

INTERIOR BOARD OF LAND APPEALS

Southern Utah Wilderness Alliance

127 IBLA 282 (October 5, 1993)

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SOUTHERN UTAH WILDERNESS ALLIANCE

IBLA 93-70

Decided October 5, 1993

Appeal from a decision of the Area Manager, Grand Resource Area, Utah, Bureau of Land Management, approving an oil and gas pipeline right-of-way grant and finding no significant environmental impact. UTU-67385.

Affirmed.

1. Environmental Quality: Environmental Statements--Mineral Leasing Act: Environment--National Environmental Policy Act of 1969: Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact--Rights-of-Way: Oil and Gas Pipelines

A decision approving a right-of-way for an oil and gas pipeline on public lands on the basis of an EA finding no significant impact which is tiered to a programmatic EIS for oil and gas leasing in the area will be affirmed where BLM has considered the cumulative impact of the right-of-way and the foreseeable oil and gas development to be served thereby and the record provides a reasonable basis for the conclusion that there will be no significant impacts other than those addressed in the EIS.

APPEARANCES: Scott Groene, Esq., Moab, Utah, for the Southern Utah Wilderness Alliance; Phillip Wm. Lear, Esq., Matthew F. McNulty, III, Esq., Thomas W. Clawson, Esq., Salt Lake City, Utah, for Western Gas Resources, Inc.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Southern Utah Wilderness Alliance (SUWA) has appealed from an October 20, 1992, Decision Record and Finding of No Significant Impact (FONSI) by the Area Manager, Grand Resource Area, Utah, Bureau of Land Management (BLM), approving issuance of an oil and gas pipeline right-of-way grant (UTU-67385) to Western Gas Resources (Western) and finding that no significant environmental impact will result therefrom. This is the second time this case has been before the Board. The present appeal is brought from the BLM decision issued after remand by our prior decision cited as Southern Utah Wilderness Alliance, 124 IBLA 162 (1992). We granted expedited consideration of this appeal by order dated January 19, 1993.

On June 13, 1991, Western filed an application seeking a 50-foot-wide, 26.9-mile-long right-of-way for construction and operation of various underground pipelines and related surface facilities on public lands. The entire pipeline project would extend a total of 36 miles across public, State, and private lands. ^{1/} It would permit the gathering of oil and gas from wells drilled in an oil and gas field known as the "Kane Creek Field" in southeastern Utah and the transmission of that oil and gas to a planned processing plant near Moab, Utah, where the oil and natural gas liquid products would be transported to market by truck or rail and the residue gas would be carried by pipeline to an existing pipeline. That field is within a larger geologic area known as the "Paradox Fold and Fault Belt," which is one of the underlying geologic formations associated with oil and gas occurrence in the resource area.

The initial impetus for the pipeline project was the production of oil and gas from the Columbia Federal No. 27-1 well situated in sec. 27, T. 25 S., R. 19 E., Salt Lake Meridian, Grand County, Utah. That well flowed at an initial rate of 914 barrels of oil per day (BOPD) and 290 thousand cubic feet of gas per day (MCFGPD). In addition to the pipelines and related facilities, the right-of-way would contain a 15 Kv electrical transmission line and related equipment intended to provide electricity to the oil and gas field for production and other well operations. The right-of-way grant was issued pursuant to section 28 of the Mineral Leasing Act, as amended, 30 U.S.C. § 185 (1988).

In order to identify the environmental impact of construction and operation of the subject pipeline project and alternatives thereto, BLM prepared an environmental assessment (EA) in September 1991. The EA was tiered to an October 1976 Environmental Analysis Record (EAR) and a December 1988 supplemental EA (SEA) which specifically assessed the environmental impact of oil and gas exploration and development throughout the resource area. See EA, dated Sept. 23, 1991, at 2. The SEA was in turn tiered to a December 1983 final environmental impact statement (EIS), which (together with a March 1983 draft (DEIS)) assessed the environmental impact of BLM's proposed management of resource activity (including oil and gas leasing and related

^{1/} The pipeline route would begin on public land in sec. 19, T. 26 S., R. 20 E., Salt Lake Meridian, Grand County, Utah, and proceed in a northerly direction through Ts. 26 through 23 S., R. 19 E., and T. 24 S., R. 18 E., Salt Lake Meridian, Grand County, Utah, and then run easterly through Ts. 23 and 24 S., R. 19 E., Salt Lake Meridian, Grand County, Utah, to a processing plant located on State land near the Grand County Airport in T. 24 S., R. 20 E., Salt Lake Meridian, Grand County, Utah. After that, it would continue in a southeasterly direction across T. 24 S., R. 20 E., Salt Lake Meridian, Grand County, Utah, crossing mostly private and state land, and connect with an existing pipeline in sec. 2, T. 25 S., R. 20 E., Salt Lake Meridian, Grand County, Utah. The total acreage covered by the Federal right-of-way would be about 164 acres.

activity) generally in the resource area under a resource management plan (RMP). See FONSI, dated Dec. 14, 1988. The purpose of the September 1991 EA was to determine whether construction and operation of the pipeline project would result in a significant environmental impact, thus requiring preparation of an EIS in conformity with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4332(2)(C) (1988).

Based on the September 1991 EA, the Area Manager, on September 25, 1991, issued a FONSI, concluding that no significant environmental impact will result from approving issuance of the right-of-way grant. He subsequently issued a Decision Record on November 8, 1991, approving issuance of the grant. SUWA appealed to the Board. The right-of-way grant was issued effective December 2, 1991.

In our October 1, 1992, decision (Southern Utah Wilderness Alliance, 124 IBLA 162), we set aside the Area Manager's November 1991 Decision Record because the record did not support the Area Manager's determination that construction and operation of the subject pipelines and related activity, as well as well drilling and other activity in the area served by the pipelines, would not have a significant impact on the environment requiring preparation of an EIS. Specifically, we held that BLM had failed to support the conclusion that there would be no significant cumulative impact to cultural resources, precisely because of the statement in the SEA, at page 12, that the "cumulative impact [to cultural resources] could be significant due to surface collection and illegal excavation." See Southern Utah Wilderness Alliance, 124 IBLA at 169, 170. For this reason alone, we therefore set aside the Area Manager's November 1991 Decision Record and remanded the case to BLM.

BLM subsequently modified its original EA. In his October 1992 Decision Record and FONSI, the Area Manager decided, after reviewing the revised EA, to again approve issuance of the right-of-way grant to Western. SUWA again appealed to the Board.

By order dated January 19, 1993, we granted appellant's petition to stay the effect of the Area Manager's October 1992 Decision Record and FONSI (pending a decision on its appeal), pursuant to 43 CFR 2884.1(b). We also granted the motion by Western to intervene in the proceeding and to expedite the Board's review of the appeal.

In its current statement of reasons (SOR) for appeal, appellant principally contends that BLM failed to adequately justify its finding that there will be no significant impact to cultural resources, soil, water quality, and wildlife as a result of BLM's approval of issuance of the subject right-of-way grant. Thus, appellant argues that BLM has violated section 102(2)(C) of NEPA by failing to prepare an EIS before deciding to go ahead with issuing the right-of-way grant.

[1] A finding by BLM that no significant environmental impact will occur as a result of issuance of a right-of-way grant (thus deciding to go ahead with approval in the absence of preparation of an EIS) will be

affirmed on appeal where BLM has taken a hard look at the environmental consequences of its action, considered all relevant matters of environmental concern, and made a convincing case either that no significant impact will result or that any such impact will be rendered insignificant by mitigating measures. See Sierra Club Legal Defense Fund, Inc., 124 IBLA 130, 140-41 (1992), appeal filed, Pardee Construction Company of Nevada v. Lujan, No. CV-S-92-978-LDG-RLH (D. Nev. Nov. 20, 1992), and cases cited therein.

Appellant contends that BLM has failed to consider the overall cumulative environmental impact of exploration and development of the Kane Creek Field by segmenting the process of environmental review. Thus,

it states that BLM has separately analyzed the impact of geophysical work performed in an effort to identify the location and extent of oil and gas resources underlying each Federal lease and then the impact of drilling a well on each lease, without considering the cumulative impact of geophysical work, drilling, and development on all leases in the field. Appellant notes that, as of December 1992, 14 wells and 5 seismic exploration projects had been approved in the previous 2 years and that an additional 7 wells were proposed, all in the Paradox Fold and Fault Belt. See SOR at 8 n.6, 14-15. In particular, appellant contends that BLM has failed to consider the cumulative impact of full field exploration and development on cultural resources, soil, water quality, and desert bighorn sheep (Ovis canadensis nelsonii).

At the outset, it is important to note that we have already concluded that BLM, in the context of assessing the environmental impact of constructing and operating the subject pipelines and related facilities, must assess the environmental impact of exploration and development of the Kane Creek Field for oil and gas purposes, but only to the extent that such activity is promoted by or associated with the instant pipeline project. See Southern Utah Wilderness Alliance, 124 IBLA at 167; see Howard B. Keck, Jr., 124 IBLA 44, 47, 49-50 (1992). BLM may not confine its environmental review solely to the impact that would be anticipated from construction and operation of the pipelines and related facilities. This means that BLM was required to assess the impact of the pipelines and related facilities in conjunction with other past, present, and reasonably foreseeable activity, and determine whether any cumulative impact would be significant (thus requiring preparation of an EIS). See Howard B. Keck, Jr., supra at 53. Such activity must clearly include all wells that have been or are being drilled or that will be drilled in the foreseeable future, and will be connected to Western's pipelines. See Southern Utah Wilderness Alliance, 124 IBLA at 167. We did not require analysis of full field development. ^{2/} See Colorado Environmental Coalition, 108 IBLA 10, 18 (1989).

^{2/} As we noted in our prior decision, the BLM FONSI is based on a "finding that there are no significant impacts of the proposed action, including the cumulative impacts of associated development of the oil and gas field, other than those analyzed in the EIS developed for the RMP." 124 IBLA at 166 (footnote omitted).

Therefore, the sole question for decision here is whether BLM properly assessed the cumulative impact (if any) of the pipelines and related activity and other past, present, and reasonably foreseeable activity in connection with that project and whether, having done so, BLM properly determined that no significant environmental impact will result.

Generally, BLM has, through the course of its environmental review from the October 1976 EAR through the December 1983 final EIS to the October 1992 revised EA, considered the specific impact on cultural resources of constructing and operating the instant pipeline project and the cumulative impact on such resources of that activity together with other past, present, and reasonably foreseeable oil and gas exploration and development in the Grand Resource Area. See DEIS at S-15, 4-83 to 4-84; Final EIS at S-22, 2-35; EAR at 223-25, 252-54, 276-77, 281, 286; SEA at 9; Revised EA at 10-11, 11, 12-13; Revised EA, Appendix B, at 4-5. By virtue of tiering, all of this environmental review may be considered in reviewing the Area Manager's current decision to go forward with the pipeline project and finding of no significant impact. See Southern Utah Wilderness Alliance, 124 IBLA at 167-68.

In particular, BLM has provided measures to mitigate any impact on cultural resources along the route of the pipelines. These measures include requiring Western (as a condition of its right-of-way grant) to suspend all nearby operations in the event of the discovery of a cultural resource and to undertake whatever actions are decreed by BLM to prevent the loss of any significant cultural resource found. See "Stipulations" attached to Right-of-Way Grant at 3. Western is also required to fence certain already-identified significant archaeological sites so as to protect them from inadvertent damage during construction. See id. at 5. Fencing is considered adequate to protect these sites since they do not contain "collectable artifacts" that would be subject to theft, but would be protected from accidental disturbance. See Revised EA, Appendix B, at 4. BLM has also provided for inspecting these sites during and after construction to insure that no damage has occurred. See "Stipulations" attached to Right-of-Way Grant at 6. In addition, Western is required to notify all persons associated with the pipeline project that they will be subject to prosecution for disturbing archaeological sites or collecting artifacts. See id. 3/ Appellant has not shown that these measures will be inadequate to protect cultural resources. 4/ See Owen Severance, 118 IBLA 381, 389-91 (1991).

3/ Further mitigating measures are to be provided for generally in the case of oil and gas exploration and development activity. See EAR at 252-54, 267, 276-77; Revised EA at 12; DEIS at 3-17; Final EIS at 1-26. 4/ Appellant does provide a copy of a letter from a person who has participated in geophysical exploration, which indicates that some crews engaged in such efforts have illegally disturbed archaeological sites or collected artifacts during the course of their work. See Exh. 24 attached to Reply Brief. There is no evidence that this practice is prevalent among such crews and it is impossible to judge the extent of its potential occurrence in the case of future geophysical exploration in the project area. This is

We remanded this case because the SEA itself acknowledged the potential for cumulatively significant impacts to cultural resources resulting from increased public access made possible by roads developed to facilitate oil and gas development. SEA at 12; Southern Utah Wilderness Alliance 124 IBLA at 169. Officials of BLM have now reviewed the cumulative impacts of the right-of-way and oil and gas development for the existing and projected wells which would be served by the pipeline. The EA indicates that since the 1988 SEA, seven wells have been drilled in the area served by the pipeline in close proximity to existing roads. Access to these wells has required less than 1 mile of new road construction and upgrading 8 miles of existing roads and trails (Revised EA at 12). The EA further noted that four additional drilling permits have been approved in the area and access to the well sites would require less than 1/2 mile of new road construction and upgrading 6 miles of existing roads (Revised EA at 12-13). Thus, the Area Manager concluded in his October 1992 decision that there will not be a significant cumulative impact to cultural resources as a result of construction and operation of the instant pipeline project together with past, present, and reasonably foreseeable oil and gas exploration and development activity. See October 1992 Decision Record and FONSI at 1, 3. Appellant has not refuted this conclusion.

Appellant, however, asserts that construction and operation of the subject pipelines and related activity, in conjunction with other past, present, and reasonably foreseeable activity, will cumulatively impact cultural resources as a result of promoting increased access to such resources and thus increasing the threat of theft and vandalism of the resources. We note that BLM is aware that a cultural resources inventory of the right-of-way corridor disclosed 21 archaeological sites, of which 10 are deemed eligible for inclusion in the National Register of Historic Places, and more sites may be uncovered during construction of the pipelines and associated facilities. See Revised EA at 7. There is nothing to suggest that BLM has not adequately provided for the protection of these identified cultural resources within the project area. Further, appellant overlooks the fact that no new road will be constructed in connection with the pipeline project. Rather, the gathering system pipelines will be sited along the route of existing roads and those and other existing roads will be used to gain access for purposes of constructing and operating the pipelines and related facilities. See id. at 2, 3. Thus, approval of the project itself does not promote increased access to any cultural resources since access already exists.

However, improved access as a result of the pipeline project may, together with additional road construction and improvement in the Kane Creek Field, result in a cumulative impact to cultural resources generally (including those along the route of the pipelines). It was just such

fn. 4 (continued)

especially true in view of the liability of the operator and the efforts made by BLM to eliminate such activity. Hence, we are unable to conclude this invalidates the FONSI.

activity that prompted BLM in its SEA, at page 12, to conclude that a significant cumulative impact (owing to theft and vandalism promoted by increased access) was possible. The record indicates, however, that circumstances have changed from those envisioned when BLM prepared the SEA.

As Western notes, the conclusion in the SEA that a significant impact to cultural resources was possible was based on the assumption of increased new road or trail construction in the resource area. Thus, the SEA stated, at page 12:

The likelihood that significant cultural resources would be adversely affected is related directly to new trails or roads. Increased access to * * * cultural resources has led to site disturbance and destruction. A second problem is illegal surface collection. Even when told of the laws protecting cultural resources, many people continue to collect surface artifacts illegally. * * * [T]he cumulative impact could be significant due to surface collection and illegal excavation. [Emphasis added.]

See also Exh. 19 attached to SOR at 10 ("[A]s an area becomes more developed, the probability of damage to cultural sites due to vandalism increases"); EAR at 277 ("[A]reas [opened] by road construction to general traffic [would then be subject] * * * to some vandalism").

However, the anticipated construction of new roads has not materialized. Oil and gas exploration and development has proceeded largely without the construction of new roads. ^{5/} As BLM noted in the revised EA, at pages 12 and 13, access to seven new wells required less than 1 mile of new road construction and access to four proposed wells will require less than 1/2 mile of such construction. See also October 1992 Decision Record and FONSI at 2. Further, it is clear that BLM did not believe that significant additional new road construction was reasonably foreseeable at the time of preparation of the revised EA in October 1992. Indeed, other than the 11 wells already drilled or for which permits to drill were sought in the project area, there is no evidence of other reasonably foreseeable drilling that BLM should have considered.

Appellant refers to an additional seven wells that BLM has approved for drilling. However, these wells are not located within the project area

^{5/} Appellant asserts that BLM failed to consider the additional impact to cultural resources owing to geophysical exploration or "seismic work" in the Paradox Fold and Fault Belt. See SOR at 15. Appellant states such work "create[s] new ways that increase access into the area." Id. at 15-16. There is no evidence offered to support the assertion that seismic work will create "ways." Indeed, we note that the seismic lines are to be rehabilitated following use. See Southern Utah Wilderness Alliance, 122 IBLA 165, 166 (1992). Thus, there was no reason for BLM to consider the additional impact of seismic work in terms of the threat to cultural resources from increased access.

(and would not be served by the subject pipeline project). See SOR at 14 n.12; Exh. 15 attached to SOR. There is no evidence that any road building in connection with those wells is likely to affect cultural resources in the project area. Nor is there any indication that such road building, together with road building in the project area, would cumulatively affect such resources in a broader area, such that it should have been considered by BLM.

Beyond that, at best, the amount and location of additional road building is dependent on the highly uncertain nature of further exploration and development in the Kane Creek Field, which in turn will depend on undetermined geology and the variable economic forces and fortunes of oil and gas operators in the area. We note that, as of August 1991, Western believed that it was "difficult to assess the potential of th[e] oil and gas deposit [in the Kane Creek Field]" (Construction and Use Plan, dated Aug. 27, 1991, at 3). There is no evidence that the situation has markedly changed since that time. This is to be expected since oil and gas development is just beginning in the field. Appellant suggests a possible future exploration and development scenario that incorporates a large amount of new road construction. See Reply Brief at 7, 9. However, it has not shown that this scenario is reasonably foreseeable such that BLM should have considered it in its environmental review. In the absence of significant new road building, the Area Manager concluded that there is no reason to believe that the possibility identified in the SEA (of a significant cumulative impact to cultural resources due to increased access) will come to pass. Appellant has not refuted that conclusion. Thus, we find no error in BLM's failure to consider the cumulative impact of significant new road building. See Howard B. Keck, Jr., supra at 53; Southwest Resource Council, 96 IBLA 105, 114-15, 94 I.D. 56, 61-62 (1987).

Appellant also contends that BLM failed to adequately support its finding that construction and operation of the pipelines and related activity, together with other past, present, and reasonably foreseeable activity, will not cause a significant cumulative impact to soil, water quality, and desert bighorn sheep. Clearly, the Area Manager's November 1991 decision encompassed a finding that no significant impact to such resources would occur from issuance of the subject right-of-way grant. Also, we found in our prior consideration of this case that cumulative impacts of oil and gas development were addressed in the DEIS to which the EA for the pipeline right-of-way was tiered. Southern Utah Wilderness Alliance, 124 IBLA at 168. Thus, a challenge to the FONSI for the right-of-way must be predicated on a showing of significant impacts not addressed in the EIS to which the EA at issue was tiered. This appellant has not done.

We conclude that the revised EA, as tiered to the EIS, the October 1976 EAR, and the December 1988 SEA, adequately considered the cumulative impact of the pipeline project, in conjunction with other past, present, and reasonably foreseeable activity, on soil, water quality, and desert bighorn sheep. See Revised EA at 11; DEIS at 4-27, 4-28, 4-48, 4-49; Final EIS at 2-16, 2-17; EAR at 198-200, 203-05, 216-17, 235-38, 239-42, 260-62, 263-64, 268-70, 283; SEA at 4, 6-7. These cumulative impacts are considered in the course of addressing the impact of oil and gas exploration and development

generally in the resource area, which encompasses both the pipeline project and other past, present, and reasonably foreseeable activity. Indeed, the EIS assumed the drilling of approximately 145 wells annually within the resource area and the annual production of about 49,500 BO and 9.5 to 9.9 million MCFG. See Final EIS at S-20. This estimate was scaled back with the December 1988 SEA which assumed (given the downturn in the oil and gas industry) the drilling of about 35 wells annually between 1989 and 1995, or a total of 248 wells. See Revised EA, Appendix B at 2; SEA at 3. Of these 248 wells, 10 were expected to be drilled in the area of the Paradox Fold and Fault Belt. See Revised EA, Appendix B, at 2. The SEA also assumed the running of 150 miles of geophysical lines each year. See SEA at 3.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed. 6/

C. Randall Grant, Jr.
Administrative Judge

I concur:

John H. Kelly
Administrative Judge

6/ Western has asked the Board to lift the stay of the effect of the Area Manager's October 1992 Decision Record and FONSI, imposed by our Jan. 19, 1993, order. Because we here decide the appeal and affirm the decision of BLM, the effect of our decision is to vacate the stay.