distinguish *Center for Native Ecosystems*, by claiming that impacts on ferret reintroduction efforts had been adequately analyzed in the 1995 Little Snake RMP Amendment and EA (RMPA/EA), Ex. C. BLM Answer at 8-9.

[2] A principal purpose of a DNA is to identify the NEPA documents considered by the Field Office to document NEPA adequacy so that the decisionmaker can make a properly informed decision, cognizant of the relevant environmental analyses contained in those documents. *See Center for Native Ecosystems*, 170 IBLA at 345-47. If a decisionmaker acts based on a DNA, agency compliance with NEPA must necessarily be determined by reference to that DNA and its identified NEPA documents. *Id.* In making a decision, BLM is free to consider additional NEPA documents beyond those identified in a DNA, but its consideration of those

⁹ Appellants provided extracts of the Little Snake RMP, Ex. 5D, and the Leasing EIS, Ex. 5E. Since BLM provided no supplements to those extracts, we assume these extracts reflect all of those documents’ references to the black-footed ferret.

¹⁰ We assume the 1991 Leasing EIS was for an amendment to the 1989 RMP and its NSO stipulation for potential black-footed ferret habitat, but neither the parties nor the record explicate these circumstances.

¹¹ Neither the record nor the parties explain BLM’s rationale for imposing CSU stipulations on the White River but not on the Little Snake parcels, all of which are located within the ExPA.

documents must be reflected and explained in the record, in which case those documents and that explanation would effectively “supplement” the DNA and inform our review of NEPA compliance. Where the record fails to demonstrate that additional NEPA documents were reviewed and considered by the decisionmaker, we will not consider those documents on appeal in determining whether the procedural requirements of NEPA have been satisfied. Because the Little Snake DNA does not identify the RMPA/EA and there is no record evidence that the BLM decisionmaker considered the RMPA/EA in deciding to include the Little Snake parcels in the Lease Sale, we cannot consider that NEPA document on appeal. Thus, we find this case factually and legally indistinguishable from *Center for Native Ecosystems* and therefore set aside BLM’s dismissal of appellants’ protest of these Little Snake parcels.

B. White River DNA

The DNA is based on the 1996 White River RMP/EIS, Ex. 5B, which addressed the expected reintroduction of black-footed ferrets into the WCMA and the anticipated development of a reintroduction management plan. *See e.g.*, White River RMP/EIS at 3-19. FWS began reintroducing ferrets under the Wolf Creek CMP in late 2001, but BLM prepared neither a DNA nor a NEPA document for that activity or its approval of the CMP. Despite continuing FWS ferret reintroduction efforts in the WCMA over the intervening years, the White River DNA stated that “[n]o land status changes have occurred, and no new site specific studies or resources assessment information has been received . . . that would preclude leasing in accordance with the existing [RMP].” White River DNA at 3.

BLM later requested and received FWS’ comments on including WCMA parcels in its proposed Lease Sale under ESA section 7(a)(4), 16 U.S.C. § 1536(a)(4) (2000).¹² FWS Memorandum dated May 8, 2006, Ex. 9. FWS there summarized its ferret reintroduction goals and efforts in the WCMA, emphasizing “the importance this one area in Colorado plays in the overall goal for achieving ferret recovery,” and noting that “we are beginning to see some success from our cooperative reintroduction effort.” *Id.* FWS then stated:

Leasing this area for oil and gas exploration could lead to increased road construction and human activity that may be detrimental to ferret recovery It would seem to be prudent at this time (for the short-term), while the ferret recovery program is still in its infancy, to provide

¹² The effect of designating black-footed ferrets a nonessential experimental population when introduced into the WCMA is to treat them as proposed for listing, *see n.4 supra*, and to require BLM to confer with FWS if and as required by ESA Section 7(a)(4), 16 U.S.C. § 1536(a)(4) (2000). *See* 16 U.S.C. § 1539(j)(2)(C)(i) (2000); 63 Fed. Reg. at 52824-25.

the utmost protection for the ferrets by removing this area from leasing consideration. . . . Introduction of an additional disturbance factor at this critical stage in the establishment of ferrets in this area could prove to be detrimental. Our recommendation is that at a future date, when it is determined that ferrets will not colonize within the WCMA, or we have a good understanding of where they are established, the area could be leased and oil and gas development would not be construed as a factor why ferrets did not make it on their own. . . . This would then allow areas that may not be suitable habitat to be leased for oil and gas exploration and extraction and not compromise the recovery goals. This approach would provide early protection for the ongoing ferret reintroduction with the potential to lease the area at a future date.

Id. at 2. FWS added that if BLM nonetheless determined “that leasing will proceed as proposed,” it should require a series of COAs when approving APDs, concluding that “[w]ith these best management practices (BMP), we concur with your ‘no jeopardy’ determination.” *Id.* At BLM’s request and on the eve of the Lease Sale, FWS clarified its intent 2 days later by stating that “[o]ur ‘no jeopardy’ concurrence for the lease sale is not contingent upon acceptance of these measures.” FWS Memorandum dated May 10, 2006, Ex. 9.

The fruits of an ESA conference, as well as information derived from BLM’s solicitation of comments (*e.g.*, data provided and views expressed by FWS), must be considered by BLM under NEPA where, as here, FWS has expertise, experience, and information on an issue of environmental significance to BLM’s decisionmaking. In this case, we question whether BLM complied with the procedural requirements of NEPA by leasing these parcels shortly after receiving FWS’ views (within 1-3 days), without any record evidence that it ever responded to or even considered FWS’ views. BLM counters that its actions complied with NEPA and that the circumstances presented are factually distinguishable from *Center for Native Ecosystems, supra*, because FWS “objected” to ExPA parcels in that lease sale but only “recommended” against including ExPA parcels in this Lease Sale. Answer at 11-12.

[3] We noted in *Center for Native Ecosystems* that BLM’s decision in that case was made “without reference to the FWS’ objections” and that it was unclear whether the decisionmaker “was aware of FWS’ views when he issued [that] decision or, if he was, why he did not address them.” 170 IBLA at 339, 340. In discussing potentially new information concerning reintroduced black-footed ferrets in the Utah portion of the ExPA, we added that:

FWS presumably was not only aware of the information available to BLM but had a significant role in developing it. It is incumbent on BLM, when effectively disagreeing with an objection by a sister agency

contending that BLM's action will have a significant impact on an issue of environmental significance, to point to a NEPA document explaining its [finding of no significant impact]. Here, however, BLM . . . never explained its seeming rejection of FWS' expertise and point of view.

170 IBLA at 348 (footnotes omitted). Whether FWS' views expressed during ESA conferencing are objections to or simply recommendations against leasing in the ExPA is of little significance to BLM's compliance with NEPA since neither an FWS objection nor its recommendations are binding on BLM. See RMPA/EA at 9 (FWS' views on actions potentially affecting ferret reintroduction "during conference would be advisory in nature"). It is the substance of what FWS said or presented in conferencing, not its characterization, which informs our consideration of this issue under NEPA.¹³ We are unpersuaded that we should distinguish this case from *Center for Native Ecosystems* based on whether FWS' expertise was expressed as an objection to or recommendation against leasing, as we would then be drawing a distinction without an apparent, legally significant difference.

Here, as in *Center for Native Ecosystems*, an expert sister agency urged that leasing be deferred within the ExPa, but neither here nor in that case, did BLM explain its rejection of FWS' views. BLM again failed to consider new information which could affect the Lease Sale in preparing its response to appellants' protest. See White River Field Office Memorandum dated July 28, 2006 (reconfirming the accuracy of its DNA but making no mention of FWS or its comments).¹⁴ We therefore hold that BLM violated NEPA by failing to consider whether a new NEPA document was required for the White River parcels at issue and set aside BLM's dismissal of appellants' protest to including those parcels in the Lease Sale.

C. Grand Junction DNA

The Grand Junction Field Office's DNA identified multiple NEPA and other documents, including the 1987 Grand Junction RMP, its EIS, and BLM's 1980 Intensive Wilderness Inventory - Final Wilderness Study Areas, compared those documents with subsequent citizen wilderness proposals (CWPs) affecting the

¹³ The fact that new information on the status of ferret reintroduction efforts would necessarily come from FWS is of no moment to our analysis. See *Center for Native Ecosystems*, 170 IBLA at 349 (the obligation to prepare a new environmental document "depends on the nature of the allegedly new information, not on who develops it").

¹⁴ Although FWS' comments were not received until shortly before the Lease Sale, this was a function of BLM's late engagement of the ESA process and not dilatory action by FWS.

Demaree Canyon parcel, and determined that BLM's prior analyses and determinations were still valid:

We are not aware of any new information or circumstances that would require modification of the analysis. The impacts analyzed in the RMP/EIS are greatly in excess of those which have actually occurred to date. Further interest group opinions regarding wilderness characteristics have been provided since the RMP. As shown below, the additional information has been reviewed and found to not represent significant new information that would show that the action would affect the quality of the human environment in a significant manner or to a significant degree not already considered. . . . Though the 1999 and 2001 public proposals disagree with the findings of BLM's 1980 inventory there is no new information that overrides BLM's 1980 inventory Even though the area in question did not meet WSA criteria, several aspects of wilderness character were analyzed and protected in the EIS and RMP. The proposed parcel is located within several other areas of special protection detailed in the RMP [scenic cliffs, scenic and natural values along the Dinosaur Diamond Scenic Byway, VRM II stipulations, and stipulations to protect steep slopes and deer/elk winter ranges]. There is no new information that shows that this level of protection is not adequate.

Ex. 2H at 2-3. Appellants assert that the CWPs' "undisturbed topography, meandering ridges, and stunning views are more rare than they were in 1980 due to advancing development, rendering the opportunities for both solitude and primitive recreation outstanding," speculate that BLM may have believed "that relatively inaccessible lands did not meet the Wilderness Act's suitability criteria" in 1980, and contend that "BLM needs to revisit its initial conclusion based on new information, changing public attitudes, and evolving management concepts as to what constitutes a true wilderness experience." SOR at 29, 31. They do not contend that any impact from oil and gas leasing on this parcel was not considered but that these lands should be identified and managed as a wilderness area. As a challenge to including this parcel in the Lease Sale, however, appellants are wide of the mark set by NEPA.

As also stated in *Colorado Environmental Coalition*, 173 IBLA at 377:

[A]ppellants have not identified any impact that was not analyzed, or stated with specificity what information in the CWPs is new or different from the information relevant to environmental concerns and the proposed action or its impacts BLM considered when it prepared those NEPA documents. See 40 C.F.R. 1502.9(c)(1)(ii). Without the requisite showing, appellants' contentions are, in effect, merely

objections to BLM's decision not to manage lands near or adjoining WSAs as wilderness. In these circumstances, BLM properly may defer additional environmental analysis until such time as a surface-disturbing activity is proposed. *Northern Alaska Environmental Center v. Kempthorne*, 457 F.3d 969, 976-77 (9th Cir. 2006); *see also Colorado Environmental Coalition*, 149 IBLA 154, 158 (1999) (BLM had "assessed the impacts of leasing per se," but had "left to a later day the evaluation of the site-specific environmental impacts of roadbuilding, drilling, pipeline construction, and other particular activity associated with oil and gas exploration and development.").

We conclude that the NEPA documents cited in the Grand Junction DNA demonstrate that BLM fully considered the likely environmental impacts of oil and gas leasing on wilderness values, find that appellants have not identified a material deficiency in BLM's environmental analyses, and therefore affirm the acting State Director's dismissal of appellants' protest to including the Damaree Canyon parcel in the Lease Sale.

II. Consideration of Alternatives and Analysis of Cumulative Impacts.

In finding that the procedural requirements of NEPA were unmet with respect to the Little Snake and WCMA parcel, we remand this matter for action consistent with this decision, including consideration of potentially significant new information concerning and changed circumstances within the ExPa. Whether such information or circumstances are sufficiently new and different to warrant a reconsideration of NSO stipulations under the 1989 Little Snake RMP or a deferral of leasing in the ExPA, as recommended by FWS, is for BLM to determine in the first instance (subject to our review on the record then presented). We need not and therefore do not here express any view on whether a new or supplemental NEPA document was required under the circumstances of this case.¹⁵

¹⁵ The same could also be said of BLM's earlier consideration of alternatives and cumulative impacts, but we note that appellants' cumulative impact claims are predicated on significantly different types of new information (*i.e.*, a drilling "boom," "unprecedented" oil and gas development within the ExPA, and increased pipeline capacity). SOR at 27. Whether these claims are variations on themes already adequately considered in existing NEPA documents is for BLM to determine. These differences are identified simply to recognize that a different NEPA result could attach to these differently situated claims.

Any other arguments raised by appellants and not expressly addressed in this opinion have been considered and rejected. Therefore, 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 affirmed in part and set aside and remanded in part.

_____/s/_____
James K. Jackson
Administrative Judge

I concur:

_____/s/_____
R. Bryan McDaniel
Administrative Judge