



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240



SEP 29 2008

IN REPLY REFER TO:
CO922(KZ)

CERTIFIED MAIL RETURN RECEIPT REQUESTED
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DECISION

Center for Native Ecosystems
1536 Wynkoop, Ste. 303
Denver, Colorado 80202

August 14, 2008 Competitive Oil & Gas Lease Sale Protest Of Parcels COC73064 through COC73094 Is Dismissed

NOTE: Due to the high volume of protests, the official BLM protest response is posted on the BLM Colorado website, co.blm.gov. This paper copy is provided to you as a courtesy.

Your letter was received in our office on July 30, 2008, protesting the above named parcels offered in the August 14, 2008, Competitive Oil & Gas Lease Sale.

Protest Point: BLM did not adequately address indirect and cumulative impacts.

Response:

The Bureau of Land Management (BLM) provided comprehensive analysis of indirect and cumulative impacts in the final Resource Management Plan Amendment (RMPA) and Environmental Impact Statement (EIS) for the Roan Plateau Planning Area, which is the National Environmental Policy Act (NEPA) analysis document under which the leases were made available for sale. The discussion of environmental consequences for the various resources addressed in Chapter 4 ("Environmental Consequences") specifically includes subsections addressing indirect and cumulative impacts of oil and gas leasing and development.

The BLM addressed cumulative impacts to the extent that they were applicable to the resources affected by the decisions in the Roan Plateau RMPA, consistent with 40 C.F.R. § 1508.25(a)(iii)(2). This analysis identifies those significant impacts caused, in whole or in part, by development activities which could foreseeably result from the leasing at issue. The BLM's decision identifies comprehensive mitigation and management measures to reduce, minimize, or avoid significant adverse impacts (40 CFR 1508.20).

Protest Point: Site-specific NEPA is needed at the leasing stage.

Response:

Prior to leasing, BLM undertakes an exhaustive review of the proposed lease parcels and examines the adequacy of existing planning and NEPA documents. With regard to the Roan Plateau parcels, both the RMPA and EIS were recently completed, and BLM determined that the impacts of leasing and developing the parcels were adequately considered and disclosed. No new information has been provided that would require site-specific analysis at the leasing stage. Additionally, site-specific analyses in the form of an Environmental Assessment (EA) will be conducted by BLM for any proposed oil and gas projects on these parcels. The site-specific environmental analyses prior to development will incorporate the most current information available at that time. Site-specific NEPA is not possible at the present because BLM cannot know the location of facilities associated with oil and gas development until presented with site-specific proposals. While the BLM knows that the facilities will be located along specific ridgetops and has analyzed these impacts, it cannot know the location of well-pads and other facilities until it is presented with an application for permit to drill (APD). Without this site-specific information BLM cannot conduct a site-specific NEPA analysis.

According to the 10th Circuit Court of Appeals, site specific NEPA analysis is not possible absent concrete proposals. Analysis at the leasing stage of impacts related to development would be highly speculative and inappropriate. Park County Resource Council, 817 F.2d 609, 623 (10th Cir. 1987) “[t]o require a cumulative EIS contemplating full field development at the leasing stage would thus result in a gross misallocation of resources, would trivialize NEPA and would ‘diminish its utility in providing useful environmental analysis for major federal actions that truly affect the environment.’”

Protest Point: Leasing without no surface occupancy (NSO) stipulations has on-the-ground consequences and is an irreversible and irretrievable commitment of resources which requires a NEPA document.

Response:

The potential impacts of leasing oil and gas has already been analyzed and disclosed in the RMPA/FEIS. More detailed analysis and disclosure of resource impacts will occur in conjunction with EAs required for each group of well pads to be developed sequentially in the six development areas, using the more specific design and resource information available at that time.

The current land use plan for the Glenwood Springs Field Office (GSFO) was updated by the Oil & Gas Leasing & Development Record of Decision (ROD) and RMPA dated March 1999. Portions of the GSFO within the Roan Plateau Planning Area were updated with the PRMPA/FEIS for which a ROD was issued in June 2007. In addition to these relatively recent NEPA analyses for land use plan amendments specific to management of oil and gas development within the GSFO area, the BLM continually updates the information available to resource specialists from a variety of sources. Therefore, the land use plan under which the Roan Plateau Planning Area leases were made available, and under which they would be managed, is recent and up to date, as are the resource data considered by the specialists who prepared the Documentation of NEPA Adequacy prior to recommending sale of the leases. As a note in Table 4-1 (p. 4-5) of the PRMPA/FEIS reveals, 45.5% of the lands atop the plateau are protected by one or more NSO stipulations, and the remainder all have one or more

controlled surface use (CSU) stipulations. The CSUs provide the BLM with the ability to move proposed surface disturbances by distances of more than 200 meters, providing protection for surface resources not markedly different than NSO stipulations, where needed to protect a resource.

Protest Point: Resource Management Plans do not constitute consideration of the adequate range of alternatives.

Response:

The BLM analyzed an adequate range of alternatives and developed a RMPA and accompanying EIS based on suitable analysis, as well as on public and cooperating agency input. The BLM is only required under NEPA and the Council on Environmental Quality (CEQ) regulations to address a reasonable range of alternatives (see 40 C.F.R. § 1502). In this instance there were numerous reasonable alternatives. The BLM is not required to address each variation; especially those put forth after the Proposed RMPA and Final Environmental Impact Statement (FEIS) have been published. The CEQ addressed this issue as follows, "For some proposals there may be a very large or even an infinite number of reasonable alternatives. When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS." (Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 46 Fed. Reg. 18,026, 18,031 (March 23, 1981)).

The range of alternatives considered throughout the planning process constituted a full and reasonable spectrum. The range included management options ranging from the emphasizing environmental preservation (Alternative II, which considered no leasing atop the plateau and protective stipulations below the cliffs) to a development-focused alternative (Alternative V). The Proposed Action Alternative contained key environmentally protective elements of alternatives analyzed in the Draft RMPA/EIS including limiting development to ridgetops with slopes less than 20 % limiting development to 350 acres at any given time, and designation of four Areas of Critical Environmental Concern covering 21,034 acres. (See Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 46 Fed. Reg. 18,026, 18,031 (March 23, 1981)). The BLM considered a broad range of analysis and public input in approving a RMPA that represents a balanced management strategy protecting resources and allowing for commodity use.

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The BLM considered both leasing and not leasing the unleased portions of the transferred lands (under the Transfer Act), as well as partially leasing these lands. Alternative I of the DEIS considered not leasing the balance of the acquired lands of those transferred (no new leasing on transferred lands). Under Alternative II, partial leasing was considered, as approximately 21,000 acres (approximately 28% of the planning area) would not have been leased. Alternatives III, IV, and V would have made all lands available for leasing. The BLM has, therefore, provided a full range of leasing alternatives for consideration and environmental review.

Protest Point: NEPA requires an analysis of effectiveness of mitigation measures.

Response:

The EIS did analyze the effectiveness of best management practices (BMPs) and other mitigation

measures to the extent possible given the absence of site-specific proposals (See pages 4-52 through 4-53 for an example of mitigation for wildlife). These BMPs and the other mitigation measures incorporated into the RMPA represent a range of methods that are proven to be effective in specific situations. At the implementation stage—e.g., preparation of master development plans for ridge-by-ridge development atop the plateau—BLM resource specialists will select the BMPs and other mitigation measures best suited to location-specific, resource-specific, and project-specific factors.

As stated in the introduction to Appendix I (Best Management Practices and Adaptive Management) of the PRMPA/FEIS:

“The BMPs identified in this Appendix represent the kinds of activities which may be required; actual BMPs required during the permitting process to mitigate impacts may vary. BMPs and specific methodologies associated with them are expected to change over time to reflect the results of monitoring and ongoing adaptive management efforts. Additional practices may be required, practices may be withdrawn, or practices may be modified during activity-, implementation-, or project-level planning...Monitoring and adaptive management practices will be used to refine and clarify needed practices consistent with goals and objectives of this plan” (RMPA/FEIS, Appendix I at p.1).

Protest Point: BLM’s ability to issue waivers of protective stipulations undermines confidence that the stipulations will not in fact protect sensitive resources

Response:

The BLM applies waivers and modifications in accordance with 43 C.F.R. § 3101.1-4, “A stipulation included in an oil and gas lease shall be subject to modification or waiver only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts.”

Waivers, modifications, and exceptions to lease stipulations are described in Appendix C of the FEIS and would be allowed only under strictly defined circumstances, and in consideration of the need to protect resources. Further, as required by 43 C.F.R. § 3101.1-4, public notification and at least a 30-day public comment period is required before granting of any waiver or modification that is substantial. An exception, which is a one-time exemption from a stipulation for a specific period, location, or activity, does not require public notice or comment. As with waivers and modifications, the BLM grants exceptions to protective stipulations only if it is demonstrated that adverse impacts would not result to the resource being protected or that any adverse impacts would be adequately mitigated.

Protest Point: BLM has violated Federal Land Policy and Management Act by not preventing unnecessary or undue degradation.

Response:

The protest does not identify any anticipated use of the leases which would result in unnecessary or undue degradation. The various protective lease stipulations, best management practices, and mitigation measures incorporated into the RMPA ROD—including phased and clustered ridgetop development atop the plateau and limiting surface disturbance at any one time to a maximum of 350 acres reduce the chance that activities carried out pursuant to the RMPA or site-specific actions authorized subsequent to the RMPA will result in unnecessary or undue degradation.

Should the BLM determine that unnecessary or undue degradation will occur; the BLM will act to prevent it.

Protest Point: BLM must consult with the U.S. Fish and Wildlife Service under the Endangered Species Act.

Response:

The BLM did consult with the USFWS at the planning stage, and biological assessments were prepared by the BLM for all listed and candidate species. In a biological opinion dated February 7, 2007 the USFWS concurred with the BLM's biological assessments and concluded no further consultation was necessary (although there are reporting requirements), ROD, June 2007. Appendix G. The USFWS was also consulted in preparation for the lease sale and will continue to be consulted during review of any master development plans prior to approval of oil and gas development on the leases.

Protest Point: BLM has the discretion not to lease.

Response:

The BLM does not have that discretion. The un-leased portions of Naval Oil Shale Reserves 1 and 3 were made available for leasing in conformance with the Transfer Act, Federal Land Policy and Management Act, the Mineral Leasing Act, and a variety of environmentally protective statutes, regulations, and policies. In exercising its discretion to issue leases, the BLM is acting to further the nation's interest in increasing domestic sources of petroleum products and thus decrease America's dependence on often-unstable foreign sources of supply. BLM's decision to lease also helps the national economy by increasing supply, which in turn reduces fuel prices, and the nation's budget, by providing increased revenue in the form of bonus bids received at the lease sale and royalties which will be received once the leases are issued and production begins. The need to increase domestic sources of petroleum products for both foreign policy and domestic economic reasons has been repeatedly recognized by Congress, most recently through passage of legislation authorizing increased offshore energy production and the Energy Policy Act of 2005. Furthermore, issuing leases and beginning production will help the State of Colorado's economy by creating jobs and infusing money into the State Treasury through the portion of royalties which are provided to the State under the Mineral Leasing Act and the increase in tax revenue which those jobs will create.

Accordingly, on behalf of the Department of the Interior, I dismiss your protest. If you have any questions about this response, contact Duane Spencer, Chief, Branch of Fluid Minerals at 303.239.3753.



C. Stephen Allred
Assistant Secretary
Land and Mineral Management

cc:

State Director, Colorado State Office
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