



COLORADO ENVIRONMENTAL COALITION, *ET AL.*

171 IBLA 256

Decided May 9, 2007

COLORADO ENVIRONMENTAL COALITION, *ET AL.*

IBLA 2005-45

Decided May 9, 2007

Appeals from a decision of the Colorado State Office, Bureau of Land Management, dismissing protests against offering certain parcels in a competitive oil and gas lease sale. COC62553, etc.

Motion to dismiss denied; decision affirmed.

1. Oil and Gas Leases: Generally--Rules of Practice: Standing to Appeal

Under 43 C.F.R. § 4.410(a), in order to have standing to appeal a BLM decision dismissing protests to a competitive oil and gas lease sale of various parcels of land, the appellant must be a party to the case and have a legally cognizable interest that is adversely affected by the BLM decision. A party may establish it is adversely affected through evidence of use of the land in question or by setting forth interests in resources or in other land or its resources affected by the decision and showing how the decision has caused or is substantially likely to cause injury to those interests.

2. Environmental Policy Act--Environmental Quality: 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 to a competitive oil and gas lease sale will be affirmed when the appellant fails to demonstrate with objective proof clear error of law or demonstrable error of fact in the decision and when the record shows that existing environmental documentation provided BLM with a hard look at the environmental consequences of the lease sale. In considering the potential impacts of an oil and gas lease sale, BLM may

properly use “Documentation of Land Use Plan Conformance and NEPA Adequacy” worksheets to assess the adequacy of previous environmental review documents.

3. Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements--Federal Land Policy and Management Act of 1976: Land Use Planning--Federal Land Policy and Management Act of 1976: Wilderness--Oil and Gas Leases: Competitive Leases--Wilderness Act

When parcels nominated for inclusion in a competitive oil and gas lease sale encompass lands that were not included in a wilderness study area, BLM may administer those lands for other purposes, including oil and gas leasing, even though the lands were asserted to have wilderness characteristics in a citizens’ group wilderness proposal and were included in an area proposed for wilderness designation in legislation introduced in Congress. BLM’s determination that existing environmental documents adequately analyze the effects of a competitive oil and gas lease sale for such parcels will be affirmed where the appellants base their objection to the adequacy of those documents on purported “significant new circumstances or information” but fail to establish such circumstances or information.

APPEARANCES: Mike Chiropolos, Esq., Boulder, Colorado, for appellants Colorado Environmental Coalition, Colorado Mountain Club, Western Colorado Congress, and The Wilderness Society; Laura Lindley, Esq., and Robert C. Mathes, Esq., Denver, Colorado, for Contex Energy Co.; and John S. Retrum, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE McDANIEL

The Colorado Environmental Coalition, Colorado Mountain Club, Western Colorado Congress, and The Wilderness Society (collectively appellants) have appealed the September 23, 2004, decision of the Deputy State Director, Colorado State Office, Bureau of Land Management (BLM), dismissing their protest of the inclusion of 29 parcels of land in a competitive oil and gas lease sale. Appellants

argue that these parcels, which are covered by five Citizens Wilderness Proposals (CWPs), were inappropriate for mineral leasing and development and that 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), because BLM failed to properly study significant new information, conduct “site-specific” environmental analysis, and consider no-surface-occupancy (NSO) stipulations and no-leasing alternatives for each parcel.

### I. Scope of Appeal

Appellants filed a combined notice of appeal without indicating whether they were appealing all 29 parcels which they had identified in their protest. In their statement of reasons (SOR), appellants voluntarily withdrew their appeal to the five parcels identified by the Deputy State Director in his decision as deferred from sale or outside a Wilderness Study Area (WSA) or CWP. Accordingly, this appeal involves 24 parcels.<sup>1</sup> The record shows that those 24 parcels involve only lands embraced by the Cow Ridge CWP and the Hunter Canyon CWP within the Grand Junction Resource Area (GJRA).<sup>2</sup>

### II. Background

In November 1980, BLM issued the results of its wilderness inventory which had been conducted for the GJRA in compliance with section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (2000). BLM identified seven WSAs, but disqualified other proposed areas, such as Cow Ridge and Hunter Canyon, due to a lack of outstanding opportunities for solitude and primitive recreation. Having categorized the Resource Area lands as either WSAs or lands without wilderness values, in March 1985 BLM prepared and issued a Draft Grand Junction Resource Management Plan (RMP) to explore its management alternatives. BLM issued a Final Environmental Impact Statement (EIS) in November 1985 and a

---

<sup>1</sup> The parcels were numbered: COC67553, COC67554, COC67555, COC67556, COC67557, COC67558, COC67559, COC67560, COC67563, COC67564, COC67565, COC67567, COC67568, COC67571, COC67574, COC67575, COC67576, COC67577, COC67578, COC67582, COC67583, COC67584, COC67585, COC67586, COC67587, COC67590, COC67591, COC67594, and COC67595. Hereinafter, we will refer to the parcels by the last two digits of the parcel number, *i.e.*, 53.

<sup>2</sup> As the five parcels beyond this review were associated with the Dragon Canyon, Oil Spring Mountain, and Big Ridge CWPs within BLM’s White River Resource Area, the arguments and documentation regarding those CWPs and applicable resource area management decisions contained in the record are appropriately excluded from our discussion here.

Record of Decision in January 1987 which adopted one of four alternatives for the GJRA RMP.

On July 24, 2001, various groups, appellants included, joined to submit CWPs to the Colorado State Office, BLM. Ex. F to SOR. In addition to outlining the proposed boundaries of their proposals, they requested that the lands be managed to avoid degrading wilderness values until BLM had reviewed the CWPs and completed new land use plans. *Id.* at 2. Upon review of the CWPs, BLM did not find any significant new information upon which to change wilderness determinations or alter management actions chosen in the RMP. See Ex. J to SOR Memorandum from Field Manager to Deputy State Director dated Apr. 12, 2002. Although several legislative proposals have sought protection for the lands within those CWPs, no favorable action has been taken thereon.

On March 3, 2004, the Field Manager, Grand Junction Field Office, BLM, completed a review of numerous parcels BLM was considering for inclusion in the May 13, 2004, oil and gas lease sale. She particularly looked at compliance with NEPA, as well as relevant portions of the RMP. She substantiated her conclusions through use of a "Documentation of Land Use Plan Conformance and NEPA Adequacy (DNA)" worksheet, determining that, based on existing NEPA documents, including those parcels in the proposed lease sale met the requirements of NEPA. She further concluded that there was no new information that would require excluding from the sale those lands within the CWPs.

Based on the DNA, BLM issued a Notice of Competitive Lease Sale on March 29, 2004, for 74 parcels containing 73,759.181 acres of Federal lands, with the sale to be conducted on May 13, 2004. By protest filed on May 12, 2004, appellants argued that the lease sale would violate "NEPA standards" because the CWPs constituted significant new information regarding the subject parcels sufficient to require a supplemental EIS; that no site-specific analysis of each parcel had been performed as required by NEPA; that BLM had failed to sufficiently consider NSO stipulations and no-leasing alternatives for each parcel; and that BLM had failed to analyze the unique environmental impacts of coal bed methane (CBM) development. The high bidders were Contex Energy Company (Contex), Retamco Operating Inc., Puckett Land Co., Walter S. Fees Jr. & Son O&G LLC, and Evergreen Resources, Inc.

On September 23, 2004, the Deputy State Director issued his decision dismissing the May 12 protest. He concluded:

- 1) Significant new information-Our analysis of the information relevant to the CWP areas was that it was not significant new information or circumstances. The DNA documented that the CWP areas did not qualify for a wilderness study area and that several

aspects of wilderness character were analyzed and protected in the [RMP].

2) Site-specific pre-leasing NEPA analysis- [IBLA has ruled] that BLM is not required to undertake a site-specific environmental review prior to issuing an oil and gas lease when it previously analyzed the environmental consequences in a[n] RMP. The DNA notes that oil and gas leasing was analyzed in the [GJRA] RMP.

3) No surface occupancy and no-leasing alternatives-The [GJRA] RMP analyzed a range of alternatives for oil and gas leasing and identified areas open for oil and gas leasing and specified stipulations that would apply to leases [and] did identify areas closed to oil and gas leasing as well as areas subject to no-surface occupancy.

4) CBM impacts- . . . the impacts of CBM development were adequately analyzed in the RMP's.

Decision at 1-2.

### III. Standing

BLM and Contex have moved to dismiss the appellants' appeal as to parcels 53-60, 63-65, 71, and 74-75, alleging they have not shown a legally cognizable interest in those parcels sufficient to establish standing.

[1] Under the Department's regulations, only a party to a case who is adversely affected by a BLM decision can maintain an appeal of that decision. See 43 C.F.R. § 4.410(a). While denial of their protest makes appellants "a party to a case," they must have a legally cognizable interest in order to be adversely affected. We stated in *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA 79, 84 (2005), as follows:

"[A]n interest in resources affected by a decision may be legally cognizable." 68 FR 33794 (June 5, 2003). Therefore, one may also establish he or she is adversely affected by setting forth interests in resources or in other land or its resources affected by a decision and showing how the decision has caused or is substantially likely to cause injury to those interests. 43 C.F.R. § 4.410(d) (2003). . . . In the oil and gas lease sale context, if one can show that he or she has a legally cognizable interest in resources that would be injured by leasing one or more parcels, even though he or she has not shown direct use of each parcel, then one has established he or she is or may be adversely affected as to those parcels.

In the May 12 protest, each appellant asserted that “members use the disputed lands for recreation and other purposes.” See Protest at 2-3. In their SOR at 5, appellants jointly aver that they satisfy the “adversely affected” prong of the standing test in 4.410(a) and attach declarations of individual members as Exhibit B of the SOR. BLM and Contex find fault in the four declarations to the extent that they do not extend to all of the individual parcels, that for some of the parcels only some of the groups are represented, and that one of the declarants does not establish the time frame in which he “hiked” certain parcels. However, considering the declarations as supplemented, we find that appellants have established a legally cognizable interest in all of the parcels at issue.

Bill Hamann, who is a member of each of the four appellant groups and has lived in the Grand Junction area since 1978, declares that on many occasions he has hiked, explored, observed, photographed, and otherwise used parcels 76-78 in Hunter Canyon and 56 and 63-65 in Cow Ridge. He also attests that he enjoys the ecology, wildlife, scenery, and recreational resources of these parcels and the other areas of both the Hunter Canyon and Cow Ridge CWPs. Hamann expresses an intent to continue pursuing his interests in the sale area within the CWPs and explains how the proposed lease sale will adversely affect his future enjoyment of identified resources. The resources which he uses and enjoys in these areas, such as native vegetation, clean air and water, unfragmented forests, intact viewsheds, wildlife habitat, natural quiet, and wide-open spaces, are not defined by the boundary lines of the particular parcels involved in this lease sale. Hamann’s declarations establish a connection between all 24 parcels and the appellants’ interests in wildlife, recreational, visual, and other resources located there.

In similar circumstances we have found that a legally cognizable interest was established on the part of several appellants and gave them standing to appeal a denial of their protest to an oil and gas lease sale even though they did not assert that they had used each parcel directly. *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA at 87. Thus, it is not necessary for Hamann to assert that he has directly used each parcel individually in order to demonstrate that he has a legally cognizable interest in the resources that he describes within Hunter Canyon and Cow Ridge and that his interest will be adversely affected by the proposed lease sale in those areas.

Based upon Hamann’s declarations, he has established standing under 43 C.F.R. § 4.410(a) on behalf of the four appellant organizations of which he is a member. See *id.* at 84. Thus, we deny the motions to dismiss.

#### IV. Arguments

We now review BLM's decision denying appellants' protest of the lease sale. In asserting error in BLM's decision, appellants focus on three of the four primary reasons they presented in their protest against the May lease sale: failure to properly study significant new information, failure to conduct "site-specific" environmental analysis, and failure to consider no-leasing or NSO alternatives. Appellants' claim that the area within the Cow Ridge and Hunter Canyon CWPs contain wilderness values requiring protection under FLPMA. In its Answer, BLM contends that the doctrine of administrative finality bars appellants' arguments because BLM had previously inventoried the areas subject to the CWPs and concluded that they did not qualify as WSAs, a decision that was not protested and which BLM is thus not required to reconsider. See BLM Answer at 13-16. In addition, BLM argues that, based on prior Board decisions, the advancement of the proposal to designate additional wilderness areas in Congressional legislation does not constitute significant new information or require BLM to review the land use or wilderness issues considered in 1987 when there has been no showing of a significant environmental impact that was not analyzed in the RMP/EIS. Contex argues that the analysis in the RMP/EIS adequately supports the leasing decision, that the EIS is detailed enough to address site-specific concerns, and that BLM had already considered and applied the no-leasing and NSO stipulations to certain parcels subject to the GJRA RMP. BLM and Contex both assert that appellants have failed to demonstrate error in the appealed decision or show that BLM failed to take a hard look at the environmental concerns. Appellants reply that BLM's and Contex's reliance upon the GJRA RMP/EIS as adequate for these circumstances is misplaced.

#### V. Adequacy of Environmental Review Under NEPA

[2] As the party challenging BLM's determination to lease the 24 disputed parcels, appellants bear the burden of demonstrating with objective proof that the decisions are premised on clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed actions. *Western Slope Environmental Resource Council*, 163 IBLA 262, 286 (2004); *Native Ecosystems Council*, 160 IBLA 288, 292 (2003). That an appellant has a differing opinion about the likelihood or significance of environmental impacts or prefers that BLM take another course of action does not establish that BLM violated the procedural requirements of NEPA. *San Juan Citizens Alliance*, 129 IBLA 1, 14 (1994).

In our recent opinion in *Center for Native Ecosystems (CNE)*, 170 IBLA 331, 344-45 (2006), the Board set forth the legal framework of an appeal from a competitive oil and gas leasing decision for which BLM has prepared a DNA for the sale. *CNE* makes clear, *inter alia*, that "NEPA does not require agencies to elevate

environmental concerns over other appropriate considerations, *Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 97 (1983), but only requires them to take a “hard look” at the environmental effects of any major Federal action. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976).” 170 IBLA at 344. The Board stated that “[t]he appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public land for oil and gas purposes, because leasing without stipulations requiring no surface occupancy (NSO) constitutes an irreversible and irretrievable commitment to permit surface-disturbing activity.” *Id.*, citing *Southern Utah Wilderness Alliance (SUWA)*, 166 IBLA 270, 276-77 (2005). Further, the Board stated that “NEPA establishes that preparation of an EA or EIS that analyzes the effects of a proposed action and its reasonable alternatives is a procedural threshold an agency must cross before it may go forward with that action.” 170 IBLA at 345.

In the present case, as in *CNE*, BLM prepared no EIS or EA for the challenged sale, but “prepared instead a DNA to determine whether including the parcels in the lease sale conformed to existing land use plans and whether existing EAs and EISs were adequate to support that action.” *Id.* Such utilization of a DNA is permissible, it cannot be used to “supplement previous EAs or EISs or to address site-specific environmental effects not previously considered by them.” *SUWA*, 166 IBLA at 283. BLM’s use of the DNA herein may only serve to “identify for a BLM decision-maker the location of existing NEPA analysis,” and “cannot supplement what is not sufficient in NEPA documentation.” *CNE*, 170 IBLA at 345.<sup>3</sup>

BLM prepared the RMP in question to analyze the environmental impacts of various land use planning decisions, including whether or not particular areas of land will be subject to mineral leasing. *See* 43 C.F.R. § 1601.0-2, 1601.0-5(n). BLM described its pre-existing NEPA documents in its March 3, 2004, notice of proposed sale with the statement that “[p]otential impacts that would result from leasing are adequately analyzed in the Grand Junction RMP/EIS of 1987.” The DNA identifies

---

<sup>3</sup> A DNA does not constitute a NEPA analysis that can be tiered. *See* 40 C.F.R. § 1508.28. The DNA is used 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. *SUWA*, 164 IBLA 1, 30 n.12 (2004); *Colorado Environmental Coalition*, 162 IBLA 293, 296 n.4 (2004).

When BLM asserts that no further NEPA analysis is required for a proposed action, the Board has, like the courts, accepted the idea that a DNA is appropriately used to identify the NEPA documents that furnish support for that conclusion. *Wyoming Outdoor Council*, 170 IBLA 130, 154 (2006) (Price, concurring), and cases cited.

the environmental impacts analysis contained in the prior RMP/EIS, where BLM had already taken a “hard look” at the impacts of oil and gas leasing in those same areas later proposed for wilderness in the CWPs:

The Grand Junction RMP of 1987 identified areas open for oil and gas leasing, and specified stipulations that would apply to leases (pages 2-7 through 2-10 and Table 6). The proposed lease sales are within the areas identified as open to leasing. Based on the RMP, specific stipulations are attached to each lease parcel.

....

#### **D. NEPA Adequacy Criteria**

##### **1. Is the current proposed action substantially the same action (or is [it] a part of that action) as previously analyzed? Is the current proposed action located at a site specifically analyzed in an existing document?**

Yes, the proposed lease parcels are within the area analyzed by the above identified RMP and this action is the same as proposed therein. That action was to make Federal oil and gas resources available for leasing with standard stipulations or, where necessary, special stipulations including no surface occupancy, avoidance, or timing restrictions (See Grand Junction Resource Area RMP and Record of Decision, Pages 2-7 through 2-10 and Table 6.)

....

##### **5. Are the direct and indirect impacts of the current proposed action substantially unchanged from those identified in the existing NEPA document(s)? Does the existing NEPA document analyze site-specific impacts related to the current proposed action?**

The Grand Junction RMP/EIS thoroughly reviewed the many specific potential environmental impacts, including those to air quality, soils, water resources, wildlife, threatened and endangered species, visual resources, and recreational resources, taking into account the diversity of land, plant and animal species and other environmental factors across the Resource Area (See Draft RMP/EIS at 37, 113-14, 118-19, 200-18, and Appendix E). The direct and indirect impacts of the

proposed lease sales are substantially unchanged from those identified in the Grand Junction RMP/EIS.

There are 11 parcels [] within the Cow Ridge public wilderness proposal and there are 10 parcels within the Hunter/Garvey Canyon public wilderness proposal. The Cow Ridge and Hunter/Garvey areas were analyzed for wilderness characteristics in the wilderness inventory of 1980 . . . . They did not qualify as WSAs and they were released from further study . . . . The lease parcels are covered by the Grand Junction RMP/EIS as well as the Endangered Species Act Section 7 Consultation Stipulation.

Analysis of site-specific impacts is not required prior to issuing an oil and gas lease when the environmental consequences of leasing the land were previously analyzed.

DNA at 2, 4, 5.

With these portions of the DNA as our guide, we will review the record in the context of the three principal allegations of NEPA violation advanced by appellants: Failure to properly study significant new information; failure to conduct “site-specific” environmental analysis; and failure to consider no-leasing or NSO alternatives. *See* SOR at 2.

A. There Are No Significant New Circumstances Or Information Requiring BLM To Supplement Its EIS

Appellants contend in their SOR that the CWP represents significant new information regarding the wilderness characteristics of the Hunter Canyon and Cow Ridge areas, which was not considered by BLM in its wilderness inventory or RMP/EIS, because the RMP did not evaluate those areas for their wilderness potential. SOR at 7. Specifically, appellants dispute BLM’s conclusion following the inventory that the areas did not qualify for wilderness designation, stating that the CWP shows that the areas “retain their natural and wild characteristics” and offer “ample outstanding opportunities for solitude and for a range of recreation opportunities.” SOR at 6-7. As appellants implicitly recognize, the time for challenging the adequacy or completeness of the earlier wilderness inventories has long since passed and that any additional designations, like the original wilderness designations, must lie with Congress, and they have acted accordingly.

Appellants nevertheless maintain that the CWP constitutes significant new information under 40 C.F.R. § 1502.9(c)(ii), which requires BLM to “prepare supplements to either draft or final environmental impact statements if . . . there are

significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” Appellants conclude that the DNA was insufficient to resolve whether the CWPs constituted significant new information. SOR at 11.

In support, appellants cite alleged admissions by BLM that “the NEPA analysis in the existing RMPs ‘did not consider impacts to wilderness values since none were known to exist at the time,’” “the wilderness proposal constitutes new information not considered in our plans,” and “[t]hese [wilderness] values are not adequately addressed in current plans or NEPA.” *Id.* at 12. As further evidence of BLM’s purported admissions, appellants assert that, in response to the CWP, BLM withdrew some parcels in the Cow Ridge and Grand Hog Back from sale. *Id.* at 13-14.<sup>4</sup> They cite Exs. G, H, I, and J to support their assertion that BLM agrees that their information constitutes significant new information. We view the evidence differently.

In Ex. G the State Director acknowledges on August 8, 2001, receipt of the revised CWP, that it complies with BLM’s Handbook, and that, as a consequence, BLM would apply its notification and review policies to the areas included in the proposal. The letter states that BLM had “not yet had time to thoroughly review the proposal area by area,” and it further states that BLM will consider the information provided “along with the status of our inventory data, land use planning, and NEPA documentation, in determining whether to approve an action or first initiate inventory or land use planning and additional NEPA documentation to consider the action in relation to potential wilderness values.” We therefore do not agree with appellants’ suggestion that the submission of “useful new information” (SOR at 11) necessarily establishes significant new circumstances or information within the meaning of 40 C.F.R. § 1502.9(c)(ii).

Ex. H is a copy of an e-mail exchange between BLM staff, which appears to show that “FACT SHEET.doc” was attached. A two-page document captioned FACT SHEET - COLORADO WILDERNESS REVIEW PROCESS follows the e-mail. The document was designed to accompany or be accompanied by “a brief review of the entire chronology.” Although the document does not state its scope or context, the document apparently is not limited to Hunter Canyon and Cow Ridge, but relates to areas throughout Colorado and was prepared as something of an outline for a talk or presentation, including questions and answers, and an unidentified Notice of Intent to “start the process of deciding how to manage” areas that possess wilderness values. The lack of information, if any, regarding the purpose and use made of this Fact Sheet clearly undermines the import and significance appellants attribute to it,

---

<sup>4</sup> In fact, BLM’s Notice of Addendum 2 deleted one parcel and sections of two others and amended the legal description of others, but it did not give the reasons. Ex. L.

particularly as to what consideration was given to the areas in question in the RMP/EIS. To the extent it is appropriate to ignore the lack of information in the Fact Sheet, however, we note that it acknowledges both the possibility that more intense inventories may warrant further decision-making regarding the management of such lands, and that BLM is not creating “defacto WSA’s,” noting that it has determined to lease in CWP areas after reviewing them and concluding that existing RMPs and their EISs were adequate.

Ex. I is a January 10, 2002, memorandum from the Field Manager to the State Director regarding only the Grand Hogback area. In it the Field Manager states, in response to CEC’s information, that it is possible that the area contains wilderness values requiring closer scrutiny. The memorandum acknowledges that those values are not adequately addressed in current plans, and that, when weather permitted, the Field Office would make a determination as to the possibility of such values. If those values were confirmed, a “complete re-inventory” would be done. More fundamentally, the areas in question in this appeal are the Hunter Canyon and Cow Ridge areas, not the Grand Hogback area, so that we question the relevance of Ex. I. We will not assume that the wilderness values and conditions established in one area apply to other areas, and thus Ex. I, and the argument stated in the SOR at 14, are not persuasive.

Ex. J is the April 12, 2002, memorandum from the Grand Junction Field Manager to the Deputy State Director regarding CEC’s information relative to Cow Ridge and the question of whether that information “significantly differs from the information in prior inventories conducted by BLM regarding wilderness values of the area.” Importantly, the Field Manager observes that CEC provided information primarily for South Shale Ridge and assumes that “BLM must come to a comparable favorable decision from a review of Cow Ridge.” BLM’s review of the information included a field review of the same inventory route followed by CEC. The Field Manager detailed the reasons why BLM had determined that the area was not suitable for recommendation as a WSA, and concluded that CEC had not provided any additional information regarding solitude or opportunities for recreation. Apr. 12, 2002, Memorandum at 2. BLM expressly concluded that “the original determination is still valid” and that “existing planning decisions are adequate to manage and protect the resources in the unit” and, accordingly, that the unit should “no longer be held in abeyance for further decisions.” *Id.*

In essence, appellants object to BLM’s determination not to withhold more of the area from oil and gas leasing. However, to establish the “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts” that is contemplated by CEQ regulations, more than conclusory assertions are necessary. Here, as Ex. J shows, BLM reviewed the information compiled by CEC and detailed the specific reasons why it adhered to its

original conclusion that the Cow Ridge area was not suitable for recommendation as a WSA, none of which appellants have addressed with particularity. It therefore appears that appellants' information is not new or significant within the meaning of 40 C.F.R. § 1502.9(c)(ii) and, in any event, does not pertain for the most part to Cow Ridge, and certainly not to Hunter Canyon. Accordingly, they have not shown a basis for their claim that the EIS should be supplemented.

[3] Similar concerns were addressed by the Board in *Southern Utah Wilderness Alliance (SUWA)*, 163 IBLA 14 (2004), in which parcels nominated for a competitive oil and gas lease sale, and included in a CWP, had not been included in a WSA or were found to possess wilderness characteristics in BLM's wilderness inventory. We held that, even though the proponents of a CWP contended that those lands possessed wilderness characteristics and were included in an area proposed for wilderness designation in legislation introduced in Congress, BLM may continue to administer those lands for other purposes, including oil and gas leasing. 163 IBLA at 25-27. We reasoned:

Because BLM inventoried the disputed areas and found them unsuitable for potential wilderness designation, BLM is not now required to consider how oil and gas leasing may affect their suitability as wilderness areas. *Colorado Environmental Coalition*, 149 IBLA 154, 159 (1999); *see also Wyoming Outdoor Council*, 147 IBLA 105, 111 (1998).

The fact that the lands are included within a congressionally proposed wilderness area does not change this result. As we stated in *SUWA*, 150 IBLA at 266-267:

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

163 IBLA at 25; *see also Colorado Environmental Coalition*, 162 IBLA at 301-02 (the doctrine of administrative finality precludes challenges to long-resolved wilderness value determinations made by filing protests against actions taken by BLM to administer the land for other purposes). Moreover, while CWP legislation is pending, BLM does not violate NEPA by continuing to manage the lands based upon the land management plan currently in place. For example, in *Colorado Environmental Coalition*, 162 IBLA at 30, the Board stated 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.”<sup>5</sup>

Considering the evidence presented, we do not agree with appellants’ contention that the CWP or the introduction of wilderness legislation constitutes “significant new information.” Their contention that the CWP promoted in the pending legislation must be considered under NEPA before BLM issues the lease sale decision must be rejected based on our precedent of administrative finality cited above.

B. BLM Was Not Obligated to Conduct Site-Specific Analysis of These Parcels Under NEPA Prior to Issuing the Leases

Appellants claim that the RMP and EIS were “broad-scale” documents lacking the site-specific analysis required under 42 U.S.C. § 4332(C) (2000) to protect the wilderness values of these parcels. They argue that the time for a site-specific analysis is when irreversible commitment of resources occurs, in this case when the leases are issued. However, BLM was not obligated to conduct site-specific analysis of these parcels prior to issuing the leases for the same reasons cited above. BLM had already considered in the RMP/EIS wilderness designation for the areas in question and rejected it and appellants have shown no significant new information or circumstances that would undercut that decision. Thus, because BLM was not managing these lands as WSAs, it need not conduct site-specific analysis to protect wilderness values. *See SUWA*, 164 IBLA 1, 31 (2004).

<sup>5</sup> In *SUWA*, 163 IBLA at 27-28, quoting IM 2003-274 (Sept. 29, 2003), at 2, the Board stated:

Although *SUWA* insists that BLM must revise its ‘outdated’ and inadequate land use plans to reflect the wilderness values uncovered in the citizens’ wilderness inventory before it can offer the parcels for oil and gas leasing, FLPMA’s land use planning provisions authorize BLM to “continue to manage public lands according to existing land use plans while new information (e.g., in the form of new resource assessments, wilderness inventory areas or citizen’s proposals) is being considered in a land use planning effort.”

*See also Colorado Environmental Coalition*, 149 IBLA at 156; *Sierra Club Legal Defense Fund, Inc.*, 124 IBLA 130, 140 (1992) (“Acceptance of appellants’ position that once BLM has decided to prepare a new land use plan for an area it must suspend action in conformance with the prevailing plan would seriously impair BLM’s ability to perform its management responsibilities”).

C. BLM was not obligated to consider NSO and No-Leasing Alternative Or Stipulations To Protect Wilderness Values

Appellants assert that BLM did not adequately analyze alternatives and restrictions to oil and gas leasing or determine whether NSO stipulations should be attached to each parcel in question to protect their wilderness values. However, BLM was not obligated to consider such alternatives or stipulations for the same reasons explained above. In the RMP/EIS BLM had already rejected wilderness designation for the areas subject to the CWPs and appellants have shown no significant new information or circumstances that would undercut that decision. Because BLM is not managing these lands as WSAs, it is not obligated to consider NSO and no-leasing alternatives or stipulations to protect wilderness values.

VI. Conclusion

Appellants have failed to show that the pre-leasing environmental analysis in the GJRA RMP/EIS is inadequate to support leasing the parcels in question.

To the extent not addressed herein, all other errors of fact or law asserted by appellants have been considered by the Board, and rejected as contrary to the facts and law, or immaterial.

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 motions to dismiss in part are denied and the decision appealed from is affirmed.

---

R. Bryan McDaniel  
Administrative Judge

I concur:

---

James F. Roberts  
Administrative Judge