

WYOMING OUTDOOR COUNCIL

IBLA 2000-398

Decided February 19, 2004

Appeal from a decision of the Acting Deputy State Director, Minerals and Lands Authorizations, Wyoming State Office, Bureau of Land Management, dismissing a protest to the June 2000 Federal competitive oil and gas lease sale. WY 3100 (922 Mistarka).

Affirmed.

1. Environmental Policy Act--Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact--Oil and Gas Leases: Competitive Leases

A BLM decision dismissing a protest challenging the approval of an oil and gas lease sale will be affirmed as to the sale parcels for which the appellant has established standing, when the Board reviews the record de novo and determines that that record, as supplemented by BLM with the submission of a new "Interim Documentation of Land Use Conformance and NEPA Adequacy" worksheet and supporting information, provides a hard look at the environmental consequences of leasing, including the impacts of exploration for and development of coalbed methane.

APPEARANCES: Keith G. Bauerle, Esq., Denver, Colorado, Bruce Pendery, Esq., Logan, Utah, Daniel Heilig, Esq., and Thomas F. Darin, Esq., Lander, Wyoming, for appellant; Lyle K. Rising, Esq., and Terri L. Debin, Esq., Office of the Regional

Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Wyoming Outdoor Council (WOC) and Powder River Basin Resource Council (PRBRC) appealed the July 17, 2000, decision of the Acting Deputy State Director, Minerals and Lands Authorizations, Wyoming State Office, Bureau of Land Management (BLM), dismissing their June 1, 2000, protest to the offering of 132 parcels located within Bighorn, Campbell, Carbon, Converse, Johnson, Natrona, Sheridan, Sweetwater, and Uinta Counties, Wyoming, at the June 6, 2000, competitive oil and gas lease sale. By order dated November 23, 2001, the Board dismissed PRBRC as an appellant for lack of standing, dismissed WOC's appeal as to all but five of the sale parcels<sup>1/</sup> for lack of standing, granted WOC's request for a stay of BLM's decision as to those five parcels but limited the stay to only coalbed methane (CBM) activities, and ordered WOC and BLM to serve all previously-filed documents on the purchasers of those five parcels. (Nov. 2, 2001, order at 2, 4.) By order dated January 9, 2002, the Board granted WOC's December 18, 2001, motion for partial voluntary dismissal of the appeal as to three of the five parcels for which it had established standing, *i.e.*, WY-0006-72, WY-0006-73, WY-0006-80, leaving only parcels WY-0006-56 and WY-0006-230 subject to this appeal.<sup>2/</sup>

In October 1999, the lands embraced by the subject parcels were nominated for inclusion in the next available oil and gas lease sale. In response to this nomination, the RFO prepared a 3-page "Interim Documentation of Land Use Conformance and NEPA Adequacy" worksheet (DNA), assessing whether inclusion of lands in the June 2000 competitive oil and gas lease sale, including the parcels in question, conformed to existing land use plans and whether existing documents prepared to comply with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2) (2000), were adequate to support the parcels' inclusion.<sup>3/</sup>

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<sup>1/</sup> The five parcels are WY-0006-56, WY-0006-72, WY-0006-73, WY-0006-80, and WY-0006-230.

<sup>2/</sup> Parcel WY-0006-56 embraces 480 acres in sec. 14, T. 24 N., R. 85 W., 6th P.M., Carbon County, Wyoming, and parcel WY-0006-230 contains 400 acres in sec. 13, T. 24 N., R. 85 W., 6th P.M., Carbon County, Wyoming. Both parcels fall within the jurisdiction of BLM's Rawlins Field Office (RFO).

<sup>3/</sup> DNAs are designed to allow BLM employees to "assess whether you can rely on (continued...)"

In the February 18, 2000, DNA, the Rawlins Field Manager found that the June 2000 lease sale conformed to the November 8, 1990, Great Divide Resource Area Resource Management Plan (Great Divide RMP or GDRMP) , which explicitly opened the entire planning area to oil and gas leasing with appropriate restrictions to protect listed resources. (DNA at 1-1.) He identified the April 1987 Medicine Bow-Divide (Great Divide Resource Area) Draft Environmental Impact Statement (EIS) and the Final EIS for the November 1990 GDRMP as the applicable NEPA documents covering the proposed inclusion of the parcels and determined that the proposed action conformed to the analysis in those documents. Id. The Field Manager concluded that the proposed inclusion of the parcels in the June 2000 lease sale conformed to the applicable land use plan and that the existing NEPA documentation fully covered the proposed action and fulfilled NEPA's requirements. Id. at 1-3.

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<sup>3/</sup> (...continued)

existing NEPA documents for a current proposed action and, if so, assist you to record your rationale for your conclusion." Instruction Memorandum (IM) No. 99-149 at 1. The IM advises that BLM employees

"should not assume that existing NEPA documents are adequate. Generally, the use of existing NEPA documents is appropriate when: a current proposed action previously was proposed and analyzed (or is part of an earlier proposal that was analyzed); resource conditions and circumstances have not changed; and there is no suggestion by the public of a significant new and appropriate alternative.

"If you determine you can properly rely on existing NEPA documents, you must establish an administrative record that documents clearly that you took a 'hard look' at whether new circumstances, new information, or unanticipated environmental impacts warrant new analysis or supplementation of existing NEPA documents and whether the impact analysis is valid for the proposed action. The documentation can be concise but must adequately address the criteria. \* \* \*"

Id.

IM 2000-034, issued on Nov. 30, 1999, to clarify IM 99-149's application to oil and gas leasing, cautions that BLM is "concerned about the maturity of some of our NEPA documents. In completing your DNA, keep in mind that the projected impacts in the NEPA document for given activities may be understated in terms of the interest shown today for any given use. You need to take a 'hard look' at the adequacy of the NEPA document." IM 2000-034 at 1. As to the level of site specificity needed in the analysis in the existing NEPA documents, the IM explains that "[f]or NEPA documentation to be sufficient to support issuance of a lease, the analysis of effects of leasing and development must have been detailed enough to identify the types of stipulations that must be attached to leases to retain BLM's full authority to protect or mitigate effects to other resources." Id. at 2.

In a protest dated June 1, 2000, WOC and PRBRC challenged BLM's offering of 132 parcels, including the 2 parcels at issue in this appeal, at the June 6, 2000, competitive oil and gas lease sale. They alleged, *inter alia*, that CBM development would most likely be the predominant use for the proposed leases and charged that, although the EIS underlying each applicable RMP had addressed the environmental effects of oil and gas leasing in general, those documents either completely failed to mention CBM development or inadequately addressed the unique and significant impacts associated with that development. They therefore argued that none of those documents could serve as the required pre-leasing environmental analysis.

In his July 17, 2000, decision dismissing the protest, the Acting Deputy State Director found that the proposed leasing conformed to the overall planning direction for the Field Offices and to the applicable RMPs, as amended or maintained, each of which provided for oil and gas exploration and development. He determined that the authorized oil and gas exploration and development included the production of CBM, as well as oil and natural gas produced from other types of reservoirs such as limestone and sandstone, and that "methane" and "natural gas" were used interchangeably regardless of the source. He disagreed with WOC's and PRBRC's assertions that CBM production differed significantly from other methane or natural gas production and had unique production problems because of produced water. He rejected their allegation that BLM had not fully evaluated unique, potentially serious environmental impacts of CBM extraction, concluding that BLM had taken the requisite hard look at the environmental effects of leasing the parcels through its NEPA analyses and was fully informed of the environmental consequences of its action.

On appeal, <sup>4/</sup> WOC's principal contention is that BLM violated NEPA by offering the parcels for lease without first preparing an EIS because the leases would permit surface occupancy and thus represented a full and irretrievable commitment of resources which, under Connor v. Burford, 848 F.2d 1441 (9th Cir. 1988), cert.

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<sup>4/</sup> On appeal, WOC adopts certain documents filed in a previous appeal, IBLA 2000-309, but does not provide copies of those documents. A party incorporating arguments made in another document must ensure that the incorporated document has been submitted to the Board. See Vern T. Weiss, 128 IBLA 119, 122 (1993). An appellant therefore should provide the Board with copies of incorporated documents to ensure consideration of those documents. In this case, the Board was able to locate copies of the referenced documents and has considered them to the extent relevant to its resolution of this appeal.

denied, 489 U.S. 1012 (1989), triggered the requirement to prepare an EIS.<sup>5/</sup> Any attempt by BLM to rely on an existing project-level CBM environmental assessment (EA) or EIS to satisfy NEPA requirements for the leasing decision fails, WOC asserts, because those project-level NEPA documents consider how to proceed with CBM extraction on previously sold leases and do not address various leasing alternatives and other criteria which, under BLM Handbook, H-1624-1, "Planning For Fluid Mineral Resources," must be considered in pre-leasing NEPA documents, such as lease stipulations, stipulation waivers, exceptions and modifications, no surface occupancy (NSO) lease areas, non-NSO lease areas, and areas not open to any leasing at all.<sup>6/</sup> WOC asserts that those NEPA documents fail to qualify as the

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<sup>5/</sup> The Board is aware of the recent decision of the U.S. District Court for the District of Columbia, Wyoming Outdoor Council v. Bosworth, 284 F. Supp. 2d 81 (2003), declining to entertain a challenge, on grounds of alleged violations of section 7 of the Endangered Species Act, as amended, 16 U.S.C. § 1536 (2000), to the issuance of oil and gas leases by BLM and the Forest Service, U.S. Department of Agriculture, in grizzly bear habitat on the basis of lack of ripeness. Therein, the court distinguished cases holding, in a NEPA context, that lease issuance constitutes the point at which there is an irreversible and irretrievable commitment of resources, noting that in such cases "the agency had chosen not to retain its authority to preclude all surface-disturbing activities after lease issuance," while "[i]n this case, the defendants have retained the authority post-lease issuance 'to condition, and even to deny, a lessee the use of the leased property if required by the ESA.'" 284 F. Supp. 2d at 93.

<sup>6/</sup> We note that the surface of the two parcels at issue is controlled by the Bureau of Reclamation and that the sale notice informed prospective bidders that for these parcels "[s]urface occupancy or use will be restricted or prohibited unless the operator and surface managing agency arrive at an acceptable plan for mitigation of anticipated impacts \* \* \*." The leases in this case contain a "Controlled Surface Use Stipulation," which repeats the above-quoted language, and Special Stipulation GP-135, which contains numerous restrictions on surface-disturbing activities, requires the filing of a surface use and operations plan prior to commencement of any surface-disturbing activities, the consent of the Bureau of Reclamation prior to approval, and the conditioning of approval "on reasonable requirements needed to prevent soil erosion, water pollution, and unnecessary damage to the surface vegetation and other resources, including cultural resources, of the United States, its lessees, permittees, or licensees, and to provide for the restoration of the land surface and vegetation.

(continued...)

requisite NEPA document for the leasing decision since none of them took a hard look at those pre-leasing issues. (Stay Petition at 9-11; see Notice of Appeal/Request for Stay in IBLA 2000-309 at 11-12, 14, 17-18.)

On April 15, 2003, this Board issued a decision in the appeal referenced above, IBLA 2000-309. That decision, styled as Wyoming Outdoor Council, 158 IBLA 384, related to the dismissal of a protest to the April 2000 BLM Wyoming Federal competitive oil and gas lease sale. In that decision, the Board, inter alia, reversed BLM's decision as it related to certain parcels of land administered by the RFO and remanded the matter to BLM. Therein, we stated:

NEPA mandates that an agency take a hard look at the relevant environmental consequences of a proposed action before it makes a decision approving or denying that action. Thus, BLM was required to consider the impacts of CBM development before it decided to offer the parcels for sale because that was the point at which it still had the opportunity to add appropriate stipulations and conditions to the offered leases related directly to the impacts of CBM development and production or to eliminate parcels from the sale.

Because the Great Divide RMP/EIS does not constitute the requisite hard look at the environmental consequences of offering the parcels for leasing, BLM was required to perform further NEPA analysis before deciding whether to approve the sale of the parcels at issue. The DNAs, which depended totally on the Great Divide RMP/EIS, failed to identify any of the relevant areas of environmental concern or reasonable alternatives to the proposed action and thus do not satisfy BLM's NEPA obligations in this case. See WOC, 156 IBLA [347] at 359 [2002].

158 IBLA at 392.

That decision would appear to control to our disposition of this case. However, since the issuance of that decision, two events have taken place. First, on May 30, 2003, United States District Judge Clarence A. Brimmer of the United States District Court for the District of Wyoming issued his decision in Pennaco Energy, Inc. v. United States Department of [the] Interior (Pennaco), 266 F. Supp. 2d 1323, appeals filed, Nos. 03-8061 and 03-8062 (10th Cir., Aug. 1, 2003). Therein, Judge

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<sup>6/</sup> (...continued)

Brimmer reversed this Board’s decision in Wyoming Outdoor Council, 156 IBLA 347 (2002), in which we had reversed BLM’s decision to lease certain parcels of land in the Powder River Basin in Wyoming for oil and gas exploration and development.<sup>7/</sup> Therein, we found that the Buffalo RMP/EIS was inadequate to serve at the requisite pre-leasing document under NEPA because it failed to discuss the impacts of CBM extraction and development. Likewise, we held that BLM could not rely on the Wyodak EIS in support of its decision because that document was a project-level EIS designed to analyze the environmental impacts of extracting and developing CBM on certain lands. We concluded that the failure of the Wyodak EIS “to consider reasonable alternatives relevant to a pre-leasing environmental analysis fatally impairs its ability to serve as the requisite pre-leasing NEPA document for these parcels.” 156 IBLA at 359.

The court criticized the Board’s analysis, stating that

the IBLA decided that because neither NEPA document alone is sufficient to enable the BLM to take a hard look, the two documents together are also insufficient. However, when the two documents are considered together, they provide the BLM with all the information it needs to take the requisite hard look before making its leasing decision. It is important to bear in mind that the BLM determined that these NEPA documents were adequate in the context of this leasing decision, not in the context of a project proposal. While this is the very reason that the IBLA objected to the BLM’s use of the Wyodak EIS, it is also the reason that the BLM satisfied its NEPA hard look obligations by viewing the two documents together.

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While the IBLA was surely pursuing the important goal of environmental protection, it may not in the process impose undue procedural burdens upon the BLM when the BLM was fully informed of the environmental consequences of its action in accordance with NEPA.

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The extensive and current analysis of the environmental effects of CBM development in the Wyodak EIS reasonably supplemented the pre-

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<sup>7/</sup> In Wyoming Outdoor Council (On Reconsideration), 157 IBLA 159 (2002), this Board denied BLM’s petition for reconsideration of the 156 IBLA 347 decision.

leasing alternatives in the Buffalo RMP/EIS so as to provide sufficient information to enable the BLM to take a hard look in this general fashion.

266 F. Supp. 2d at 1330.

Thus, the court adopted a “supplementation” theory, such that even though a planning-level EIS may not specifically address the effects of CBM exploration and development in its consideration of oil and gas development, BLM may rely on it and other environmental documentation, whether or not the other documentation involves pre-leasing analysis, to fully inform it about a decision to lease for oil and gas, when the exploration and development of CBM is possible.

The second event occurred when, following our remand in 158 IBLA 384, noted above, BLM undertook a new review of its existing environmental documentation resulting in the preparation of a revised DNA. In a July 29, 2003, memorandum to the Wyoming State Director, from the Acting Field Manager, RFO, BLM, which accompanied the updated DNA worksheet, the Acting Field Manager stated:

The DNA for the April 2000 sale was completed in December 1999. At this time, the potential for the development of methane gas from coal reservoirs in the Rawlins Field Office management area was relatively unexplored, and development of these resources could not necessarily be predicted as the likely use.

(Memorandum at 1.)

He continued by explaining that the RFO had completed a new DNA which reviews the assumptions and analyses in the Great Divide Resource Management Plan (GDRMP, 1990) and compares them to impacts seen in projects which are currently exploring the potential for gas development from coal reservoirs and also with impacts seen in [sic] during the development of oil and gas from other types of natural gas reservoirs. \* \* \* It confirms the exploration and development of methane gas from coal reservoirs is in conformance with the GDRMP.

Id.

On August 28, 2003, BLM forwarded to this Board the July 29, 2003, memorandum and its accompanying DNA worksheet (New DNA), as well as other documentation in support of its position that it properly analyzed the environmental impacts of leasing the lands in question.<sup>8/</sup> On September 8, 2003, we directed BLM, by order, to complete service of that material on WOC and allowed WOC the opportunity to respond thereto. BLM completed service of the material on October 6, 2003. On December 15, 2003, WOC filed its response to those submissions.

WOC's position is that BLM failed to undertake an environmental analysis of CBM impacts prior to conducting the sale for the parcels in question. It points to the Board's decision in Wyoming Outdoor Council, 158 IBLA at 392, in which we held that the Great Divide RMP/EIS was not itself sufficient to support leasing for CBM and that "the Great Divide RMP/EIS does not satisfy BLM's obligation under NEPA to take a hard look at the impacts associated with CBM extraction and development." WOC asserts that BLM's New DNA "purports to show that the IBLA was wrong and that the Great Divide RMP/EIS in fact did adequately analyze CBM development so as to provide the NEPA analysis necessary for issuing the challenged leases." (Response at 8.) WOC charges that the "supplementation" theory adopted by the court in Penneco, under which BLM could rely on subsequent NEPA documentation to supplement an RMP/EIS, was not utilized by BLM in this case. WOC argues that BLM "uses the NEPA analyses completed to date in the RFO for small-scale exploratory CBM projects referenced in the DNA solely to confirm that the 'exploration and development of [CBM] is in conformance with the GDRMP,' \* \* \*, and that the GDRMP/EIS therefore provides, on its own, the requisite NEPA analysis." (Response at 9.)

WOC argues that "even if the BLM had attempted to use the small-scale CBM project analyses conducted to date in the RFO to somehow supplement the RMP/EIS's analysis, the Pennaco decision would still not provide a basis for

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<sup>8/</sup> The New DNA consisted of 15 pages, the last of which contained the following conclusion signed by the Acting Field Manager and dated July 29, 2003: "Based on the review documented above, I conclude that this proposal conforms to the applicable land use plan and that the NEPA documentation fully covers the proposed action and constitutes the BLM's compliance with the requirements of NEPA." BLM explained on page 1 of the worksheet that "[t]he intent of this document is to establish the administrative record for oil and gas leasing decisions in the Rawlins Field Office (RFO) management area beginning with the lease sale of April 2000" and that "BLM proposes to offer for sale oil and gas lease parcels in which a potential use could be the exploration for and extraction of natural gas from coal reservoirs."

concluding that the agency had taken a hard look at CBM development in the RFO.” (Response at 10.) WOC contrasts the supplemental information relied on by the court in Pennaco (an EIS containing a detailed analysis of the impacts of a 3,000 to 6,000 well full-field development) with the “only projects that have been approved to date in the RFO, and have therefore undergone NEPA analyses, [which] are small-scale, in the range of ten to thirty wells, and exploratory.” Id. at 11. WOC concludes that no NEPA document cited in the New DNA can therefore provide the “extensive and current analysis of the environmental effects of CBM development” that the Pennaco court relied on in concluding that BLM had taken a hard look at the impacts of CBM development, citing Pennaco, 266 F. Supp. 2d at 1330. Id. Therefore, WOC asserts, BLM’s position may only be upheld if CBM exploration and development is no different from conventional gas exploration and development, a proposition, it claims, is wrong based on “the overwhelming weight of evidence from industry officials, independent scientists, professional consultants, and indeed the agency’s own experts.” Id.

WOC acknowledges BLM’s attempts in another case pending before this Board (IBLA 2003-358) to distinguish coal geology in the RFO management area, which has rather thin coal seams (as small as a foot and a half thick) at depths between 2,500 feet and 6,000 feet, from the Powder River Basin, where there is extensive development of CBM in shallow (less than 1,200 feet), thick (up to 250 feet) coal seams in which small, water-well drill rigs are used without well pads and few roads, and the wells are open-hole completions. (Response at 14; see Response, Ex. 18 at 5-6.) WOC asserts that differences in geology do not translate into a lack of unique impacts. In support of that assertion, it points to the San Juan Basin in northwestern New Mexico and southwestern Colorado where there is extensive CBM development from the Fruitland Formation, which averages six to nine feet in thickness and is found at depths of up to 4,200 feet. (Response at 14; Response, Ex. 10 and Ex. 11 at 3-9.) WOC states that the unique, widespread, unanticipated impacts of CBM development are documented in the San Juan Basin Case Study contained in the July 2002 Natural Resources Law Center report, “Coalbed Methane Development in the Intermountain West,” which it attaches as Exhibit 12 to its Response. Given the similarities with San Juan Basin geology, WOC contends that CBM development in the RFO management area has the potential to cause similar impacts, which it goes on to detail.

The adequacy of BLM’s environmental review under section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C) (2000), depends on whether it constitutes a hard look at the environmental consequences of the proposed action, considering all relevant matters of environmental concern. See Colorado Environmental Coalition, 149 IBLA 154, 156 (1999); Colorado Environmental Coalition, 142 IBLA 49, 52

(1997), and cases cited. BLM's environmental review must fulfill the primary purpose of NEPA, which is to ensure that a Federal agency, in exercising its discretion to approve or disapprove a project, is fully informed of the environmental consequences of such action. See 40 CFR 1500.1(b) and (c); Natural Resources Defense Council v. Hodel, 819 F.2d 927, 929 (9th Cir. 1987); Colorado Environmental Coalition, 142 IBLA at 52.

[1] For the following reasons, we conclude that the record in this case shows that BLM took a hard look at the environmental consequences of leasing the particular parcels in question in this appeal. WOC claims that NEPA requires that agencies take a hard look at environmental impacts before they make their decisions, and that BLM failed to do so in this case prior to offering the parcels for lease. Under the regulations governing competitive oil and gas leasing, 43 CFR Subpart 3120, conducting a competitive sale is not the same as issuance of a lease. In fact, "[e]xecution by the high bidder of a competitive lease bid form \* \* \* shall constitute a binding lease offer \* \* \*." 43 CFR 3120.5-3(a). The offer is not accepted until execution of the lease by the authorized officer. 43 CFR 3120.2-2. In this case, the authorized officer executed a lease for each of the parcels in question shortly after denial of WOC's protest, with an effective date of August 1, 2000.<sup>9/</sup> The stay issued by this Board in this case on November 21, 2001, was limited to precluding CBM activities.<sup>10/</sup>

As we stated in National Wildlife Federation, 145 IBLA 348, 362 (1998), although the courts are limited in their review to the administrative record created before the agency under the arbitrary, capricious, or an abuse of discretion standard,

our review authority is de novo in scope because it is our delegated responsibility to decide for the Department "as fully and finally as might

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<sup>9/</sup> The stamped signature of the authorized officer appears on the lease for Parcel No. 0006-56 above the date of July 20, 2000, and on the lease for Parcel No. 0006-230 above the date of July 21, 2000.

<sup>10/</sup> Under the regulations governing the effectiveness of BLM's decision denying WOC's protest, that decision was not effective "during the time in which a person adversely affected may file a notice of appeal." 43 CFR 4.21(a)(1); see Wyoming Outdoor Council, 156 IBLA 377, 380-83 (2002). In fact, because WOC filed a timely appeal accompanied by a petition for stay, BLM's decision was not effective until the Board failed to act on the petition for stay within 45 days of the expiration of the appeal period. See 43 CFR 4.21(b)(4). However, as noted, the Board subsequently did grant a limited stay.

the Secretary” appeals regarding use and disposition of the public lands and their resources. 43 C.F.R. § 4.1; see Ideal Basic Industries v. Morton, 542 F.2d 1364, 1367-68 (9th Cir. 1976); Forest Oil Corp., 141 IBLA 295, 306 (1997); Richard Bargaen, 117 IBLA 239, 245 n.3 (1991); United States Fish & Wildlife Service, 72 IBLA 218, 220 (1983).

Thus, we are not limited by the record before BLM at the time it denied appellant’s protest in this case in determining the correctness of that decision. While we have said many times that BLM must ensure that its decision is supported by a rational basis, which must be stated in the decision as well as being demonstrated in the administrative record accompanying the decision, e.g., Larry Brown & Associates, 133 IBLA 202, 205 (1995); Eddleman Community Property Trust, 106 IBLA 376, 377 (1989), we have also, as a matter of practice, allowed parties to supplement the record on appeal. Silverado Nevada, Inc., 152 IBLA 313, 322 (2000). We have accepted data submitted by BLM on appeal in support of its decision, emphasizing that it is our duty to have before us as complete a record as possible. In Re Lick Gulch Timber Sale, 72 IBLA 261, 273 n.6, 90 I.D. 189, 196 n.6 (1983); see B. K. Killion, 90 IBLA 378, 381 (1986).

In National Wildlife Federation, 145 IBLA at 364, we addressed the question of whether, by allowing BLM to submit additional information in support of its environmental analysis of a mining plan of operations, the Board would violate NEPA requirements to provide public notice and comment. We stated: “While NEPA mandates procedures, not substantive results, it does not require public review and comment on all information. The question of whether documents must be distributed by an agency for public comment turns on the facts of each particular case.” Id. In that case, we held:

The new information does not radically change an assumption of the FEIS, or relate directly to an alternative action, or show that there are significant impacts of the project that were not disclosed in the FEIS. In fact, the new information confirmed the assumption of the FEIS that the Navajo Aquifer was a Class III aquifer, and it also arguably establishes that impacts to ground water quality will be minimal. In addition, BLM sent copies of all the new information to Appellants and the information was publically available. The groundwater data and analyses were also submitted to the State of Utah, which classified the Navajo Aquifer as Class III. The fact that the information was not released expressly for public comment is not, under the facts of this case, a violation of NEPA.

Id. at 365.

In this case, BLM prepared its New DNA in response to our April 15, 2003, decision in Wyoming Outdoor Council, 158 IBLA 384, finding that the record in that case was inadequate to support the leasing for CBM exploration and development of particular parcels in the RFO management area. Anticipating the same result in this case, BLM filed the New DNA and other supplementary information with this Board in support of its decision to deny WOC's protest and lease the parcels in question.

We have reviewed the record, as supplemented, under our de novo review authority, to reach our conclusion that the record supports the sale and leasing of the parcels in question for oil and gas exploration and development, including for CBM exploration and development. The record in this case did not, before supplementation, support such leasing for the parcels in question. There was no evidence of a hard look at the impacts of leasing for CBM exploration and development. To the extent the record now shows that impacts for CBM exploration and development for those parcels would generally not be different from the impacts from conventional gas exploration and development of the same parcels, that conclusion results from a review of BLM's examination of the impacts of CBM exploration and development in its New DNA. Such an analysis did not exist in the original record in this case. However, BLM did not change its conclusion and WOC, the organization that had protested the June 2000 sale and sought review of the denial of its protest, received the supplementary information and had an opportunity to respond. Under such circumstances, we believe it was appropriate for this Board to consider this case with the New DNA and the other supplementary information and without the necessity for further public comment.

The Great Divide RMP/EIS addressed general oil and gas exploration, production, and development, and, based on that analysis, opened the entire planning area to oil and gas leasing with appropriate restrictions to protect listed resources.<sup>11/</sup> Neither that document nor the 3-page DNAs for the parcels in question mentioned CBM exploration or development, the latter documents citing only the Draft and Final EIS's for the Great Divide RMP as the sources for BLM's information regarding the impacts of leasing. On the other hand, the New DNA, in response to the directive to identify "all applicable NEPA document(s) and other related

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<sup>11/</sup> We note that, while an RMP generally designates lands as available for leasing, BLM may, when considering whether or not to lease particular parcels, refuse to lease on the basis of environmental considerations. Marathon Oil Co., 139 IBLA 347, 356 (1997).

documents” listed 11 environmental documents prepared between June 1992 and April 2003, which considered the environmental impacts of various natural gas or CBM projects in the planning area. (New DNA at 3.) Seven of those documents were released subsequent to BLM’s February 18, 2000, DNAs.

In addition, the New DNA also acknowledged six other documents relevant to the proposed action, such as biological assessments, air quality assessments, and a water management plan, some of which involved CBM projects and four of which were released after February 18, 2000. (New DNA at 4.)

In the New DNA, BLM concludes that “[t]he analysis conducted for the GDRMP is still valid for oil and gas leasing.” (New DNA at 6.) BLM explains that one of the assumptions of the RMP was that the planning area contains significant known oil and gas resources, but that geologic conditions are favorable for the occurrence of additional unevaluated or unrecognized oil and gas resources. Therefore, it concludes that “exploration of the potential to extract natural gas from coal is in conformance with the RMP.” *Id.* However, it notes that “[d]espite the interest shown by industry during the past 13 years, the majority of the exploratory efforts have yet to prove that coalbed methane can be economically produced from the planning area.” *Id.*

BLM stated:

Two project-specific and three site-specific EAs have been completed for coalbed methane exploratory activities and released for public review. Consideration of new information is being documented in all CBM exploratory project environmental assessments (EA). [<sup>12/</sup>] Based on the

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<sup>12/</sup> Those documents are apparently the following, which were included in the list of 11 on page 3 of the New DNA:

Environmental Assessment for the Seminoe Road Coalbed Methane Pilot Project, Carbon County, Wyoming (April 2001; DR/FONSI July 2001)

Environmental Assessment for the Atlantic Rim Coalbed Methane Project, Sun Dog Pod, Carbon County, Wyoming (September 2001; DR/FONSI December 2001)

Environmental Assessment for the Atlantic Rim Coalbed Methane Project, Blue Sky Pod, Carbon County, Wyoming (January 2002; DR/FONSI July 2002)

(continued...)

analyses presented in these EAs, decision-makers have been able to make a finding of no significant impact (FONSI). All contain additional mitigation to lessen potential impacts. Up to this point, no impacts have been described to distinguish impacts from exploratory drilling for natural gas from coal reservoirs from those described and considered when the leasing decision was made in the RMP/ROD.

Id. at 6-7.

With regard to potential impacts to air quality from CBM development, the New DNA states that three recent CBM EA's completed in the RFO management area compared emissions from a CBM well to a well in the Continental Divide/Wamsutter II project area and determined that "there was virtually no difference in emissions from natural gas well sites and compressors and CBM well sites and compressors for" carbon monoxide, nitrogen oxides, sulfur dioxide, and particulate matter less than 10 microns in size. (New DNA at 7-8.) BLM concluded that impacts to air quality from CBM development would be "similar [to] or less" than from natural gas development of other reservoirs. Id. at 8.

The New DNA also addresses produced water. At page 8, it states that

[a]ll NEPA documents prepared for oil and gas (including CBM) projects, referenced in this DNA, discuss the need to comply with WDEQ [Wyoming Department of Environmental Quality] (Clean Water Act, National Pollutant Discharge Elimination System permits) and BLM requirements (Onshore Order No. 7, 43 CFR 3160) for the disposal of produced water. All CBM projects in the planning area are required to prepare water management plans[,] which contain mitigation and monitoring appropriate for the project.

BLM concluded, "[b]ased on a review of recent analyses prepared for CBM exploration projects," that "the methodology for developing CBM and the impacts

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<sup>12/</sup> (...continued)

Environmental Assessment for the Hanna Draw Coalbed Methane Exploration Project, Carbon County, Wyoming (January 2002; DR/FONSI June 2002)

Environmental Assessment for the Atlantic Rim Coalbed Methane Project, Cow Creek Pod, Carbon County, Wyoming (February 2002; DR/FONSI June 2002)

predicted and seen are the same [as] or similar to those used in the assumptions for oil and gas development in the RMP.” (New DNA at 9.) The New DNA contains a discussion of the RMP assumptions, as well as relevant references to the project level NEPA documents, for methods of development, water discharge, surface water quality, groundwater quality, groundwater use, and soils.<sup>13/</sup>

WOC has offered substantial documentation in support of its position that the unique and significant impacts of CBM development have not been addressed by BLM, but it is not clear that those impacts translate directly to the possibility of CBM exploration and development of the two parcels in question. Rather, we find that, while BLM’s original DNAs contained merely a cryptic analysis of only two environmental documents, the Medicine Bow-Divide Draft EIS and the GDRMP/EIS, the New DNA analyzes not only those documents, but all the other NEPA documents listed therein in reaching its conclusion that the existing NEPA documentation “fully covers the proposed action and constitutes compliance with the requirements of NEPA.” (New DNA at 15.)

WOC insists that we would be required to reverse our decision in Wyoming Outdoor Council, 158 IBLA 384, in order to rule in BLM’s favor in this case because we held in that case that the Great Divide RMP/EIS did not constitute the requisite hard look at the environmental consequences of offering the parcels in question for leasing and that BLM was required to perform further NEPA analysis before deciding whether to approve the sale of those parcels. Therein, however, we did not instruct BLM on what analysis was necessary. We did state that “[t]he DNAs, which depended totally on the Great Divide RMP/EIS, failed to identify any of the relevant areas of environmental concern or reasonable alternatives to the proposed action and thus do not satisfy BLM’s NEPA obligations in this case.” 158 IBLA at 392. The fact that BLM continues to rely on the Great Divide RMP/EIS is not dispositive, because on remand BLM undertook an examination of all existing environmental documentation concerning both conventional and CBM gas operations in the RFO management area and prepared the New DNA. It is that new examination that differentiates this case from 158 IBLA 384, and justifies a different result. Thus, we

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<sup>13/</sup> BLM noted in the New DNA at page 12 that surface water uses in the planning area were mainly for livestock and wildlife water, which “is important because an elevated sodium adsorption ratio (SAR) [from produced water], when combined with certain soil types, can impact the ability of water to penetrate soils and possibly affect irrigated lands.” According to BLM, “[a]ll the currently-authorized CBM exploratory projects are located on rangelands, not irrigated cropland.” Id.

disagree that 158 IBLA 384 must be reversed in order to affirm BLM's determination to lease the two parcels in question in this case.

The case record, as supplemented, meets the requirements of NEPA by showing that BLM has taken a hard look at the environmental impacts of leasing the two parcels at issue in this appeal and is fully informed of the consequences of leasing those parcels.

To the extent WOC has raised other arguments in the appeal not specifically addressed in this opinion, they have been considered and rejected. In addition, WOC filed a motion to consolidate this case with two other appeals pending before this Board, IBLA 2003-358 and IBLA 2004-52, involving it and other appellants. That motion is denied.

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

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur:

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H. Barry Holt  
Chief Administrative Judge