

INTERIOR BOARD OF LAND APPEALS

Colorado Environmental Coalition

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COLORADO ENVIRONMENTAL COALITION

IBLA 93-126

Decided July 22, 1994

Appeal from a decision of the Colorado State Office, Bureau of Land Management, denying protest to competitive onshore oil and gas lease sale of 14 tracts. COC53889 etc.

Appeal dismissed in part; decision affirmed.

1. Administrative Procedure: Generally--Appeals: Jurisdiction--Board of Land Appeals--Contests and Protests: Generally--Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements--Rules of Practice: Protests

Challenges to the approval or amendment of a resource management plan and its related EIS are accorded administrative review only in conformity with the protest procedures prescribed by 43 CFR Part 1600. Such challenges are properly distinguished from an appeal challenging implementing actions undertaken without preparation of a supplemental EIS which may be appealed to the Board of Land Appeals.

2. Environmental Policy Act--Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements

A supplemental EIS may be required if an agency makes substantial changes in a proposed action that are relevant to environmental concerns. A decision to hold an oil and gas lease sale without preparation of a supplemental EIS is properly affirmed where the basis for appeal is the omission of stipulations from lands delineated on a map in the original EIS, it appears from the EIS that the stipulations were designed to mitigate impacts to certain specific resource values which may or may not be found in the delineated lands, and no showing has been made of the presence of such resources requiring protection within the lease parcels.

APPEARANCES: Paul Zogg, Esq., Boulder, Colorado, and Todd Robertson Esq., Denver, Colorado, for appellant; Lyle K. Rising, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management; Carl F. Baker, Esq., Houston, Texas, for Coastal Oil and Gas Corporation.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Colorado Environmental Coalition (CEC) has appealed from a November 23, 1992, decision of the Colorado State Office, Bureau of Land Management (BLM), rejecting its protest of 14 parcels in the August 13, 1992, BLM competitive oil and gas lease sale. Appellant has requested expedited consideration of this matter in light of BLM's announced intention to issue leases for the protested parcels which received bids.

We observed in our April 2, 1993, order in this case that the essence of appellant's protest to BLM was the assertion that the sale of the protested parcels violates the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1784 (1988), and the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4370 (1988), and regulations promulgated thereunder. The basis of this charge was the contention that leasing of the tracts, either with regard to issuance of a lease or the stipulations required of the lessee, does not conform to the land-use planning documents and the corresponding environmental impact statement (EIS). Appellant argued that the failure to impose the lease stipulations required by the EIS and the associated land use plans required preparation of an amended EIS and amendment of the land use plans.

With respect to each of the 14 sale parcels under appeal, 1/ appellant specifically protested the failure to include stipulations which it asserts were required under the terms of the EIS 2/ and the related land-use plans. Regarding parcels COC53934, COC53935, and COC53938, appellant protested that the tracts are located within an area designated as subject to "timing limitations" at Map 2-14, page 2-19 of the EIS and the RMP amendment for the San Juan Resource Area (SJRA), however, the sale only imposes timing stipulations on portions of the parcels. With respect to parcels COC53903, COC53904, COC53905, and COC53912, appellant protested that these leases are

1/ The protest filed with BLM initially applied to 17 sale parcels listed in the August 1992 sale. The 14

parcels which have been challenged on appeal include:

COC53889	COC53905	COC53933
COC53890	COC53912	COC53934
COC53902	COC53921	COC53935
COC53903	COC53922	COC53938
COC53904	COC53923	

2/ The EIS at issue with respect to the sale of lease parcels on public lands administered by BLM is the programmatic EIS for oil and gas leasing developed by the Colorado State Office of BLM. Colorado State Office, Bureau of Land Management, Colorado Oil & Gas Leasing and Development Final Environmental Impact Statement (Jan. 1991). This EIS was the basis of the oil and gas plan amendments to the Resource Management Plan (RMP) for the Little Snake Resource Area and the San Juan/San Miguel Resource Area, both adopted in October 1991.

within areas designated as being subject to either timing limitations or no surface occupancy stipulations (as shown by the EIS, Maps 2-7, 2-8, pages 2-13, 2-14, and the Little Snake Resource Area (LSRA) RMP), but the lease sale did not provide for such stipulations.

The sale of parcel COC53921 was protested on the ground that it was located within a no surface occupancy area as shown in the EIS, Map 2-7, page 2-13, and the LSRA RMP, yet the parcel did not include the required stipulation. Similarly, parcel COC53922 was protested on the basis that all portions of the tract are located within an area designated as having timing limitations and no surface occupancy stipulations in the EIS, Maps 2-7, 2-8, pages 2-13, 2-14, and the RMP for the LSRA, but the lease sale only covers portions of the lease with these stipulations. Appellant protested the sale of parcel COC53923 contending that all of the tract is within an area designated as having timing limitations (EIS, Map 2-8, page 2-14) yet the lease sale imposes the stipulation only on portions of the lease.

Parcels COC53889 and COC53890 were protested on the ground that these leases are entirely within an area designated as having timing limitations and no surface occupancy restrictions in the EIS (Maps 2-7, 2-8, pages 2-13, 2-14) and the LSRA RMP, yet no stipulations were imposed in the lease sale. Regarding parcel COC53902, appellant protested the failure of the sale to apply the timing limitation and no surface occupancy stipulations to all of the lands in the parcel as required by the EIS, Maps 2-7, 2-8, pages 2-13, 2-14.

Finally, appellant protested a sale parcel (COC53933) embracing lands withdrawn for the San Juan National Forest and administered by the U.S. Forest Service (FS). The ground for protest was that the stipulations attached to the sale parcel differed from those required under the land management plan. ^{3/}

In dismissing appellant's protest, BLM found that the maps appellant "utilized in an attempt to define areas to be covered by stipulations is at such a scale as to preclude the correct application of the stipulations" (BLM Decision at 1). BLM related that appellant's protest was referred to the BLM offices with administrative jurisdiction over the tracts involved. The BLM decision provided a copy of a memorandum from the Manager, LSRA, indicating that each protested parcel had been reviewed and no error in the required stipulations was identified. The memorandum noted that within the large areas identified in the small scale maps in the EIS (which do not show township and range) "stipulations will only be applied to specific areas in which conditions warrant" (Memorandum of Aug. 18, 1992). Also attached to the BLM decision is a similar memorandum of October 21, 1992, from the

^{3/} Relevant documents which are part of the record include the Final Environmental Impact Statement for the San Juan National Forest Land and Resource Management Plan (FEIS) and the plan itself (LRMP).

Montrose District Manager indicating that stipulations for the protested parcels were rechecked against their data base and resource maps and determined to be correct.

With respect to the parcel (COC53933) located within the San Juan National Forest, the BLM decision explained that the forest supervisor reviewed the lands embraced within the parcel and concluded that the posted stipulations are consistent with the forest Land and Resource Management Plan (LRMP) with the exception of a tract where a change from no surface occupancy to limited surface use was authorized as the result of a site specific inspection in April 1992. Attached to the BLM decision was a copy of a FS background report responding to the protest. The report confirmed that the only inconsistency with the stipulations indicated in the LRMP was a tract for which a "site specific inspection found that slopes within that specific geographic area average 40 percent, and that the limited surface use stipulations provide for appropriate protection of resource values" (Background Report at 2). The FS report noted that the map used by appellant may have been too small in scale to verify the stipulations for a particular tract.

In its statement of reasons (SOR) on appeal, CEC challenges the failure of BLM to include protective stipulations in the leases offered "that correspond to the maps included in the 1991 RMP/EIS" (SOR at 3). Appellant contends the public was "deceived and defrauded" by BLM in its 1991 EIS, in that the maps referred to therein identified broad areas for protection, but the lease sales did not include the promised protection (SOR at 3). CEC contends that by not including the stipulations identified in the 1991 RMP/EIS or amending the plan to account for the fact that stipulations are not included, BLM has violated both NEPA and the FLPMA land planning requirements (SOR at 4-5). Appellant argues that NEPA requires an EIS to be supplemented if the agency makes substantial changes in its proposed action that are relevant to environmental concerns. Appellant makes similar arguments with respect to the asserted inconsistency of the stipulations in the national forest lease with the LRMP/EIS. A request for expedited consideration of this appeal has also been made by appellant in view of the potential for development on those protested leases issued in response to the sale.

In response, BLM contends that the scale of the maps relied upon by appellant, taken from the programmatic EIS for oil and gas leasing, is such as to preclude determining the stipulations applicable to specific lands without consulting information in the local BLM district and area offices. ^{4/} BLM asserts that minor changes in the facts on the ground

^{4/} BLM indicated in its initial brief filed with the Board that determination of the applicability of stipulations to specific lands required consulting "more detailed maps in district and area offices" (BLM Motion to Dismiss at 3). By order of Apr. 2, 1993, the Board denied the motion to dismiss and required BLM to supplement the administrative record by providing both the relevant EIS and any specific detailed maps referenced therein. In the second reply brief, BLM indicates that "specific lease

which alter the applicability of certain stipulations do not require amendment of an RMP or issuance of a supplemental EIS, citing Colorado Environmental Coalition, 125 IBLA 210, 221-22 (1993). Regarding the national forest lease, BLM argues that a site-specific examination of the tract at issue indicated that a no surface occupancy stipulation was not needed as the slope of the terrain was less than 60 percent, not greater, as was previously thought. With respect to CEC's challenge to the adequacy of the stipulation maps in the RMP's and the associated EIS, BLM contends this issue was properly raised by appellant under the planning regulations at 43 CFR Part 1600. It is asserted that the June 6, 1991, decision of the BLM Director dismissing the protest was final for the Department of the Interior under those regulations, and, hence, the appeal to the Board should be dismissed to the extent it challenges the EIS/RMP itself.

Coastal Oil & Gas Corporation, lessee of two of the leases protested and appealed in this case, has also filed an answer. Coastal notes that the EIS expressly recognized that the scale of the map used was designed to generally identify areas subject to resource concerns and not to precisely identify those lands which would require such resource protection. In the LSRA where Coastal's leases are located, Coastal asserts that approximately 1 million acres are marked on the map for no surface occupancy stipulations while the EIS indicates at Table 2-9, page 2-26, that only 57,894 acres located within the marked area require no surface occupancy.

The BLM decision under appeal indicated that leases for those parcels receiving bids for which appellant's protest was rejected were being issued concurrently with issuance of the decision under appeal. See 43 CFR 3120.1-3. ^{5/} In view of the potential for development on the issued leases and the need to resolve challenges to the propriety of lease issuance, we find that it is in the public interest to grant the motion for expedited consideration and advance this case on our docket for review.

[1] As a threshold matter we find it necessary to clarify the jurisdiction of the Board in this case with regard to the BLM EIS and the RMP's based thereon. Challenges to the approval or amendment of a RMP and its related EIS are accorded administrative review only under the protest procedures set forth in the regulations at 43 CFR Part 1600. Headwaters, Inc., 101 IBLA 234, 238-39 (1988). Accordingly, the Board is without jurisdiction to review the adequacy of the EIS/RMP and this aspect of the CEC appeal is properly dismissed. Id. However, this issue is properly distinguished from jurisdiction over actions implementing the RMP and the decision not to prepare a supplemental EIS which are within the Board's jurisdiction. Headwaters, Inc., 101 IBLA at 237-38.

fn. 4 (continued)

stipulations have been entered into an automated data base which shows stipulations down to the nearest 40 acres for all resource areas addressed in the FEIS" (BLM's Second Reply Brief at 4). Further, BLM indicates that a hard copy of the database was provided to appellant in late 1992. Id.

^{5/} Issuance of leases for parcels receiving acceptable bids at a competitive lease sale is not stayed pending review of an appeal from denial of a protest. 43 CFR 3120.1-3.

The essence of appellant's contention on appeal is not that there is any significant impact of leasing not considered in the EIS requiring preparation of a supplemental EIS, but rather that the difference between the terms of the lease sale for certain specific parcels and the leasing alternative analyzed in the EIS requires preparation of a supplemental EIS and a plan amendment. This appeal is based primarily on the contention that leasing terms for the sale parcels are inconsistent with the Maps 2-7 and 2-8 for the LSRA and Map 2-14 for the San Juan/San Miguel Planning Area in the EIS. In Exhibit E to appellant's brief the townships containing the lease parcels have been drawn in on copies of the maps from the EIS showing that the parcels lie within areas identified for protection. ^{6/} A similar contention is made with respect to the national forest lease. See Appellant's Brief, Exh. G.

The EIS itself recognized limitations on use of the maps alone to determine the appropriate stipulations:

The map scale used in this plan is chosen to facilitate public recognition of general resource localities. The cost to print maps at a different scale which would allow for greater detail in identifying resource and stipulation location is prohibitive when two factors are considered. First, maps used for locating resources are dynamic; continuing inventories and new information result in constant changes. The greater graphic specificity and detailed information which is possible by using a larger scale map is valid for only a short time after the maps are printed. Second, the maps in this document are for the purpose of helping the reader, that is, the decision maker and the interested public, understand the nature of the proposed action and the alternatives. The map scale chosen achieves this purpose by graphically providing a general sense of the location of the resources in question. No greater scale is needed to understand generally for each resource/planning area the spacial relationships between the oil and gas resources and the various types of stipulations considered.

Each Resource Area Office has the detailed, larger scale working maps and/or files that are used for management and inventory purposes. Anyone requiring information about specific localities, or areas too small to be clearly defined on the plan amendment maps, or large areas whose boundaries may be indistinct at this scale, should contact the appropriate Resource Area Office. An additional reason for contacting the Resource Area Office is to check on the latest status of some boundaries. The protective measures discussed in this plan would be applied as required by the plan decisions, and as new inventories show the

^{6/} While the locations are not free from doubt in view of the relatively small scale of the maps in the EIS which do not identify township and range, the record does not contradict appellant's assertion as to the location of the tracts.

the expansion or contraction of some resources, for example, elk crucial winter habitat, the area of applicability will change.

(EIS at 1-2). ^{7/} Mitigation measures "determined to be necessary to protect resource uses or values" are found at Appendix E (EIS at 2-6). The EIS indicates use of no surface occupancy protection within the LSRA under the proposed alternative to protect nesting sites and habitat for several wildlife species including Peregrine Falcon, Bald Eagle, and Sandhill Crane (Table 2-18 at 2-29). Such protection is also indicated for protection of sensitive and threatened plant species as well as recreational and scenic values within certain areas (EIS, App. E. at E-4). In the SJRA, the EIS discloses that the proposed alternative involves use of no surface occupancy limitations to protect numerous archeological sites, wildlife sites, and other scenic and recreational sites such as river canyons (EIS Table 2-18 at 2-30; App. E at E-5). Timing limitations were called for in the EIS for certain types of wildlife protection sites (e.g., Desert Bighorn sheep lambing sites) in both the LSRA and the SJRA (EIS App. E at E-6 through E-8).

[2] The Council on Environmental Quality regulations dealing with the need for a supplemental EIS provide, in pertinent part, that a supplemental EIS shall be prepared if an "agency makes substantial changes in the proposed action that are relevant to environmental concerns." 40 CFR 1502.9(c)(1)(i). We find that appellant's reliance on the map boundaries alone to determine the proper leasing stipulations constitutes a misreading of the EIS. It is clear from review of the EIS that the stipulations were developed to mitigate potential impacts of oil and gas leasing to certain natural resource values. The maps developed in the EIS provide a representation of locations where those resource values may be found, but both the BLM and FS EIS rejected a simplistic reliance on map boundaries to determine the applicability of leasing stipulations. Thus, we are unable to conclude that the lease sale is so different from the alternative analyzed in the EIS as to require preparation of a supplemental EIS. Cf. Colorado Environmental Coalition, 125 IBLA at 222 (leasing determination supported by site-specific analysis is not contrary to EIS which provided that leasing decisions are subject to modification based on site-specific study). Appellant has not argued on the basis of a site-specific analysis that resource values exist on the lease parcels which were overlooked by BLM or FS and which require (under the analysis in the EIS) mitigating stipulations not imposed by BLM

^{7/} The FS EIS also avoided the arbitrary use of map boundaries to define leasing alternatives. Thus, the EIS noted that:

"A 'lease' recommendation does not imply that there are no environmentally sensitive conditions within an area. Areas recommended as available for leasing with surface use may contain conditions which in a site-specific study will be found to fulfill the criteria requiring a 'no lease' recommendation. * * *. Any mineral leasing recommendation may be changed on a site-specific basis."
(FS EIS at IV-114 to IV-115).

or FS. 8/ Accordingly, we find that BLM was not required to supplement the EIS prior to leasing the appealed parcels.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed in part and the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

David L. Hughes
Administrative Judge

8/ In a prior appeal challenging a lease sale of parcels within the San Juan National Forest, we examined the relationship between BLM and FS in the leasing of national forest tracts subsequent to passage of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA), P.L. 100-203, §§ 5101--5113, 100 Stat. 1330-256 to 1330-263. Section 5102(d) of FOOGLRA provides in part that "[t]he Secretary of the Interior, or for National Forest lands, the Secretary of Agriculture, shall regulate all surface-disturbing activities conducted pursuant to any lease issued under this Act, and shall determine reclamation and other actions as required in the interest of conservation." 30 U.S.C. § 226(g) (1988). We held that:

"[W]here a party wishes to raise issues concerning Forest Service actions under its statutory and regulatory directives which do not impinge upon the Department of the Interior's own responsibilities, it is the Board's view that comity requires that the Board defer to the judgment of that agency and require that an appellant pursue any remedies in the forum which the Forest Service has provided."

Colorado Environmental Coalition, 125 IBLA at 220 (footnote omitted). Thus, to the extent CEC challenges the failure of FS to comply with

the planning statutes and regulations which it has the administrative responsibility for implementing, we find that appellant's proper recourse lies with the FS appeals procedures. Regarding allegations that issuance of the national forest lease violates NEPA, on the other hand, BLM also has an obligation to ensure compliance with this statute in leasing and, hence, BLM and this Board (on appeal) have the responsibility to review this issue. Id.