



COLORADO ENVIRONMENTAL COALITION
COLORADO MOUNTAIN CLUB
SAN JUAN CITIZENS ALLIANCE
THE WILDERNESS SOCIETY
WESTERN COLORADO CONGRESS

173 IBLA 362

Decided: February 27, 2008



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

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IBLA 2006-260

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Appeal of a decision by the Deputy State Director, Colorado State Office, Bureau of Land Management, dismissing a protest of various parcels of land included in the sale of competitive oil and gas leases. COC-69382, *et al.*

Appeal dismissed as to parcels COC-69382, COC-69457, COC-69475, and COC-69477 through COC-69479; decision affirmed as to the remaining parcels.

1. Administrative Authority--Administrative Procedure: Standing--Rules of Practice: Appeals: Standing to Appeal

When a notice of appeal does not expressly identify parcels proposed for an oil and gas lease sale and does not otherwise provide information referring to the parcels from which their inclusion in the appeal can be ascertained, the parcels will be excluded from consideration of the appeal on the merits.

2. Administrative Procedure: Generally--Rules of Practice: Appeals: Service on Adverse Party

The regulatory requirement to serve notices of appeal and statements of reasons on each adverse party applies to adverse parties named in the decision on appeal or when an appellant has been otherwise notified that an appeal affects an adverse party. The Board will not dismiss an appeal for a procedural deficiency in failing to serve a statement of reasons when there is no showing that a party has been prejudiced.

3. Administrative Procedure: Standing--Rules of Practice: Appeals: Standing to Appeal

Evidence of use of the land in an oil and gas lease parcel is the most direct way to show a legally cognizable interest and injury to that interest, but an appellant also may establish standing by setting forth interests in other land or its resources that are affected by the decision and showing how the decision has caused or is substantially likely to cause injury to those interests.

4. Environmental Policy Act--Environmental Quality: Environmental Statements--Mineral Leasing Act: Environment--National Environmental Policy Act of 1969: Environmental Statements

When BLM identifies the environmental documents in which it analyzed the impacts of oil and gas leasing to fulfill its pre-leasing obligation under NEPA and appellants contend that their Citizens' Wilderness Proposals reflect significant new information, whether supplemental analysis is required depends on whether such information presents a seriously different picture of the likely environmental effects of the proposed action not adequately envisioned in the environmental documents.

5. Environmental Policy Act--Environmental Quality: Environmental Statements--Mineral Leasing Act: Environment--National Environmental Policy Act of 1969: Environmental Statements

Where appellants have not identified any impact that was not analyzed in existing pre-leasing environmental documents or stated with specificity what information in their Citizens' Wilderness Proposals is new or different from the information BLM considered when it prepared those NEPA documents, BLM properly may defer additional environmental analysis until such time as a surface-disturbing activity is proposed.

APPEARANCES: Mike Chiropolos, Esq., Boulder, Colorado, for appellants; Arthur R. Kleven, Esq., Office of the Regional Solicitor, Lakewood, Colorado, for the Bureau of Land Management; Bret A. Sumner, Esq., William E. Sparks, Esq., Stephanie E. Kinzel, Esq., Washington, D.C., for the Bill Barrett Corporation.

OPINION BY ADMINISTRATIVE JUDGE PRICE

The Colorado Environmental Coalition (CEC), the Colorado Mountain Club, the San Juan Citizens Alliance (SJCA), The Wilderness Society, and the Western Colorado Congress (collectively, appellants) have jointly appealed the July 6, 2006, decision of the Deputy State Director, Colorado State Office, Bureau of Land Management (BLM), dismissing their protest of a decision to offer various parcels in the Glenwood Springs, San Juan, and White River Resource Areas in the February 9, 2006, competitive oil and gas lease sale. As described in appellants' Statement of Reasons (SOR), the parcels at issue are in or near six areas:

San Miguel River potential Wild and Scenic Rivers Act area: parcels COC-69475, COC-69477, COC-69478, and COC-69479
 McKenna Peak Citizens' Wilderness Proposal (CWP)¹ area: parcels COC-69492, COC-69493, COC-69494, COC-69495, COC-69499, and COC-69504
 Snaggletooth CWP area: parcels COC-69511, COC-69512, and COC-69513
 Dolores River Canyon CWP area: parcel COC-69521
 Grand Hogback CWP area: parcel COC-69382
 Skull Creek CWP area: parcel COC-69457^[2]

SOR at 1-2.

BACKGROUND

BLM announced the February 9, 2006, competitive oil and gas lease sale of 157 parcels by notice dated December 23, 2005. Appellants filed their protest, which identified 34 parcels in CWPs and along the San Miguel River, a stream for which the BLM has not completed eligibility studies under the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271-1287 (2000). BLM's July 6, 2006, decision dismissed appellants'

¹ As the name suggests, a CWP is an area proposed for inclusion in the wilderness preservation system under the Wilderness Act of 1964, *as amended*, 16 U.S.C. §§ 1131-1136 (2000), by a group of citizens or an organization they have formed. A CWP often includes an area BLM identified as a wilderness study area (WSA) as a result of the wilderness inventory it conducted in compliance with section 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (2000), but may also include lands that BLM found to lack the characteristics necessary for designation as a WSA. *See* 16 U.S.C. § 1131(c) (2000). Appellants submitted their CWPs in 2004, 2005, 2006, and earlier, in unspecified years. SOR at 6.

² Although these area names are not Federal designations, for convenience, this decision will use the names assigned by the appellants.

protest and deferred the sale of leases for 10 parcels. On August 6, 2006, appellants timely filed a notice of appeal (NOA) in which 14 parcels were identified. Appellants' SOR explains that they mistakenly omitted the Grand Hogback and Skull Creek parcels. SOR at 3 n.2.

BLM has moved to dismiss the appeal as to the Grand Hogback and Skull Creek parcels because they were not identified in appellants' NOA. BLM's Motion to Dismiss and Answer to Statement of Reasons (BLM Answer) at 2-3. In addition, BLM argues appellants did not serve their NOA on adverse parties as required by 43 C.F.R. §§ 4.402 and 4.413. More generally, BLM contends the appeal should be dismissed as to seven other parcels due to failure to serve the SOR "upon all the adverse parties listed in BLM's decision."³ *Id.* at 3-4. BLM argues, moreover, that all the appellants lack standing to appeal the San Miguel River, McKenna Peak, and Snaggletooth parcels and that, in particular, the Western Colorado Congress has failed to demonstrate standing to appeal. *Id.* at 5-8.

The Bill Barrett Corporation (BBC) was granted permission to intervene in the appeal by order dated September 20, 2006.⁴ BBC moved to dismiss the appeal for lack of standing as to the McKenna Peak and Snaggletooth parcels (BBC Motion).

ANALYSIS

This decision first addresses BLM's contention that appellants failed to timely appeal the Grand Hogback and Skull Creek parcels. Next, it responds to BLM's argument that the appeal should be dismissed as to the seven other parcels in which BBC does not hold an interest because appellants failed to properly serve adverse parties. We will then turn to BLM's and BBC's arguments concerning appellants' standing to appeal and, because we conclude that some appellants have standing to

³ BLM also moved the Board to suspend consideration of the Dolores River Canyon parcel. It has subsequently amended the lease issued for that parcel to exclude land that is within the Secretary's wilderness recommendation for the Dolores River Canyon WSA. Since that lease still includes lands within the Dolores River Canyon CWP, BLM recognizes that its action does not foreclose the appeal. BLM's Status Report on Parcel COC69521 and in the Alternative Request for Partial Remand at 3. Accordingly, BLM filed an Answer to the appellants' arguments regarding that parcel. BLM's Answer to Statement of Reasons of Appeal of Parcel COC69521 (BLM Answer COC-69521).

⁴ As explained in BBC's Motion to Intervene and Answer, Westcliff Resources LLC (Westcliff) was the high bidder for the six McKenna Peak parcels, as well as parcel COC-69511 of the Snaggletooth parcels. BLM issued seven leases to Westcliff, and assignments from Westcliff to BBC are pending.

appeal the decision to lease some of the parcels, we will take up the merits of the appeal. The issues raised are addressed in the order described above.

*I. Failure to Timely File a Notice of Appeal
Challenging the Grand Hogback and Skull
Creek Parcels*

[1] The timely filing of a notice of appeal is necessary for the Board to have jurisdiction over an appeal. 43 C.F.R. § 4.411(c); *Western Watersheds Project v. BLM*, 166 IBLA 30, 38 (2005); *St. James Village, Inc.*, 154 IBLA 150, 153 (2001), and cases cited. Although appellants' NOA was timely filed, it did not expressly identify by name or number the Grand Hogback and Skull Creek parcels and nothing in that document can be construed to refer to them. Therefore, there is no basis upon which to find that they were included in the NOA and are a part of this appeal. Appellants' attempt to expand the appeal to include those parcels by later referencing them in the SOR is untimely.

II. Alleged Deficiencies in Service

[2] BLM correctly notes that 43 C.F.R. § 4.402(c) states that an appeal is subject to summary dismissal if a NOA is not timely served on adverse parties and that 43 C.F.R. § 4.413(a) requires service of NOAs and SORs on "each adverse party named in the decision from which the appeal is taken." In addition, 43 C.F.R. § 4.413(b) provides that failure to timely serve those documents "will subject the appeal to summary dismissal."⁵ BLM argues that the appeal should be dismissed as to the other seven parcels in which BBC claims no interest due to failure to serve the SOR on the appropriate adverse parties. BLM Answer at 3-4. We reject that argument.

BLM's July 6, 2006, decision states that "[i]n the event of an appeal, the following parties may be affected" and lists 10 individuals and companies, including Westcliff. Appellants served their NOA on each of the 10 parties listed in the decision. BLM has not shown, and we do not find, that any party has been harmed due to failure to receive a copy of the SOR. Apparently Westcliff forwarded its copy to BBC, and BBC has intervened in the appeal. No other party has sought to intervene in response to the NOA. The Board will not dismiss an appeal for a procedural deficiency in failing to serve an SOR when there is no showing that a party has been prejudiced. *The Klamath Tribes*, 135 IBLA 192, 194-95 (1996); *Red Thunder, Inc.*, 117 IBLA 167, 172, 97 I.D. 263, 266 (1990). Accordingly, the Board will not dismiss the present appeal as to the seven parcels. *See United States v.*

⁵ To the extent BLM's argument also pertains to the Grand Hogback and Skull Creek parcels, *see* BLM Answer at 3, it is now moot.

Peterson, 170 IBLA 230, 233-34 (2006); *Utah Wilderness Association*, 134 IBLA 395, 396 n.1 (1996).

III. Standing to Appeal

Standing to appeal is governed by 43 C.F.R. § 4.410(a) which states that “[a]ny party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management or of an administrative law judge shall have a right to appeal to the Board” In 2003, the Board codified its long standing precedent that, to have standing to appeal, an appellant must be both a “party to a case” and “adversely affected” by having a legally cognizable interest that has or is substantially likely to be injured by the decision at issue. 43 C.F.R. § 4.410(b) and (d); *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA 79, 82 (2005). “The interest need not be an economic or a property interest; use of the land involved or ownership of adjoining land suffices, but mere interest in a problem or concern with the issues involved does not.” *Kendall’s Concerned Area Residents*, 129 IBLA 130, 136-37 (1994); *Mark S. Altman*, 93 IBLA 265, 266 (1986). For an organization to have standing to appeal, one or more of its members must have a legal interest that is or may be adversely affected by the decision. See *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA at 86-87; *Legal and Safety Employer Research, Inc.*, 154 IBLA 167, 172-73 (2001). If either of the two requirements is not met, an appeal must be dismissed for lack of standing. *Southern Utah Wilderness Alliance*, 140 IBLA 341, 346 (1997); *National Wildlife Federation v. BLM*, 129 IBLA 124 (1994). It is an appellant’s responsibility to demonstrate the requisite elements of standing. *Colorado Open Space Council*, 109 IBLA 274, 280 (1989).

In *Wyoming Outdoor Council*, 153 IBLA 379, 382-83 (2000), the Board dismissed an appeal of all but three oil and gas lease parcels to be offered for sale, holding that “[a]n appellant must have a legally cognizable interest in the land at issue in order to be adversely affected” by the decision being appealed. The Board stated that the interest “may be shown through evidence of use of the land in question. In the oil and gas lease sale context, that means providing evidence of use of each particular parcel to which the appeal relates.” *Id.* at 384. Showing actual use of each parcel would be the most direct way to establish standing, but a party may show adverse effect “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.” *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA at 84 and cases cited. Such interests may include cultural, recreational, and aesthetic use and enjoyment of the public lands, including lands in the area of a parcel for which leasing has been proposed. *Becharof Corp.*, 147 IBLA 117, 129 (1998); *Powder River Basin Resource Council*, 124 IBLA 83, 88 (1992).

Having jointly filed a protest of the inclusion of the parcels in the lease sale, each appellant is a party to the case.⁶ Their claim of adverse effect is based upon declarations by four individuals. Three declarations are by Mark D. Pearson, who is a member and officer of SJCA, and a member of CEC and The Wilderness Society. SOR, Exs. 4C, 5C, 6C. He states that he has “been a regular visitor to the areas included within McKenna Peak proposed wilderness and adjacent areas since 1981,” having hiked, backpacked, and photographed throughout the area, and that he has written a hiking guidebook which includes the McKenna Peak proposed wilderness. SOR, Ex. 4C. Pearson further explains that he visited the six McKenna Peak parcels in July of 1981 when doing a field inventory, that in April 2006 he, with his wife and daughter, visited the Spring Creek Basin where the parcels are located. *Id.* Similarly,

Pearson’s second declaration states that he has regularly visited the area contained in the Snaggletooth CWP since 1983, hiking, rafting, and photographing throughout the area, and included hikes in the area in his guidebook. SOR, Ex. 5C. Specifically, he states that he has visited the three parcels in the Snaggletooth group “a half-dozen times over the past 20 years, most recently in May, 2005.” *Id.*

Pearson’s third declaration states that he has visited the Dolores River Canyon CWP since 1981, most recently in May 2005, and that he included hikes in the Dolores River Canyon WSA and the Dolores River Canyon CWP in his guidebook. SOR, Ex. 6C. In each declaration, Pearson states his intent to continue “recreating in this area, and on these particular parcels, in the near and distant future.” SOR, Exs. 4C-6C.

The declaration of Kurt E. Kunkle states that he is a CEC employee and has been a member of The Wilderness Society, the Colorado Mountain Club, and the Sierra Club “off and on since the mid-1990s.” SOR, Ex. 4D. Like Pearson, Kunkle asserts that he has visited each of the six parcels in the McKenna Peak CWP, engages in recreational activities in the area where those parcels are located, and intends to continue to do so “in the near and distant future.” *Id.*⁷

David B. and Patricia A. Temple jointly declare they are members of the SJCA, and own land adjacent to the area that includes the Spring Creek Basin Wild Horse Management Area, the McKenna Peak WSA, and the McKenna Peak CWP. They are particularly concerned about the impacts of energy development on wild horses they

⁶ The Western Colorado Congress was a party to the protest, but was not named in the heading of BLM’s July 6, 2006, decision.

⁷ Two additional declarations by Kunkle address his use of the area of the Grand Hogback and Skull Creek parcels, which are not considered in this appeal.

help protect through their work with the National Mustang Association. SOR, Exs. 4E, 4F.

Appellants have not shown that they have standing to appeal the decision relative to the San Miguel River parcels. None of the declarations indicates that the declarant has visited or otherwise used lands within or near those parcels. *See also* BLM Answer at 5-6. Nor do the declarants aver current membership in the Western Colorado Congress or the Colorado Mountain Club.⁸ Accordingly, the San Miguel River parcels will not be addressed in this decision, and the Western Colorado Congress and the Colorado Mountain Club are dismissed as parties to the appeal.

[3] We do not agree, however, that the appeal should be dismissed as to the other parties or parcels. BBC argues that appellants' declarations are "too generic and inadequate to show a legally cognizable interest in the lands in question" based upon the standard set forth in an order issued in *Biodiversity Associates*, IBLA 2002-16 (Dec. 21, 2001). BBC Motion at 5-6; *see also* BLM Answer at 6. The argument must fail. Like all orders issued by this Board, that order does not comply with the requirements of the Administrative Procedure Act, 5 U.S.C. § 552(a)(2) (2000), and therefore is not precedential.⁹ More fundamentally, BBC incorrectly understands *Wyoming Outdoor Council*, 153 IBLA at 384, to require a party to assert actual use of the land within each parcel. As later explained in *The Coalition of Concerned National Park [Service] Retirees*, although evidence of the use of the land within a proposed lease parcel

would be the most direct way to show a connection between a legally cognizable interest and injury to that interest as the result of a decision[,] . . . 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. . . . In the oil and gas lease sale context, if one can show a connection between a legally cognizable interest that would likely be injured by leasing one or more parcels, then one has established he or she is or may be adversely affected as to those parcels.

⁸ As BBC points out, only Kunkle's affidavit mentions the Colorado Mountain Club, and he states that he has been a member "off and on since the mid-1990s," but does not affirmatively state that he is currently a member. BBC Motion at 10.

⁹ Moreover, that order concluded that an affidavit of a Biodiversity Associates officer was sufficient to confer standing on the basis of facts similar to those alleged in the declarations in this case.

165 IBLA at 83-84. The declarations are sufficient to establish the remaining appellants' standing to pursue the appeal as to the McKenna Peak, Snaggletooth, and Dolores River Canyon parcels.

IV. Substantive Issues

A. A New or Supplemental Environmental Document Was Not Required

Appellants present three primary arguments.¹⁰ First, they contend that BLM did not comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2000), because it failed to supplement its prior environmental analysis to consider significant new information concerning wilderness and other resource values they supplied in their CWPs. SOR at 4-6. They note that BLM's decision denying their protest was premised on "Documentation of Land Use Plan Conformance and NEPA Adequacy" Worksheets (DNAs), which documented the continuing adequacy of existing NEPA documents issued before appellants submitted their information. SOR at 5. They argue that BLM's assertion that it considered the information provided in their CWPs is belied by the absence of copies of their submissions and any analysis of them by BLM in the record before the Board.¹¹ SOR at 5-6. Appellants present separate arguments concerning the

¹⁰ Appellants presented a major issue concerning whether BLM should have completed a study of whether the San Miguel River is eligible for designation under the Wild and Scenic Rivers Act, *as amended*, 16 U.S.C. §§ 1271-1287 (2000), prior to leasing land in the watershed. SOR at 18-22. As discussed above, however, appellants lack standing to challenge the San Miguel parcels; consequently, we do not reach this issue.

¹¹ Appellants point out that the record BLM submitted in response to their appeal does not contain CWPs or evidence confirming BLM's analysis of the information. Appellants cite *Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983), as support for their conclusion that the absence of such documents demonstrates BLM did not consider them. SOR at 6. However, that case concerned the record needed to support rulemaking and is not relevant here.

As a general rule, an administrative decision is properly set aside and remanded where it is not supported by a case record providing the Board with the evidence necessary for an objective, independent review of the basis for the decision. *Shell Offshore, Inc.*, 113 IBLA 226, 233, 97 I.D. 73, 77 (1990), and cases cited. In various decisions, however, the Board has discussed its practice of allowing the record to be supplemented on appeal. *See Wyoming Outdoor Council*, 160 IBLA 387, 397-98 (2004). We note that the DNA acknowledges and refers to the CWPs, *see*

(continued...)

McKenna Peak, Dolores River, Snaggletooth, Grand Hogback, and Skull Creek parcels. SOR at 10-15. Second, appellants contend that two recent Federal court decisions establish the need to prepare site-specific NEPA documents prior to leasing environmentally sensitive lands or lands with wilderness characteristics. SOR at 5-6. Third, they argue that BLM violated NEPA by failing to consider the alternative of not leasing the parcels. SOR at 16-18.

BLM did not prepare an environmental assessment (EA) or an environmental impact statement (EIS) for this lease sale. Instead, the Dolores Public Lands Office completed a DNA worksheet for the sale of over 40 parcels.¹² SOR, Ex. 2B; *see Southern Utah Wilderness Alliance*, 166 IBLA 270, 282-83 (2005); *Wyoming Outdoor Council*, 160 IBLA 387, 388-89 n.3 (2004). It was approved by the Associate Field Office Manager on November 18, 2005. SOR, Ex. 2B at 24.

The DNA identifies the relevant existing land use planning and NEPA documents BLM relied on to determine whether such analyses address the impacts of leasing these and other lands: the Colorado Oil and Gas Leasing and Development Final EIS (Jan. 1991); the Record of Decision for the San Juan/San Miguel Resource Management Plan Amendment (Oct. 1991); the Montrose District Wilderness EIS (Sept. 1990); and the Dolores River Corridor Management Plan EA (Feb. 1990). *Id.* at 12. The DNA states that the “direct and indirect impacts of Oil and Gas Leasing are substantially unchanged.” *Id.* at 15. It asserts that a reasonable range of alternatives to the proposed action was reviewed in the prior NEPA documents and that the analysis considered “current environmental concerns, interests, and resource values.” *Id.* at 13. It further states the information and circumstances addressed in

¹¹ (...continued)

DNA at 13, 14; that appellants have provided copies of their CWPs on appeal, *see* Exs. 4-8 to SOR; and that BBC has submitted BLM’s wilderness inventory information for McKenna Peak, *see* Exs. 3, 12 to BBC Answer. We do not in any event agree that the absence of the CWPs demonstrates that BLM did not consider them “and thus failed to make a rational connection between the facts in the CWPs and its decision that they did not constitute significant new information.” SOR at 6.

¹² The DNA used different parcel numbers. The corresponding DNA numbers for the parcels that remain under review are:

McKenna Peak parcels: COC-69492 (DNA 3135); COC-69493 (DNA 3136); COC-69494 (DNA 3137); COC-69495 (DNA 3138); COC-69499 (DNA 3144); COC-69504 (DNA 3174).

Snaggletooth parcels: COC-69511 (DNA 3129); COC-69512 (DNA 3202); COC-69513 (DNA 3182).

Dolores River Canyon parcel: COC-69521 (DNA 3198).

those NEPA documents remain valid for the proposed action “in light of new studies or resource assessment information.” *Id.* at 14. The DNA states in part:

There is no new information which would require modification of the previous analysis. Additional interest group opinions regarding wilderness characteristics have been provided since the RMP, Wilderness EIS was completed. . . . [T]his additional information was adequately analyzed for leasing actions and site-specific impacts were adequately analyzed through the NEPA process.

The Board has held that a DNA is an acceptable method for BLM to assess the adequacy of existing environmental analysis for a proposed action, but it is not a NEPA document and may not be used to supplement existing environmental analysis or address site-specific environmental effects not previously considered. *The Coalition of Concerned National Park Service Retirees*, 169 IBLA 366, 370 (2006); *Southern Utah Wilderness Alliance*, 166 IBLA at 282-83; see *Pennaco Energy Inc. v. U.S. Department of the Interior*, 377 F.3d 1147, 1151, 1162 (10th Cir. 2004). Here, BLM prepared the cited environmental documents to analyze the environmental impacts of various land use planning decisions, including whether or not particular areas of land were to be subject to mineral leasing. See 43 C.F.R. §§ 1601.0-2, 1601.0-5(n). Consequently, the question before us is whether the documents identified in the DNA adequately considered the environmental impacts of oil and gas leasing. Those analyses may be held to be deficient either because they failed to adequately address a relevant environmental concern or because significant new circumstances or information require that it be supplemented. See 40 C.F.R. § 1502.9(c)(1)(ii); *Forest Guardians*, 170 IBLA 80, 96 (2006). Appellants’ burden on appeal is to show that existing environmental analyses are inadequate or that BLM otherwise erred in relying upon those documents in deciding to offer the parcels for lease sale. See *Wyoming Outdoor Council*, 164 IBLA 84, 94, 104 (2004).

Appellants clearly want to have the lands in their McKenna Peak, Snaggletooth, and Dolores River Canyon CWPs designated as wilderness, but it is important to remember that they here advance a NEPA claim. The goal of NEPA is a fully informed and well-considered decision:

In order to meet that goal, the NEPA analysis prepared for a leasing decision must take a hard look at the environmental consequences of the proposed leasing, considering all relevant matters of environmental concern. . . . While the scope of the examination of those impacts in a pre-leasing NEPA document will necessarily differ from that required in a site-specific NEPA analysis prepared for a proposed development project, NEPA mandates that those impacts must nevertheless be

acknowledged and appropriately considered *before* the leasing decision is made.

Wyoming Outdoor Council (On Reconsideration), 157 IBLA 259, 264 (2002). Thus, the subject NEPA document(s) should consider reasonable alternatives available in a leasing decision, including whether lands should be leased, appropriate lease stipulations that should be imposed, and whether to impose no surface occupancy (NSO) stipulations. *Western Slope Environmental Resource Council*, 163 IBLA 262, 272 (2004), quoting *Wyoming Outdoor Council*, 156 IBLA 347, 358-59 (2002).

The environmental documents identified in the DNA clearly considered the impacts typical of oil and gas activity on various resources and resource values, and determined which lands were to be open to oil and gas leasing, which were to be closed, and what stipulations, including NSO, would be imposed.¹³ Appellants claim that their CWP contains new information of such significance that BLM should have prepared supplemental NEPA documentation before deciding to lease the parcels. SOR at 4-6. Appellants are correct that the existence of significant new circumstances or information requires the preparation of supplemental NEPA documentation. 40 C.F.R. § 1502.9(c)(1)(ii); *Committee for Idaho's High Desert*, 146 IBLA 194, 201-202 (1998).¹⁴ However, they have not substantiated their position in this case.

Appellants' protest and CWP inventory report for the Dolores River Canyon CWP, for example, observe that the Dolores Canyon River is home to bald eagles, bats, bighorn sheep, black bear, elk, geese, mountain lions, mule deer, otters, peregrine falcons, and turkeys. SOR Ex. 2D at 6, Ex. 6 at 1. Both documents list as "supplemental values" potentially important sites identified by the Colorado Natural Heritage Program and the State of Colorado, and both provide a lengthy list of flora and fauna that have been found to occur within the area. SOR Ex. 2D at 7, Ex. 6 at 10. Appellants' supporting declarations generally describe the wildlife and other resources within such areas, and state that the

¹³ BBC submitted the relevant portions of the environmental documents identified in the DNA, which confirm that BLM considered the likely effects of oil and gas leasing on the resource values or qualities described by appellants. See Exs. 1, 2, 5, 6, 7, 11 to BBC Answer.

¹⁴ The regulation requires supplements to draft or final EISs if, among other things, "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c)(1)(ii).

oil and gas activity that follows these sales threatens the natural resources of native vegetation, clean air and water, intact view sheds, wildlife and fishery habitat, and wide-open spaces. Roads, pipelines and compressor facilities will threaten these values as well as directly impact my recreational opportunities in the area. Additional impacts will include noise and air pollution, increased vehicular traffic and increased soil erosion.

SOR, Ex. 6C (Pearson Declaration, Dolores Canyon River CWP) ¶ 9 at 2. The same statements are repeated for the other CWPs that remain at issue. *See also* Ex. 4C and 4D (Pearson and Kunkle Declarations, McKenna Peak CWP) ¶ 9 at 2; Ex. 5C (Pearson Declaration, Snaggletooth CWP) ¶ 9 at 2; Ex. 4E (Temple Declaration, McKenna Peak CWP) ¶ 9 at 1; *see also* ¶ 10 (which additionally alleges impacts on wild horses).

[4] Appellants' arguments and supporting declarations make it plain that they disagree with BLM's decision not to manage the lands for their wilderness values and characteristics,¹⁵ but they do not demonstrate that the environmental documents cited in the DNA are inadequate as pre-leasing analyses. While the declarations generally identify types of possible impacts, appellants have not shown that any such impacts were ignored. With one exception, they have not specifically identified the information they believe their CWP submissions provided that BLM did not have when it prepared the NEPA documents identified in the DNA.¹⁶ Absent such a showing, appellants are unable to establish that the CWPs present "a seriously

¹⁵ The time to appeal the establishment of boundaries for WSAs has long since passed, and this Board lacks authority to require BLM to re-inventory land for its wilderness potential. *See Southern Utah Wilderness Alliance*, 163 IBLA 14, 25-27 (2004); *Colorado Environmental Coalition*, 162 IBLA 293, 298-99 (2004); *Colorado Environmental Coalition*, 161 IBLA 386, 391-94 (2004); *Southern Utah Wilderness Alliance*, 158 IBLA 212, 215-17 (2003); *Colorado Environmental Coalition*, 149 IBLA 154, 156 (1999). When BLM has determined that lands do not qualify for wilderness designation, it may administer those lands for other purposes, including oil and gas leasing, even though such lands are said to have wilderness characteristics and are included in a CWP. *See Colorado Environmental Coalition*, 171 IBLA 256, 268-69 (2007); *Biodiversity Conservation Alliance*, 171 IBLA 218, 234 (2007). Nonetheless, BLM may consider the wilderness characteristics of land when developing or amending a resource management plan. *See Southern Utah Wilderness Alliance*, 163 IBLA at 26-27; *Southern Utah Wilderness Alliance*, 161 IBLA at 395-96.

¹⁶ The exception is the assertion that "Natural Heritage recognition of these lands qualifies as 'new information.'" SOR at 12. As BLM notes, the CWP does not describe the location of such areas and, consequently, there is no basis for finding that any portion of lease COC-69521 falls within one of them. BLM Answer COC-69521 at 14.

different picture of the likely environmental effects of the proposed action not adequately envisioned by the EIS.” *Forest Guardians*, 170 IBLA at 96, quoting *Wisconsin v. Weinberger*, 745 F.2d 412, 418, 420 (7th Cir. 1984). Accordingly, appellants have failed to show that BLM should have prepared a supplemental NEPA analysis before it could lease the parcels at issue.

The two recent cases appellants cite do not require a different ruling. The court in *Southern Utah Wilderness Alliance v. Norton*, 457 F. Supp. 2d 1253, 1264 (D. Utah 2006), concluded that BLM had “ignored significant new information when it decided to lease the sixteen parcels at issue without first conducting a supplemental NEPA analysis.” The court noted that the new information was contained in BLM’s own recent review of wilderness inventory areas (WIAs) and comprehensive wilderness case files, *id.* at 1257, 1264; that BLM could not rely on the land use planning EIS to ignore its own recent determination that the parcels at issue in WIAs in fact possessed “remarkable wilderness character,” *id.* at 1265; that a DNA itself admitted that an updated NEPA document was needed, *id.* at 1266-67; and that BLM had expressly determined that information submitted by the Southern Utah Wilderness Alliance was significant and new, and showed a reasonable probability that the land had wilderness characteristics, *id.* at 1267-68. No such circumstances are present in the instant case; to the contrary, BLM avers that it reviewed the information contained in the CWPs prior to the lease sale and concluded that it is not new or significant. See DNA at 13-14; Answer, Ex. C (Declaration of Jamie Sellar-Baker, Dolores Public Lands Office) at 3 and attachments 1 (map showing roads in Dolores Office area) and 2 (documenting BLM’s response to protest). Thus, *Southern Utah Wilderness Alliance v. Norton* does not require a finding that BLM should have prepared supplemental NEPA documentation before leasing the parcels.

Appellants’ reliance on *New Mexico ex rel. Richardson v. Bureau of Land Management*, 459 F. Supp. 2d 1102, 1110-1114 (D.N.M. 2006), is unavailing in the present circumstances. In that case, BLM leased a 1,600-acre parcel known as the Bennett Ranch Unit (BRU) based upon a DNA that relied on the EIS prepared to review impacts of proposed amendments to the resource management plan (RMP). *Id.* at 1109, 1116. The court ruled that BLM was not required to prepare a supplemental EIS. However, the court concluded that “some type of site-specific environmental analysis must be performed before the BRU lease may be executed.” *Id.* at 1118-19. It did so because it was persuaded that the BRU lease parcel presented environmental concerns that had not been adequately addressed in the EIS for the plan amendment. *Id.* at 1117-19.¹⁷

¹⁷ We note also that the district court appeared to be strongly influenced by a perceived directive in BLM’s *Handbook for Planning for Fluid Mineral Resources*. Citing *Pennaco Energy v. U.S. Dept. of the Interior*, 377 F.3d at 1160, the district court (continued...)

Appellants claim that, like the lands where the BRU lease was located, their CWPs “establish the presence of outstanding natural values.” SOR at 7. They assert that “BLM cannot defer site-specific analysis to the APD [application for permit to drill] stage of development” and “was required to prepare a site-specific NEPA analysis to consider the new CWP information, rather than relying on its 1979 inventories.” SOR at 10. BLM responds that it “inventoried the majority of the parcels in 1979 and determined that they did not merit inclusion within WSA unit boundaries,” noting that the wilderness values and characteristics contained within the parcels “exist in more untrammelled or otherwise uncompromised states on their respective adjacent or nearby WSAs.” BLM Answer at 28-29. BLM acknowledges that its wilderness inventory did not include the Snaggletooth parcels, but notes that those parcels are subject to an NSO stipulation to the extent they are either wholly or partially within the Dolores River Canyon Special Recreation Management Area corridor. BLM Answer at 28, n.12; SOR, Ex. 2H at unnumbered 7; *see also* BBC Answer at 22.

[5] The parties vigorously argue the cases that support their positions, but any NEPA challenge turns on the bedrock question of whether the environmental analysis at issue identified and adequately considered the impacts of the proposed action. Here, four environmental documents have considered the impacts of oil and

¹⁷ (...continued)

stated that lease issuance is, under the *Handbook*, “the stage at which the site-specific environmental analysis should take place.” *Id.* at 1118. However, viewed in its entirety, the *Handbook* does not establish that site-specific environmental analysis is required before a lease can be executed:

Compliance with NEPA has been integrated into BLM’s resource management planning process. *The BLM has a statutory responsibility under NEPA to analyze and document the direct, indirect and cumulative impacts of past, present and reasonably foreseeable future action resulting from Federally authorized fluid minerals activities. By law, these impacts must be analyzed before the agency makes an irreversible commitment. In the fluid minerals program, this commitment occurs at the point of lease issuance. Therefore, the EIS prepared with the RMP is intended to satisfy NEPA requirements for issuing fluid mineral leases* (see Chapter III of this *Handbook*). Bureauwide standards and guidelines for complying with NEPA requirements are set forth in the BLM NEPA Handbook (H-1790-1).

Handbook for Planning for Fluid Mineral Resources Chapter 1.B.2 at I-2, Rel. 1-1583 (5/7/90) (emphasis added). *Pennaco Energy* is not to the contrary, because the 10th Circuit quoted and relied upon the emphasized language.

gas leasing on wilderness and other resources and values.¹⁸ Appellants contend that site-specific analysis was required before leases could be issued, but that argument ignores these prior analyses and assumes that BLM did not consider not leasing the lands at issue. As shown above, appellants have not identified any impact that was not analyzed, or stated with specificity what information in the CWPs is new or different from the information relevant to environmental concerns and the proposed action or its impacts BLM considered when it prepared those NEPA documents. See 40 C.F.R. § 1502.9(c)(1)(ii). Without the requisite showing, appellants' contentions are, in effect, merely objections to BLM's decision not to manage lands near or adjoining WSAs as wilderness. In these circumstances, BLM properly may defer additional environmental analysis until such time as a surface-disturbing activity is proposed. *Northern Alaska Environmental Center v. Kempthorne*, 457 F.3d 969, 976-77 (9th Cir. 2006); see also *Colorado Environmental Coalition*, 149 IBLA 154, 158 (1999) (BLM had "assessed the impacts of leasing per se," but had "left to a later day the evaluation of the site-specific environmental impacts of roadbuilding, drilling, pipeline construction, and other particular activity associated with oil and gas exploration and development."). Accordingly, we conclude that the NEPA documents cited in the DNA demonstrate that BLM considered the likely environmental impacts of oil and gas leasing on wilderness values as part of determining whether or not to allow leasing and under what conditions.

B. BLM Considered the No Lease Alternative

Appellants correctly assert that NEPA requires that the analysis of alternatives include "the alternative of no action," 40 C.F.R. § 1502.14(c), and that in regard to oil and gas leasing, this means the alternative of not leasing lands. SOR at 16; see *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228-30 (9th Cir. 1988). In regard to the McKenna Peak, Snaggletooth, and Dolores River parcels, they claim that the 1984 San Juan/San Miguel Resource Management Plan Amendment Final EIS "does not contain any site-specific discussion analyzing the no leasing alternative for the disputed parcels" and, in particular, did not consider a no leasing alternative for lands outside WSA boundaries. SOR at 16-17. They also contend that the nine-page discussion of alternatives in the 1991 Oil and Gas EIS also considered the alternative of not leasing only in relation to WSAs. SOR at 17.¹⁹

¹⁸ Both BLM and BBC point out that the Board had previously addressed the 1991 EIS in *Colorado Environmental Coalition*, 142 IBLA 49, 52-53 (1997). BLM Answer at 23-24, 29-30; BBC Answer at 3, 9. Contrary to their claims, however, the Board did not hold that the EIS is adequate *per se* so as to withstand all possible challenges.

¹⁹ Appellants do not mount similar challenges to the Montrose District Wilderness EIS or the Dolores River Corridor Management Plan EA, the other two NEPA

(continued...)

Both the draft and final versions of the EIS²⁰ addressed three alternatives: (1) a proposed action alternative of leasing oil and gas using standard terms and conditions as well as newly developed additional stipulations to protect resources and values, (2) the continuation of present management alternatives using only standard terms and conditions and stipulations currently in use, and (3) using only the standard terms and conditions. SOR, Ex. 9B at 2-1; BBC Answer, Ex. 1 at 2-1. Although a no leasing alternative is not expressly identified, each of these alternatives considered the five resources areas studied, and BLM varied the amount of acreage for which various types of lease terms would be used. Appellants' argument is based upon the fact that the three alternatives for the area governed by the draft San Juan/San Miguel RMP/EIS listed 103,152 acres in WSAs as unavailable for leasing and, as to lands the Secretary has discretionary authority not to lease, zero acres. SOR, at 17, Ex. 9B at 2-5 though 2-7. In the final EIS, however, BLM modified the third alternative to classify 75,032 acres as "No Lease (Discretionary)" lands. BBC Answer, Ex. 1 at 2-28.²¹ Thus, the final EIS considered the alternative of not issuing oil and gas leases. Appellants' argument therefore must be rejected.

V. Conclusion

Western Colorado Congress and the Colorado Mountain Club are dismissed as parties to the appeal. Appellants failed to demonstrate standing to appeal the San Miguel River parcels. Appellants have not shown that their CWPs reflect significant new information presenting a seriously different picture of the likely environmental effects of the proposed action analyzed in the environmental documents on which BLM relied to fulfill its pre-leasing NEPA obligation, nor have they shown that BLM failed to consider a no leasing alternative in such environmental documents.

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 appeal of the July 6, 2006, decision of the Deputy State Director is dismissed as to parcels COC-69382, COC-

¹⁹ (...continued)

documents on which BLM relies to support its action.

²⁰ BLM and BBC point out that appellants' argument is based upon a mistake. The photocopied pages of the chapter on alternatives submitted as Ex. 9B uses the cover of the Final EIS, but the pages attached to it are from the draft EIS. BLM Answer at 30 n.14; BBC Answer at 2, 28.

²¹ The Colorado Oil and Gas Leasing and Development Final EIS breaks the number down into specific areas at Appendix C-4, but their relation to the parcels at issue in the appeal is not clear. However, as BLM points out, the McKenna Peak parcels appear to be within a "no lease" area reviewed in the EIS. *Compare* map 2-13 at 2-19 with map M-8 at M-10.

69457, COC-69475, and COC-69477 through COC-69479, and the decision is affirmed as to the remaining parcels.

_____/s/_____
T. Britt Price
Administrative Judge

I concur:

_____/s/_____
James K. Jackson
Administrative Judge