

NOTE: This disposition is nonprecedential.



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IBLA 2016-56)	3120 (CO-922)
)	
MEGHAN BELASKI-ASHE)	Competitive Oil & Gas Lease Sale
)	
)	Decision Affirmed;
)	Petition for Stay Denied as Moot

ORDER

Meghan Belaski-Ashe (appellant) has appealed from and petitioned for a stay of the effect of a November 12, 2015, decision of the Deputy State Director, Division of Energy, Lands and Minerals, Colorado State Office, Bureau of Land Management (BLM). The Deputy State Director's decision dismissed her protest to an August 14, 2015, Notice of Competitive Oil and Gas Lease Sale, proposing to offer 121 parcels, encompassing a total of 89,534.30 acres of Federal land in eastern Colorado, for competitive oil and gas leasing.

Because appellant has not carried her burden to demonstrate any error of fact or law in BLM's decision to competitively lease the parcels for oil and gas purposes, we affirm the Deputy State Director's November 2015 decision dismissing her protest, and deny her petition for a stay as moot.

Background

At issue are 102 parcels of Federal land situated in the Pawnee National Grassland (PNG) of the Arapaho-Roosevelt National Forest, the surface and mineral estates of which are, respectively, under the administrative jurisdiction of the Forest Service (FS), U.S. Department of Agriculture, and the Royal Gorge (Colorado) Field Office (RGFO), BLM, and 19 parcels of public land, the surface and mineral estates of which are under the administrative jurisdiction of the RGFO.

In order to assess the environmental impacts of leasing the 102 PNG parcels and reasonable alternatives thereto, the FS, as the lead agency, and BLM, as the

cooperating agency, prepared a February 2015 Final Environmental Impact Statement (EIS) in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2012). The FS provided multiple opportunities for public involvement throughout the NEPA process, including a lengthy public scoping process and public comment periods on the draft and final EISs. *See* 78 Fed. Reg. 19444 (Apr. 1, 2013); 79 Fed. Reg. 53061 (Sept. 5, 2014); 79 Fed. Reg. 73890 (Dec. 12, 2014). The FS issued the Record of Decision (ROD), approving the leasing of the PNG Parcels on February 9, 2015.¹

Thereafter, BLM determined, in a November 10, 2015, Documentation of NEPA Adequacy (DNA) (DOI-BLM-CO-F020-2015-0061DN), that the EIS had adequately addressed the likely impacts of leasing the PNG parcels. BLM therefore adopted the EIS, pursuant to 40 C.F.R. § 1506.3(a) and (c), finding that the EIS satisfied BLM's compliance with NEPA for leasing the Federal mineral estate underlying FS lands of the PNG. DNA at 6. BLM also prepared a November 2015 Environmental Assessment (EA) (DOI-BLM-CO-F020-2015-0021-EA) addressing the environmental impacts of leasing the 19 RGFO parcels, and a November 10, 2015, Finding of No Significant Impact. In two November 10, 2015, Decision Records (DR), the Deputy State Director separately approved offering the 102 parcels in the PNG and the 19 parcels under RGFO's jurisdiction for competitive oil and gas leasing.²

Under the agencies' decisions, all of the PNG parcels would be issued subject to a No Surface Occupancy (NSO) stipulation prohibiting wells and well pads from being located on the parcels, and the RGFO parcels would be issued subject to NSO or restrictions on the timing and location of oil and gas drilling and development. *See* ROD at 3; DR (EA) at 1; EA, Attachments C (Parcels Available for Lease with

¹ The draft and final EISs, together with the Feb. 9, 2015, ROD, can be found at http://www.fs.usda.gov/wps/portal/fsinternet/%21ut/p/c5/04_SB8K8xLLM9MSSzPy8xBz9CP0os3hvXxMjMz8Dc0P_kFALA09zLzNDowAXYwMLE6B8pFm8kQEEOFoY-Ht4hPmF-UAFDIjRbYAD0IJ1G_ibGHgahjk6WRq4GnkHm5oamMDMhujGLY_f7nCQX_G7HWw_btf5eeTnpuoX5IaGRhhkmQAAoYKgoA%21%21/dl3/d3/L2dJQSEvUUt3QS9ZQnZ3LzZfS000MjZOMDcxT1RVODBJN0o2MTJQRDMwODQ%21/?project=41812&exp=overview (last visited Jan. 28, 2016).

² The DNA, FONSI, EA, and DRs can be found at http://www.blm.gov/co/st/en/BLM_Programs/oilandgas/oil_and_gas_lease/2015/november_2015_lease.html (last visited Jan. 28, 2016).

Applied Stipulations) and D (Stipulation Exhibits). In addition, and as explained in the NEPA analyses, before any drilling and development can occur under any lease, BLM must approve an application for a permit to drill (APD), including a surface use and drilling plan, following site-specific environmental review pursuant to NEPA. See Final EIS at ES 3; EA at 1-2.³

On August 14, 2015, BLM published on its website its Notice proposing to offer the parcels for competitive leasing, affording the public a 30-day period to protest the proposed sale. Appellant protested the lease sale on September 14, 2015, stating that “[a]ny and all parcels under consideration for sale . . . should be revoked or rescinded.” Protest, dated Sept. 11, 2015, at 2.

In his November 2015 decision now on appeal, the Deputy State Director dismissed appellant’s protest. The Deputy State Director concluded that in its DNA, BLM had properly “confirm[ed] the sufficiency of the analysis” in the Final EIS prepared by the FS for Federal lands in the PNG, and properly adopted the Final EIS in accordance with 40 C.F.R. § 1506.3(a). Decision at 2. The Deputy State Director further concluded that BLM’s EA properly analyzed the impacts of leasing the parcels under the RGFO’s jurisdiction. *Id.* He also noted that the site-specific effects of any drilling and development would be addressed at the APD stage, and that based on the NEPA review, “BLM may require certain Conditions of Approval, beyond the minimum protection required by current regulations and law, as applicable, to minimize potential adverse impacts.” *Id.*

Appellant timely appealed from the Deputy State Director’s November 2015 decision, and requested a stay of the effect of BLM’s determination to offer the parcels for competitive oil and gas leasing. BLM has opposed the request for stay.⁴

³ For environmental review purposes at the leasing stage, FS and BLM used a BLM projection of expected oil and gas development, termed a Reasonably Foreseeable Development Scenario (RFD). For the PNG parcels, BLM projected a total of 265 new oil and gas wells in the short term, with 234 in the long term (over the next 20 years). See Final EIS at ES 3. For the RGFO parcels, BLM projected new oil and gas wells depending on the oil and gas potential of the area, ranging from very low development potential (less than 1 well per township) to high development potential (20-50 wells per township). See EA at 14.

⁴ Under the regulations governing competitive lease sales, BLM’s decision to offer the parcels for sale was immediately effective. 43 C.F.R. § 3120.1-3 (“No action pursuant

(continued ...)

Discussion

Appellant contends that BLM failed to prepare “[a]ll of the relevant environmental . . . studies” necessary before deciding whether to lease the parcels. Notice of Appeal/Statement of Reasons for Appeal/Request for Stay (NA/SOR) at 2. She indicates that BLM failed to disclose “the extent of the uranium contamination in, on, around, and under the Pawnee Grasslands,” which occurred as a consequence of past “military” activities, further noting that this contamination poses a considerable threat to “our common health and well-being, [and] . . . our national security interests as well.” *Id.* She states that “[t]here will be immediate and irreparable harm to public health and national security if the oil and gas parcels are released to the entities attempting to ‘develop’ these lands.”⁵ *Id.* at 3.

Appellant also asserts that “Multiple Reasons for Appeal” are included in a lengthy series of documents, attached to the NA/SOR, which purport to depict “a complex oil, gas, water, and uranium fraud scheme in Colorado” that appellant recently sought to bring to the attention of “the Securities and Exchange Commission Office of the Whistleblower, Commodities Futures Trading Commission, Department of Justice etc.” NA/SOR at 2. She indicates that by offering the parcels for lease sale, BLM is “literally obstruct[ing] justice.” *Id.*

(...continued)

to the regulations in this subpart shall be suspended under § 4.21(a) of this title due to an appeal from a decision by the authorized officer to hold a lease sale.”); *see also Wyoming Outdoor Council*, 156 IBLA 377, 380-82 (2002). BLM therefore held the Nov. 12, 2015, lease sale, declaring high bidders for 106 parcels, encompassing a total of 83,257.33 acres of Federal land. *See* http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/recent_leases_sales.html (last visited Jan. 28, 2016). The remaining 15 parcels are available for noncompetitive leasing for a period of 2 years following the sale. *See* Final EIS at 1. We do not know whether BLM has issued any competitive or noncompetitive oil and gas leases for the parcels.

⁵ Appellant appears to challenge BLM’s decision to go forward with the November 2015 competitive lease sale only to the extent that it concerns parcels that involve “lands in, on, around, and under *the Pawnee Grasslands*.” NA/SOR at 2 (emphasis added). She thus does not appear to object to the competitive leasing of any public lands under the administrative jurisdiction of RGFO.

While we have carefully reviewed all of the numerous documents submitted by appellant, we will not parse the documents in order to attempt to understand the full nature and scope of the supposed “fraud scheme,” and thus determine “what’s really going on.” NA/SOR at 3. We find no suggestion that a “scheme,” even if one exists, influenced, affected, or has any bearing on BLM’s decision to lease the parcels, or, importantly, establishes any impropriety or illegality in that decision.

Appellant does not identify any statutory or regulatory basis for her challenge to BLM’s decision to offer the parcels for competitive oil and gas leasing. However, based on her statements that BLM has failed to engage in appropriate “environmental . . . studies” and disclose “the extent of uranium contamination,” we will construe her challenge as alleging that BLM violated the environmental review requirements of NEPA. NA/SOR at 2. Specifically, because BLM adopted the EIS prepared by the FS addressing the environmental impacts of leasing the PNG Parcels, which are presently at issue, the question of whether BLM has complied with NEPA rests on the adequacy of the EIS.

Section 102(2)(C) of NEPA requires a Federal agency to prepare a “detailed statement” addressing the potential environmental impacts of a proposed action and alternatives thereto in the case of any major Federal action that “significantly affect[s] the quality of the human environment.” 42 U.S.C. § 4332(2)(C) (2012). It is well established that the statute does not mandate any particular substantive result of agency decisionmaking, but rather imposes procedural obligations on the agency, which require that the agency and the public be fully informed of the likely environmental consequences when the agency exercises its substantive discretion to approve a proposed action. *See Rick Badgley*, 186 IBLA 253, 257 (2015), and cases cited. We have frequently quoted the United States Supreme Court decision in *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989), which explained: “If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs, [in deciding to go forward with the proposed action].” *See, e.g., Rick Badgley*, 186 IBLA at 257; *Powder River Basin Resource Council*, 180 IBLA 119, 127 (2010); *Bear River Development Corporation*, 157 IBLA 37, 49 (2002); *Wyoming Audubon*, 151 IBLA 42, 50 (1999). As we stated in *Oregon Natural Resources Council*, 116 IBLA 355, 361 n.6 (1990):

[Section 102(2)(C) of NEPA] does not direct that BLM take any particular action in a given set of circumstances and, specifically, does not prohibit action where environmental degradation will inevitably result. Rather, it merely mandates that whatever action BLM decides upon be initiated only after a full consideration of the environmental impact of such action.

Thus, the adequacy of an EIS is judged by whether it constitutes a “detailed statement” that took a “hard look” at all of the potential significant environmental consequences of the proposed action and reasonable alternatives thereto, considering all relevant matters of environmental concern. *Backcountry Against Dumps*, 179 IBLA 148, 161 (2010) (internal quotations omitted) (quoting *Center for Biological Diversity*, 162 IBLA 268, 275 (2004) (quoting 42 U.S.C. § 4332(2)(C) (2012))). “The EIS must contain a reasonably thorough discussion of the significant aspects of the probable environmental consequences of the proposed action and alternatives thereto.” *Id.* (internal quotations omitted) (quoting *California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982) (quoting *Trout Unlimited v. Morton*, 509 F.2d 1276, 1283 (9th Cir. 1974))). In deciding whether an EIS promotes informed decisionmaking, a “rule of reason” will be employed. *Mammoth Community Water District*, 186 IBLA 108, 116 (2015) (citing *County of Suffolk v. Secretary of Interior*, 562 F.2d 1368, 1375 (2nd Cir. 1977), *cert. denied*, 434 U.S. 1064 (1978)); *Powder River Basin Resource Council*, 180 IBLA at 128.

An appellant challenging a BLM decision to approve the leasing of Federal lands for oil and gas purposes, following preparation of an EIS, must carry her burden to demonstrate by a preponderance of the evidence, with objective proof, that BLM failed to adequately consider a substantial environmental question of material significance to the proposed action, or otherwise failed to abide by section 102(2)(C) of NEPA. *See, e.g., Backcountry Against Dumps*, 179 IBLA at 161. This means that the appellant must make an “affirmative showing that BLM failed to consider a substantial environmental question of material significance,” and cannot simply “pick apart a record with alleged errors and disagreements.” *Arizona Zoological Society*, 167 IBLA 347, 357-58 (2006) (internal quotations omitted) (quoting *In re Stratton Hog Timber Sale*, 160 IBLA 329, 332 (2004)); *see also Backcountry Against Dumps*, 179 IBLA at 161.

Here, appellant appears to argue that BLM violated NEPA by failing to engage in further environmental review, above and beyond its participation in the preparation of the EIS, its assessment of the adequacy of the EIS to address the

environmental ramifications of leasing the PNG Parcels, and its preparation of an EA to address the environmental ramifications of leasing the RGFO Parcels. *See* NA/SOR at 2. Appellant, however, does not explain what studies BLM failed to conduct or identify any specific information lacking in the EIS. *See* BLM Opposition to Request for Stay at 3. The only deficiency in BLM's existing environmental review identified by appellant is the agency's failure to disclose "the extent of uranium contamination," and presumably its implications for oil and gas leasing and any drilling and development of oil and gas resources and the environment. *Id.* Yet appellant fails to offer any argument or supporting evidence establishing that any of the lands to be leased are likely to be contaminated by uranium, or, even if uranium is likely to be present to some extent, that there are likely to be any impacts to human health or other aspects of the environment attributable to the oil and gas leasing of such lands.

Appellant evidently offers, as proof that the lands to be leased are contaminated by uranium, the fact that they are part of the "Grover Test Site" and "Formerly Used Defense Sites or FUDS." NA/SOR at 2. The Grover Test Site is a former mine operated by the Wyoming Mining Corporation from 1977 to 1978, which produced naturally-occurring uranium having an average grade of 0.14% eU308. *See* Grover Test Site, Western Mining History Website, Dec. 26, 2015 (http://westernmininghistory.com/mine_detail/10013016 (last visited Jan. 28, 2016)) (attached to NA/SOR). The FUDS are former Atlas missile sites, part of the Nation's missile defense system, which, at one time, housed intercontinental ballistic missiles armed with nuclear warheads in underground silos, but which were, in 1965, decommissioned, including removal of the missiles. *See* Fact Sheet, "Atlas Missile Sites in Colorado," Fall 2013 (attached to NA/SOR). Although apparently disputed by appellant, the Fact Sheet states: "While the Atlas E missile was armed with a plutonium-based nuclear warhead, the Colorado Department of Public Health and Environment has no evidence of radioactive contamination at the sites." While appellant generally locates both the Test Site and the FUDS in the Pawnee Grasslands, she fails to place them in relation to any of the parcels. Nor does she make any effort to establish that any of the parcels are, by reason of the Test Site or the FUDS, contaminated by uranium, or that any of the newly-authorized oil and gas leasing and associated drilling and development are likely to result in the exposure of any individuals to any uranium-contaminated material.

Moreover, while uranium contamination caused by nuclear waste material disposal and other means may pose a threat to public health, where and when it exists, appellant has failed to establish that any uranium contamination exists in the PNG. So far as we can discern, there is nothing in the documents provided by appellant that demonstrates that leasing any of the parcels, or drilling and developing

them in the future for oil and gas, is likely to affect the degree and extent of exposure by any individuals to any existing uranium contamination in the PNG.

Appellant appears to suggest that oil and gas leasing, and future drilling and development, are likely to release into the environment uranium that is “already buried or in the groundwater from years of nuclear testing, missile silo sites, and nuclear power generation.” Letter from appellant, dated Jan. 28, 2015 (attached to NA/SOR), at 1.⁶ Appellant, however, offers absolutely no evidence that uranium is likely to be released as a consequence of oil and gas leasing; her assertions to the contrary are not supported and are hypothetical. Indeed, the documents provided by appellant indicate that all of the alleged exposure to uranium contamination is associated with activities *other than* the leasing, drilling, and development of oil and gas resources.

It is well established that BLM is not required to consider in NEPA documents direct, indirect, or cumulative impacts that are remote and highly speculative, which is precisely the case with impacts attributed by appellant to the presence of uranium in the Pawnee Grasslands. *See, e.g., Coeur d’Alene Audubon Society, Inc.*, 146 IBLA 65, 70 (1998) (citing *Trout Unlimited v. Morton*, 509 F.2d at 1283). Thus, we can find no violation of NEPA arising from BLM’s failure to address such impacts in its environmental review supporting its decision to lease the parcels.

We therefore conclude appellant has failed to carry her burden to establish any error of fact or any violation of NEPA, and the Deputy State Director’s November 2015 decision properly dismissed appellant’s protest to the August 2015 Notice of Competitive Oil and Gas Lease Sale. We note that to the extent that appellant raises any legitimate issues regarding the presence of uranium on Federal lands, and any resulting threat posed to public health, such matters are properly dealt with by the State and Federal authorities to which appellant has already addressed her concerns.

⁶ Appellant seems to liken the situation to the Cotter Corporation’s uranium mill in Cañon City, Colorado, which, according to appellant has caused a “health crisis” by “discharging nuclear material . . . every day since the 1960[’]s.” Letter from appellant, dated Nov. 18, 2015 (attached to NA/SOR), at unpaginated (unp.) 4-5.

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 affirmed, and appellant's petition for a stay is denied as moot.

_____/s/_____
Amy B. Sosin
Administrative Judge

I concur:

_____/s/_____
James F. Roberts
Deputy Chief Administrative Judge