

COLORADO ENVIRONMENTAL COALITION
THE WILDERNESS SOCIETY
SIERRA CLUB

IBLA 2002-307

Decided August 17, 2004

Appeal from a decision of the Colorado State Office, Bureau of Land Management, dismissing a protest to a competitive oil and gas lease sale of 17 parcels. COC 065822 et al.

Affirmed.

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

BLM's authority to conduct wilderness reviews or establish new wilderness study areas expired on October 21, 1993, and, absent Congressional authorization, BLM may not establish, manage or treat public lands, other than those designated wilderness by Congress under 43 U.S.C. § 1782 (2000), as wilderness study areas or as wilderness under the land use planning provisions of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1712 (2000). Under FLPMA, BLM has the authority to prepare and maintain an inventory of all public lands and their resources and other values, which may include characteristics that are associated with the concept of wilderness.

2. Administrative Review: Generally--Administrative Review: Administrative Finality--Federal Land Policy and Management Act of 1976: Land-Use Planning--Federal

Land Policy and Management Act of 1976: Wilderness--
Wilderness Act

BLM properly dismisses a protest against an oil and gas lease sale based on assertions of the wilderness character of the lands, because the final administrative determination that the land was not wilderness in character was made in the 1980's. Even where the land has been proposed for wilderness designation in pending legislation, BLM may properly administer those lands for other purposes, where the land has not been included in a wilderness study area. Because the time for taking appeals from inventory decisions has long since passed, the doctrine of administrative finality precludes appellants from challenging those decisions by filing protests against actions taken by BLM to administer the land for other purposes.

APPEARANCES: Susan D. Daggett, Esq., Denver, Colorado, for appellants; 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 ADMINISTRATIVE JUDGE PRICE

The Colorado Environmental Coalition, the Wilderness Society, and the Sierra Club (collectively, CEC or appellants) have appealed from an April 4, 2002, decision of the Colorado State Office, Bureau of Land Management (BLM), dismissing their protest of the inclusion of 17 parcels in a competitive oil and gas lease sale held by the Colorado State Office on February 14, 2002. The parcels at issue are located in part of the White River Resource Area (WRRRA) generally known as the "Pinyon Ridge area,"^{1/} and are identified by BLM Serial Nos. COC 065822, COC 065824, COC 65827-834, COC 65837-838, COC 65840-843, and COC 65845.^{2/}

^{1/} The Pinyon Ridge area lies 30 air miles northwest of Meeker, within T. 3 N., R. 98 W., 6th P.M., T. 3 N., R. 99 W., 6th P.M., and T. 4 N., R. 98 W., 6th P.M., in Moffat and Rio Blanco Counties, Colorado. (Statement of Reasons (SOR), Ex. 11, BLM Roadless Review Summary attached to BLM Aug. 6, 1997, Memorandum, at 1), and Ex. 17 ("BLM News," released Nov. 23, 1998).)

^{2/} In addition to the lease files, BLM submitted a copy of the WRRRA land use
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On November 13, 2001, BLM prepared a “Documentation of Land Use Plan Conformance and NEPA Adequacy” (DNA), serialized as WRFO-02-012 DNA, in which it concluded that the WRRRA Resource Management Plan(RMP)/Environmental Impact Statement (EIS) and Record of Decision (ROD) approved July 1, 1997, had adequately analyzed the environmental impacts of leasing 64 parcels it proposed for the February 2002 sale, including 17 parcels located in the Pinyon Ridge area, and that the requirements of section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C) (2000), had been met.^{3/} Accordingly, BLM advertised the availability of the leases and held the lease sale on February 14, 2002.

On February 13, 2002, BLM received a protest of the sale of the 17 Pinyon Ridge parcels, alleging that Pinyon Ridge is within a “nearly 20,000 acre roadless area” (Protest, Ex. 3 to SOR at 2) that is part of the Pinyon Ridge Citizens’ (or Conservationists’) Wilderness Proposal (Citizens’ Proposal), which was developed in 1994. See SOR at 6; Ex. 8 to SOR. In 1992, Representatives DeGette and Shays introduced a bill in Congress to add the lands in the Citizens’ Proposal to the Wilderness Preservation System. (Ex. 2 to SOR at 6.) Among other things, appellants argued in their protest that BLM “should not lease inside proposed wilderness areas” (Protest at 2), because oil and gas development would destroy the roadless character of the area and undermine the area’s potential for inclusion in the wilderness preservation system (Protest at 2-3, 4-6). They contended that the DNA and the underlying RMP violate NEPA requirements because they do not adequately address the environmental impacts of oil and gas development on the roadless character of the Pinyon Ridge Area. (Protest at 4-5.) CEC asserted, moreover, that the site-specific impacts of disturbing an undeveloped area should be assessed prior to leasing (Protest at 6-8), noting that they submitted comments pertaining to Environmental Assessment CO-WRFO-00-132-EA (Pinyon Ridge EA), discussed infra, that specifically addressed leasing in the Pinyon Ridge area, but that BLM did not

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planning documents on compact disk. All other relevant documents have been included as exhibits attached to either the SOR or the Answer, and will be identified herein accordingly.

^{3/} BLM had prepared the White River Approved Record of Decision and Resource Management Plan (ROD/RMP) issued in July 1997, which adopted the WRRRA Proposed Resource Management Plan and Final Environmental Impact Statement (PRMP/FEIS) issued in July 1996. The WRRRA Draft Resource Management Plan and Environmental Impact Statement (DRMP/EIS) was issued in October 1994. See Ex. 18 to SOR.

respond to those comments or notify them when that EA was later withdrawn, effectively precluding their right of appeal (Protest at 1-2).

In its April 4, 2002, decision, BLM rejected appellants' challenges, stating that the Pinyon Ridge area had been inventoried for wilderness characteristics pursuant to section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, 43 U.S.C. § 1782 (2000), in August 1978 and the fall of 1979. The area was evaluated again in 1995, and all three reviews determined that the area did not qualify for further wilderness study. (Ex. 4 to SOR at 2.) The decision stated that BLM had again reviewed the area for wilderness characteristics in March 1997, and determined in November 1998 that although the area has nearly 20,000 roadless acres and opportunities for solitude, it "fails to meet the criteria for naturalness and outstanding opportunities for primitive recreation." (Decision at 2.) Therefore, in November 1998, BLM rejected the Citizens' Proposal to manage the Pinyon Ridge area for inclusion in the wilderness preservation system, and determined to continue to manage the Pinyon Ridge area for the multiple uses identified in the RMP, including oil and gas leasing. (Decision at 2.) Notwithstanding this 1998 determination, under Instruction Memorandum (IM) No. CO-99-013, which "was general to the CWP [Citizens' Wilderness Proposal] lands," the WRFO began preparing the Pinyon Ridge EA "to address the proposed inclusion of parcels within the area in an upcoming lease sale." (Decision at 2.) Ultimately, as the decision explained, preparation of the Pinyon Ridge EA was terminated when it became apparent that the EA could not be completed in time for an upcoming lease sale. Consequently, the parcels were offered for sale two years later, in February 2002, following a determination by BLM that, under the circumstances, an EA was not necessary.

Specifically, in November 2001, BLM issued IM No. CO-2002-006, which stated that "[o]ur policy to review actions for irreversible and irretrievable impacts before proceeding with the action will apply to the entire CWP, EXCEPT for areas that we have already reviewed or inventoried under our policies and determined to not require additional review." (Decision at 2.) BLM concluded that since it had determined that Pinyon Ridge did not have wilderness characteristics, there was no need to complete a site-specific EA prior to leasing. According to the BLM decision, "[t]he tiering of a DNA to the White River RMP/EIS for actions planned in the Pinyon Ridge area is the appropriate NEPA documentation for the leasing of these parcels." (Decision at 2.)^{4/} Additionally, the decision explained that the "stated

^{4/} Notwithstanding BLM's phrasing in this instance, strictly speaking, a DNA does not constitute a NEPA analysis that can be tiered. See 40 CFR 1508.28. As its name (continued...)

objective in the White River RMP is to make federal oil and gas resources available for leasing and development in a manner that provides reasonable protection for other resource values” (Decision at 2), noting that “BLM’s oil and gas leasing program complies with NEPA through a tiered decision making process” in accordance with 40 CFR 1508.28. (Decision at 3.) The decision further explained that “this tiered process begins with the preparation of a Land Use Plan (LUP) accompanied by an EIS” (Decision at 3), and that once the LUP indicates that lands will be open for leasing, “prior to the actual offering of the land for oil and gas lease sales, BLM conducts a second, more site-specific tier of NEPA analysis” (Decision at 3). The DNA provides confirmation that “the lands were re-evaluated and that our position remains unchanged; they will be managed under decisions made in the 1997 RMP.” (Decision at 3.) Lastly, the decision noted that impacts to wilderness values and roadless areas from leasing had been raised in comments on the DRMP/EIS and were addressed in the PRMP/FEIS, which “identifies and quantifies impacts anticipated as a result of proposed oil and gas leasing activities on a resource by resource basis,” and provides for stipulations to mitigate those impacts. (Decision at 4.) BLM therefore rejected appellants’ assertion that the area should be managed based on the possibility of a future legislative designation.

In their SOR, appellants acknowledge they have been “engaged in a long-running debate regarding the wilderness values in Pinyon Ridge” (SOR at 6), and note that, as a result of their Citizens’ Proposal, BLM re-evaluated the area in 1995 and acknowledged in the PRMP/EIS that “significant wilderness qualities exist in Pinyon Ridge.”^{5/} (SOR at 6-7.) Given those qualities, appellants object to BLM’s determination not to amend the RMP to designate Pinyon Ridge a wilderness study

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suggests, a DNA is used merely to identify the relevant analyses prepared in accordance with NEPA’s provisions and to indicate BLM’s conclusions regarding whether they remain adequate for the Federal action at issue and conform to land use planning decisions.

It appears that appellants did not serve a copy of their SOR on the adverse parties identified in BLM’s decision. Appellants are admonished that they are obligated to serve each adverse party named in the decision. 43 CFR 4.413. Ordinarily, we would complete service or direct the parties to do so and afford each adverse party an opportunity to enter an appearance and file a response. The individuals named in BLM’s decision would be adversely affected if BLM’s decision were reversed on appeal. However, for the reasons discussed, we have concluded that BLM’s decision must be affirmed, and thus it is not necessary to require service of the notice of appeal and SOR.

area (WSA) and instead continue to manage the area for multiple uses, without granting appellants notice or opportunity for appeal (SOR at 8-9), and that the issuance of oil and gas leases will seriously compromise the wilderness character of the Pinyon Ridge area (SOR at 15-16). Characterizing the introduction of H.R. 4468 in the House of Representatives in April 2002 by Congresswoman DeGette as “significant new circumstances and information” (SOR at 2), appellants contend oil and gas leasing should be halted pending further NEPA analysis.

BLM responds that, having determined that the area does not meet the “initial qualifying criteria,” it is not now required to consider how oil and gas leasing may affect the area’s suitability as a wilderness area.^{6/} (Answer at 4.) It is conceded that the DNA did not acknowledge that the Pinyon Ridge area contains lands proposed for wilderness designation in a pending legislative bill, but BLM argues that it is under no legal obligation to withhold lands from leasing or manage “roadless areas” differently from the way in which it manages other non-wilderness lands based upon the possibility that they may be designated wilderness pursuant to special legislation enacted to do so.^{7/} (Answer at 6-7.)

[1] BLM’s authority to designate new WSA’s pursuant to section 603 of FLPMA expired as of October 21, 1993.^{8/} BLM therefore has no authority to

^{6/} BLM acknowledges that the area is a “contiguous block of land that does not have any roads,” but noted that it does not “have a designation for ‘roadless areas’ nor does it utilize the term ‘roadless areas’ like the Forest Service. BLM does have special management designations (e.g. ACEC’s [areas of critical environmental concern] and WSA’s [wilderness study areas] that, if there were be an effect upon [sic], would require specific discussion in appropriate NEPA documents.” (Answer at 3, n.1.) For convenience, we will use appellants’ nomenclature.

^{7/} BLM’s assertion is correct. See Colorado Environmental Coalition, 149 IBLA 154, 159 (1999). We observe, however, that under NEPA, the “roadless character” of public lands is a relevant environmental concern, irrespective of whether specific regulatory language exists which might govern its management. See, e.g., National Audubon Society v. U.S. Forest Service, 46 F.3d 1437, 1446 (9th Cir. 1993). See 40 CFR 1508.8 and 1508.27(b)(3). See also n.9 *post*.

^{8/} Section 603(a) of FLPMA, 43 U.S.C. § 1782(a) (2000), provides that the Secretary of the Interior will recommend to the President lands for preservation as wilderness within 15 years subsequent to Oct. 21, 1976 (the effective date of FLPMA), that is, Oct. 21, 1991. The President thereafter was granted two years within which to “advise the President of the Senate and the Speaker of the House of Representatives
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designate new WSA's or to establish, manage or otherwise treat public lands not Congressionally designated as wilderness as a WSA or as wilderness under the land use planning provisions of section 202 of FLPMA, 43 U.S.C. § 1712 (2000), absent Congressional authorization to do so. See Colorado Environmental Coalition, 161 IBLA 386, 391-92, 394 (2004). Once the decision has been made to reject land for inclusion in the wilderness preservation system, NEPA does not require subsequent analyses of the impacts of that determination, because such impacts were considered when the decision was made to administer them for other purposes. Colorado Environmental Coalition, 161 IBLA at 396; Southern Utah Wilderness Alliance, 158 IBLA 212, 214-15 (2003); Southern Utah Wilderness Alliance, 151 IBLA 338, 341-42 (2000); Colorado Environmental Coalition, 149 IBLA at 156; Southern Utah Wilderness Alliance, 150 IBLA 263, 266-67 (1999); Colorado Environmental Coalition, 142 IBLA 49, 52 (1997); Southern Utah Wilderness Alliance, 128 IBLA 52, 65-66 (1993).

Pursuant to section 201(a) of FLPMA, 43 U.S.C. § 1711(a) (2000), BLM must “prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values,” which may include characteristics that are associated with the concept of wilderness. BLM thus retains authority to consider wilderness characteristics in amending its RMP's.^{2/} Colorado Environmental Coalition,

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of his recommendations.” 43 U.S.C. § 1782(b) (2000). Thus, the last date upon which the President could recommend lands for wilderness designation was Oct. 21, 1993. The President's recommendations become effective only upon Congressional action; however, pursuant to section 603(c), all lands characterized as suitable for wilderness pursuant to section 603(a) are to be managed so as not to impair wilderness suitability “until Congress has determined otherwise.” 43 U.S.C. § 1782(c) (2000).

^{2/} We discussed the stipulated outcome of the litigation in Utah v. Norton, No. 96-C-870 B (D. Utah Apr 14, 2003) in Colorado Environmental Coalition, 161 IBLA at 396. That case was settled by stipulating that the Department's authority to conduct wilderness reviews and establish WSA's had expired no later than Oct. 21, 1993, and that the Department therefore had no authority to establish WSA's after that date. That stipulation nevertheless recognized the Department's authority to manage land dedicated to a specific use, to develop and revise land use plans and designate areas of critical environmental concern, and to take any action necessary to prevent unnecessary and undue degradation of public lands. Colorado Environmental Coalition, 161 IBLA at 395. Further, the stipulation provided:

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161 IBLA at 396. As recited in the decision here appealed, BLM has inventoried the lands in the Pinyon Ridge area as part of the section 603 determination and evaluated them repeatedly in response to the Citizens' Proposal. BLM conducted two extensive wilderness evaluations, and, after each assessment determined by appropriate decision rationale to continue managing the area for multiple uses, including oil and gas leasing, with stipulations to protect resource values.^{2/} No error is demonstrated by the fact that BLM administers lands not included within a WSA for other purposes, including oil and gas leasing. Colorado Environmental Coalition, 161 IBLA at 393-94; Southern Utah Wilderness Alliance, 158 IBLA at 214; Southern Utah Wilderness Alliance, 150 IBLA at 266-67; Southern Utah Wilderness Alliance,

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“However, nothing herein is intended to diminish BLM’s authority under FLPMA to prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values, as described in FLPMA Section 201. These resources and other values may include, but are not limited to characteristics that are associated with the concept of wilderness.” Colorado Environmental Coalition, 161 IBLA at 395-96. We observed that “[t]he principles recognized by the United States in that litigation merely reflect the requirements of statutory provisions that have been in effect since FLPMA was enacted in 1976.” Colorado Environmental Coalition, 161 IBLA at 396.

On Sept. 19, 2003, BLM issued IM No. 2003-274, applying in all states the principles set forth in the stipulated agreement in Utah v. Norton, and setting forth the following management policy with respect to proposals by wilderness advocates:

“BLM will continue to manage public lands according to existing land use plans while new information (e.g., in the form of new resource assessments, wilderness inventory areas or ‘citizen’s proposals’) is being considered in a land use planning effort. During the planning process and concluding with the actions after the planning process, BLM will not manage those lands under a congressionally designated non-impairment standard, nor manage them as if they are or may become congressionally designated wilderness areas, but through the planning process BLM may manage them using special protections to protect wilderness characteristics.” (IM No. 2003-274 at 2.) See also Colorado Environmental Coalition, 161 IBLA at 396.

^{2/} Appellants allege they were not given an opportunity to appeal BLM’s November 1998 decision not to amend the RMP after its 1997 evaluation, which was published in a BLM “news release.” However, anyone who has participated in a plan amendment process under 43 CFR 1610.5-5 and who has an interest that is or may be adversely affected by the amendment of or failure to amend an RMP would file a protest pursuant to 43 CFR 1610.5-2, rather than an appeal under 43 CFR 4.410.

128 IBLA at 66. To the extent appellants attempt to challenge the land use decisions made in the RMP and the adequacy of the alternatives considered in the supporting EIS, as BLM notes, the time for doing so has long since passed. Such arguments are clearly untimely and therefore will not be further considered.

[2] Our view of matters is not affected by appellants' contention that the introduction of H.R. 4468 constitutes "significant new information" that requires the halt of oil and gas leasing pending supplemental environmental analysis, as used in 40 CFR 1502.9(c)(1)(ii). We do not agree that the advancement of appellants' wilderness proposal constitutes "significant new information" within the meaning of the Council on Environmental Quality regulation. H.R. 4468 obviously represents a further development in appellants' quest to persuade Congress to designate the lands described in their Citizens' Proposal as wilderness, but until Congress chooses to do so, the information, and the line of argument they pursue has been considered and explicitly rejected by this Board as contrary to applicable law. Thus, in Colorado Environmental Coalition, 149 IBLA at 154, this Board affirmed a BLM decision authorizing the leasing of three parcels in the Pinyon Ridge area without further environmental review. As in the present appeal, appellants there asserted that BLM should have prepared a site-specific EA analyzing, among other things, the effects of leasing on wilderness values in Pinyon Ridge. We expressly rejected appellants' argument on the ground that it was precluded by the doctrine of administrative finality, because BLM had inventoried the lands to determine whether they qualified as a WSA under section 603 of FLPMA, as amended, 43 U.S.C. § 1782 (2000), and had concluded that it was not, a decision that was not protested. 149 IBLA at 156. See also 45 FR 75584, 75585 (November 14, 1980); 46 FR 1033, 1035 (January 5, 1981). The Board noted that "we know of no legal mandate that requires BLM to manage those areas on the basis that they might, at some future time, be designated as protected wilderness areas." Colorado Environmental Coalition, 149 IBLA at 156.

More recently, in Colorado Environmental Coalition, 161 IBLA at 393-94, we affirmed the decision to offer two parcels in an area of the Vermillion Basin for lease sale. The Board reaffirmed its precedents applying the doctrine of administrative finality to section 603 wilderness designations:

Notwithstanding the finality of BLM's decisions excluding certain areas from designation as wilderness, wilderness advocates pressed for the wilderness designation of some of the excluded areas and challenged BLM decisions authorizing land uses such as oil and gas leasing that might impair the wilderness characteristics they perceived to exist in those areas. Consistent with the Congressional mandate that

the wilderness review process be expedited to minimize interference with multiple use management, this Board has not looked upon such challenges with a great deal of favor. See Southern Utah Wilderness Alliance, 158 IBLA [212, 215 (2003)]; Colorado Environmental Coalition, 149 IBLA [at 156]; Southern Utah Wilderness Alliance, 123 IBLA [13, 18 (1992)]; Southern Utah Wilderness Association, 122 IBLA [17, 21 n.4 (1992)]. We have held it is proper for BLM to deny protests of oil and gas lease sales based on assertions of the wilderness character of the lands when the administrative determination that the land was not wilderness in character was made in the 1980's. E.g., Southern Utah Wilderness Alliance, 122 IBLA at 21. Similarly, we have held that BLM may properly administer those lands for other purposes even when the land had been proposed for wilderness designation in pending legislation. Southern Utah Wilderness Alliance, 123 IBLA at 18. The time for taking appeals from the inventory decisions had long since passed, and we found that the doctrine of administrative finality precluded appellants from challenging those decisions by protesting actions taken by BLM to administer the land for other purposes.

As a result of those decisions and cases cited therein, the doctrine of administrative finality precludes appellants' contentions, and they are rejected without further consideration on that basis.

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.

T. Britt Price
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge