

INTERIOR BOARD OF LAND APPEALS

Colorado Environmental Coalition and the Wilderness Society

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COLORADO ENVIRONMENTAL COALITION
THE WILDERNESS SOCIETY

IBLA 2002-81

Decided June 4, 2004

Appeal from a decision of the Colorado State Office, Bureau of Land Management (BLM), denying protest of the inclusion of two parcels in a competitive oil and gas lease sale. COC 65203; COC 65205.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Land-Use Planning--Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

BLM's authority to conduct wilderness reviews or establish new wilderness study areas expired on October 21, 1993, and, absent congressional authorization, BLM may not establish, manage or otherwise treat public lands, other than Congressionally designated wilderness under 43 U.S.C. § 1782 (2000), as a wilderness study area or as a wilderness under the land use planning provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1712.

2. Federal Land Policy and Management Act of 1976: Land-Use Planning--Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

BLM has authority under the Federal Land Policy and Management Act to prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values, which may include characteristics that are associated with the concept of wilderness.

3. Federal Land Policy and Management Act of 1976: Land-Use Planning--Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

When considering a proposal to preserve land having wilderness characteristics, BLM will continue to manage public lands according to existing land use plans. During the planning process and concluding with actions after the planning process, BLM will not manage those lands under a congressionally designated non-impairment standard, nor manage them as if they are or may become congressionally designated wilderness areas, but through the planning process BLM may manage them using special protections to protect wilderness characteristics.

4. Environmental Policy Act--Environmental Quality: Environmental Statements--Federal Land Policy and Management Act of 1976: Land-Use Planning--Federal Land Policy and Management Act of 1976: Wilderness--Oil and Gas Leases: Generally--Wilderness Act

When BLM prepares an environmental analysis for a proposed action to issue an oil and gas lease in an area open to leasing under a governing resource management plan, it is not required to postpone leasing under its existing resource management plan in order to consider a wilderness proposal from an advocacy group. Proposed designations that would require amendment of the existing resource management plan need not be considered each time BLM decides to grant a right to undertake an activity in conformity with the existing land use plan.

5. Federal Land Policy and Management Act of 1976: Land-Use Planning

The language of the provisions of the Federal Land Policy and Management Act pertaining to land use plans, 43 U.S.C. § 1712 (2000), does not establish a clear duty to revise a land use plan at any date certain, and does not create a duty to cease actions allowed under an existing plan while the existing plan is being revised.

6. Environmental Policy Act--Environmental Quality:
Environmental Statements--Federal Land Policy and
Management Act of 1976: Land-Use Planning--Oil and
Gas Leases: Generally

An environmental assessment of a proposal to issue an oil and gas lease which is tiered to a final environmental impact statement for a resource management plan or activity plan need not restate cumulative impacts or the no action alternative considered in the environmental impact statement to which the environmental assessment is tiered.

APPEARANCES: Susan Daggett, Esq., Denver, Colorado, for Appellants; Lyle K. Rising, Esq., Office of the Regional Solicitor, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Wilderness Society (Society) and the Colorado Environmental Coalition (Coalition) (collectively CEC) have appealed a September 26, 2001, decision issued by the Colorado State Office, Bureau of Land Management (BLM), denying their protest of the inclusion of parcels COC 65203 and COC 65205 in the August 9, 2001, Colorado competitive oil and gas lease sale.^{1/} On June 25, 2001, BLM issued a Decision Record setting out its decision to offer the parcels, and finding of no significant impact (Decision/FONSI), based on its Environmental Assessment (EA) CO-100-LS-00-033 EA. On August 8, 2001, appellants filed their protest of the June 25, Decision/FONSI, and BLM denied their protest in its September 26, 2002, decision. On September 28, BLM issued leases for each of the two parcels, effective October 1, 2001. Lease COC 65203 was issued to Medallion Exploration; lease COC 65205 was issued to Yates Petroleum Corporation. Appellants filed their notice of appeal on November 5, 2001.

The two tracts are adjacent and are located in northwestern Colorado. Lease COC 65203 contains 476.44 acres in section 19, T. 11 N., R. 100 W., Sixth Principal Meridian, and lease COC 65205 contains 1,520 acres immediately to the west in sections 22, 23, and 24, T. 11 N., R. 101 W. Neither of the tracts is in a wilderness or wilderness study area (WSA). See, EA at 14. However, the appellants' principal concern is that a portion of each lies in an area of the Vermillion Basin that

^{1/} The parcels had been nominated for competitive leasing in a March 23, 2000, letter from Marathon Oil Company.

appellants believe warrants protection as wilderness. (Statement of Reasons (SOR), 1-2, Ex. 1.) They note that a Colorado Representative has introduced legislation proposing designation of the area as wilderness. (SOR, Ex. 15.)

Appellants assert that BLM's EA failed to consider the "no lease" alternative, required by 42 U.S.C. § 4332(2)(E) (2000), in violation of the National Environmental Policy Act (NEPA). (SOR, 10-14.) They contend that BLM failed to analyze the effectiveness of its mitigation measures when determining that leasing would have no significant impact. (SOR, 14-18.) Finally, they contend that BLM failed to analyze the cumulative and indirect effects of leasing these parcels in the context of planned oil and gas development in the region.

In its Answer, BLM notes that the Board has held that the fact that a parcel may lie within appellants' wilderness proposal for the Vermillion Basin does not automatically justify elimination of that parcel from an oil and gas lease sale. In Marathon Oil Co., 139 IBLA 347 (1997), BLM deleted parcels that were within an area the Coalition had proposed as a wilderness area from an oil and gas lease sale in order to restudy the wilderness characteristics of the area. 139 IBLA at 349. However, BLM's resource management plan (RMP), identified the area including the parcels as being open to oil and gas leasing. The Board set aside and remanded the decision because BLM failed to prepare a site-specific analysis to support its deletion of the parcels from the sale.

In the case now before us, BLM determined that the two parcels did not warrant protection as wilderness. BLM further points out that in a Coalition appeal of the denial of its protest of issuance of an oil and gas lease in the Vermillion Basin, the Board held that BLM's action was supported by BLM's April 26, 1989, Little Snake RMP (which governs activities on public lands in the Little Snake Resource Area) and by BLM's 1991 Colorado Oil and Gas Environmental Impact Statement (EIS). Colorado Environmental Coalition, 142 IBLA 49 (1997).

Appellants refer to the "Citizen's Wilderness Proposal" and BLM's 1997 roadless review that occurred after the RMP and EIS were prepared. Appellants contend:

BLM has since committed to amending its RMP's specifically to consider whether to protect the lands with newly defined wilderness character. BLM is apparently poised to initiate an RMP amendment for the Vermillion Basin for precisely these reasons, and Appellants have repeatedly urged that the contested area of the Vermillion Basin be

considered as part of an RMP amendment process in order to allow for a more comprehensive analysis of its value as wilderness.

(SOR, 9.)

At this point, it is helpful to understand how the land in the two tracts relates to appellants' wilderness proposal. Both tracts lie at the northwestern edge of the proposal area, and only a small portion of each of the tracts lies within the boundary of that proposal area. During the 1997 roadless review to which appellants refer, BLM determined that a route in the area designated as VR-A-1 was a road that separated the land in the tracts from the rest of appellants' wilderness proposal area. Appellants dispute BLM's characterization of the route as a road, asserting that "[n]o part of the road is maintained and the segments that are even identifiable as a route are barely passable by a four-wheel-drive vehicle." (SOR, 6-7.) In its Answer, BLM asserts that because of the presence of Route VR-A-1, the area under lease is not part of any RMP amendment, and that "excluding the portions of the lease that have the No Surface Occupancy (NSO) Stipulation, the closest this potential future WSA comes to either parcel is about half a mile." (Answer, 8.)

In a Road/Way Analysis dated July 15, 1997, Robert W. Schneider described VR-A-1 as a 4 mile long road in sections 19 and 30 in T. 11 N., R. 100 W., and sections 25, 36, and 35 in T. 11 N., R. 101 W. (SOR, Ex. 10.) The route allows vehicle access along the west side of Vermillion Creek. Tract COC 65203 comprises most of the acreage in section 19, T. 11 N., R. 100 W., where the northern portion of the road is located. Immediately to the west of section 19 are sections 22, 23, and 24 of T. 11 N., R. 100 W., where tract COC 65205 is located. Section 24 is north of section 25 where the middle segment of the road is located. Schneider's July 1997 evaluation indicated that the road had been bladed and maintained with a "dozer." He provided the following comments:

Washes at north and south ends of the route have been cleaned out. In the middle, the route is not discernable. Route is a general travel route. Halogeton is evident in areas of maintenance suggesting soil disturbance. Intermittent route. According to Wright Dickenson, dozer used every 2 to 5 years to reopen wash crossings. However, based upon an on-the-ground inspection and follow-up conversations with Mr. Dickenson, maintenance of the middle portion of this route is done by the passage of vehicles. When an obstacle is encountered, travel patterns indicate operators go around the obstacle rather than repair or maintain the route. There is no single identifiable route in this area. The middle portion of this route is important for the movement of cattle in the winter during ice conditions.

In determining whether an area may be subject to further consideration of wilderness characteristics, BLM has distinguished roads that had been actively maintained from ways that were maintained solely by the passage of vehicles. *E.g., Edward H. Howe*, 76 IBLA 27, 28-29 (1983). The presence of ways did not render an area “roaded” so as to eliminate that area from further evaluation as wilderness. *Id.*

On November 25, 1997, John E. Husband, the Craig Field Manager, accompanied Dickenson to inspect the route in person. In a December 5, 1997, addendum to the July 1997 Route/Way analysis, Husband commented that Dickenson “said that he had personally done the cat work for the major crossing in section 25 - a portion of the route that was determined not to have mechanical maintenance improvement.” Schneider’s team had not gone that far on the route, but had only “gone as far where the evidence of the route became non-evident - looked a little farther and finding no evidence of a route, went no further.” The team had missed the portion of the route with the crossing, and the Field Manager changed the designation of the route to a road for its entire length.

Appellants challenge this finding on the basis of a field review conducted by the Wilderness Society described in an October 14, 1997, letter to BLM. (SOR, 6, Ex. 13.) They contend that even the ends of the route do not meet a definition of a road so as to disqualify the area as roadless, asserting that both segments “are barely passable in four-wheel drive vehicles, and clearly have not been maintained.” *Id.*

In essence, appellants’ principal arguments proceed as follows: (1) because BLM improperly determined that route VR-A-1 was a road, BLM improperly separated portions of the leases from the other lands in their wilderness proposal; (2) because appellants proposed these lands as wilderness, BLM was obliged to give greater consideration to a “no leasing” alternative and its decision to issue the leases should be set aside for its failure to do so. Before analyzing these issues, we will address BLM’s duties with respect to land that appellants have proposed for wilderness designation. Because the nature of these duties lies at the heart of this appeal, a proper understanding of the issues raised by appellants requires some understanding of BLM’s wilderness review process generally, and how that process is applicable to the tracts at issue in this appeal.

When Congress enacted the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701-1782 (2000), it required the Secretary to “prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values * * *.” 43 U.S.C. § 1711(a) (2000). Under section 603 of FLPMA, 43 U.S.C. § 1782 (2000), the Secretary was directed to review roadless areas of 5,000 acres or more identified during the inventory required by § 1711(a) as having wilderness characteristics and to report to the President his recommendation as to the

suitability or nonsuitability of each area for preservation as wilderness within 15 years from the date of FLPMA's enactment. Under § 1782(b), the President was required to advise Congressional leaders of his recommendations with respect to wilderness designations within two years after receipt of the Secretary's report.

When the time periods now set forth in 43 U.S.C. § 1782 were proposed, this Department objected, characterizing them as "too short" and "unrealistic."^{2/} Despite this Department's objection, Congress retained the deadlines, and the House committee stated: "The Committee expects the Secretary to establish priorities in a manner which will expedite the review process and which will cause minimum interference with existing multiple use management of the public lands." (Emphasis added.)^{3/}

Thus, unlike the inventories under § 201 that are conducted "on a continuous basis," the Congressionally mandated requirement that the review and designation of lands as having wilderness characteristics under § 603 was to be completed within 15 years from the date of enactment of FLPMA is clear and unambiguous. The Secretary was required to report his recommendations to the President no later than October 21, 1991, and the President was required to report his recommendations to Congress no later than October 21, 1993.

To accomplish its task within the statutory time frame, BLM divided the § 603 review process into three phases: (1) an inventory phase during which BLM identified those roadless areas of the public lands possessing wilderness characteristics; (2) the study phase during which BLM studied the uses, values, and resources of those lands identified in the inventory as possessing wilderness characteristics to determine which areas would be recommended as suitable for wilderness designation and which would be recommended as nonsuitable; and (3) the reporting phase which involved the actual forwarding or reporting of recommendations as to the suitability or nonsuitability of the various areas for preservation as wilderness through the Secretary of the Interior to the President. See National Outdoor Coalition, 59 IBLA 291, 292-93 (1981). The inventory phase was a

^{2/} Summary of Major Problem Areas in Subcommittee Print No. 2, attached to letter dated Nov. 21, 1975, from Jack Horton, Assistant Secretary of the Interior, to Hon. James A. Haley, Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives, appended to H.R. Rep. No. 1163, 94th Cong., 2d Sess. 50 (1976), reprinted in Committee on Energy and Natural Resources, Legislative History of the Federal Land Policy and Management Act of 1976 (FLPMA Legislative History), at 480 (1978), reprinted in 1976 U.S.C.C.A.N. at 6224.

^{3/} H.R. Rep. No. 1163, 94th Cong., 2d Sess. 17 (1976), reprinted in FLPMA Legislative History at 447 (1978), reprinted in 1976 U.S.C.C.A.N. at 6191.

two-step process. In the initial inventory phase, BLM identified lands that clearly and obviously did not possess wilderness characteristics and others that may possess wilderness characteristics. The latter lands became subject to intensive inventory, id., after which areas not found to possess wilderness characteristics usually became subject to multiple use management. Lands possessing wilderness characteristics that warranted further study were designated wilderness study areas (WSA's) and BLM has been required to manage WSA's so as not to impair their suitability for protection as wilderness. 43 U.S.C. § 1782(c) (2000).

BLM's inventory decisions resulted in numerous appeals. Those seeking access to lands filed appeals when BLM included those lands in WSA's. E.g., Tri-County Cattlemen's Association, 60 IBLA 305 (1981); California Association of Four-Wheel Drive Clubs, Inc., 60 IBLA 240 (1981); C & K Petroleum Co., 59 IBLA 301 (1981); National Outdoor Coalition, 59 IBLA 291 (1981). Those seeking to preserve lands as wilderness filed appeals when BLM excluded those lands from further wilderness study. Committee for Idaho's High Desert, 85 IBLA 112 (1985); Utah Wilderness Association, 72 IBLA 125 (1983); Richard J. Leaumont, 54 IBLA 242, 88 I.D. 490 (1981); Save the Glades Committee, 54 IBLA 215 (1981); Sierra Club, 53 IBLA 159 (1981). For the most part, the inventory decisions were completed by the early 1980's. See Southern Utah Wilderness Alliance, 158 IBLA 212, 214 (2003); Southern Utah Wilderness Alliance, 123 IBLA 13, 18 (1992); Southern Utah Wilderness Alliance, 122 IBLA 17, 21 n.4 (1992). Once decisions excluding land from further study became final, those lands were no longer subject to the nonimpairment requirement.

Notwithstanding the finality of BLM's decisions excluding certain areas from designation as wilderness, wilderness advocates pressed for the wilderness designation of some of the excluded areas and challenged BLM decisions authorizing land uses such as oil and gas leasing that might impair the wilderness characteristics they perceived to exist in those areas. Consistent with the Congressional mandate that the wilderness review process be expedited to minimize interference with multiple use management, this Board has not looked upon such challenges with a great deal of favor. See Southern Utah Wilderness Alliance, 158 IBLA at 215; Colorado Environmental Coalition, 149 IBLA 154, 156 (1999); Southern Utah Wilderness Alliance, 123 IBLA at 18; Southern Utah Wilderness Association, 122 IBLA at 21 n.4. We have held it is proper for BLM to deny protests of oil and gas lease sales based on assertions of the wilderness character of the lands when the administrative determination that the land was not wilderness in character was made in the 1980's. E.g., Southern Utah Wilderness Alliance, 122 IBLA at 21. Similarly, we have held that BLM may properly administer those lands for other purposes even when the land had been proposed for wilderness designation in pending legislation. Southern Utah Wilderness Alliance, 123 IBLA at 18. The time for taking appeals from

the inventory decisions had long since passed, and we found that the doctrine of administrative finality precluded appellants from challenging those decisions by protesting actions taken by BLM to administer the land for other purposes.

In Colorado Environmental Coalition, 142 IBLA at 51-52, we adhered to these holdings with respect to land within appellants' wilderness proposal area:

At the outset, we note that the time for taking an appeal from BLM's Decision that the Vermillion Basin (North Unit), including the land at issue here, was not suitable for designation as a WSA has long since passed. The BLM provided notice to the public, including CEC, of its Final Initial Wilderness Inventory Decision by publishing notice of it in the Federal Register on August 31, 1979. See 44 Fed. Reg. 51339 (Aug. 31, 1979). The CEC had 30 days following the date of publication to file an appeal therefrom, pursuant to 43 C.F.R. § 4.410(a). It did not do so. Thus, we conclude that the doctrine of administrative finality precludes CEC from later challenging BLM's decision. See San Juan County Commission, 123 IBLA 68, 71 (1992), and cases cited. We know of no legal mandate that requires BLM to manage the Vermillion Basin (North Unit) area on the basis that, although finally rejected as a WSA, it might, at some unspecified future time, be designated by Congress as a protected wilderness area. See Southern Utah Wilderness Alliance (SUWA), 128 IBLA 52, 65-66 (1993); SUWA, 122 IBLA 17, 21 (1992).

Despite the fact that the Coalition was a party to that case, CEC has not addressed that decision or offered any explanation why that decision and the other decisions cited therein are not precedents that govern the disposition of this appeal.

Even though the date had long passed for making wilderness recommendations, BLM subsequently began to consider new proposals submitted by wilderness advocates concerning areas not included in its earlier recommendations. On June 18, 1997, BLM established new Colorado Wilderness Review Procedures (CWRP). (SOR, Ex. 7.) CWRP acknowledged that the period for making wilderness recommendations under section 603 of FLPMA had expired, but invoked authority under the general inventory and land use planning provisions of that statute. (CWRP, 1.) The first step in the process was to determine whether the units proposed by the Coalition were roadless. (CWRP, 2.) As part of that process, BLM determined that route VR-A-1 was a road.

As noted previously, portions of the two tracts are within the area of the Vermillion Basin the Coalition has proposed as a wilderness area. (EA, 14.)

Referring to a BLM “policy” for managing land which had been proposed as wilderness by the Coalition under which “discretionary actions which will have irreversible or irretrievable [effects] will be temporarily in abeyance until the area is evaluated for wilderness characteristics,” the EA states that the area proposed for leasing “is not within a roadless area large enough to be eligible for further analysis.” Id. Appellants dispute this finding, contending that BLM erroneously concluded that route VR-A-1 was a road. (SOR 5-7, Exs. 10-14.) Appellants contend that the land should not have been leased, and should be further evaluated for wilderness characteristics with the other land in the Vermillion Basin CEC believes to be suitable for wilderness designation. However, applying the same reasoning that we used in the above noted decisions, we find that appellants’ contention that route VR-A-1 is not a road provides no basis for reversing BLM’s decision to lease the two tracts. In Colorado Environmental Coalition, 142 IBLA 49, our decision to affirm BLM’s decision denying CEC’s protest of the issuance of leases within the Coalition’s proposed Vermillion Basin wilderness area involved no dispute concerning a road. We concluded that when determining the environmental consequences of issuing a lease, BLM was not required to consider the impact of leasing land on the possible designation of that land as wilderness. 142 IBLA at 53. Again, appellants have not addressed our ruling in that case, nor have they offered any explanation why that ruling should not govern the disposition of this appeal.

[1, 2, 3] The lawfulness of BLM efforts to consider new wilderness proposals in Utah was challenged by that State’s government, and in settlement of that litigation, the Department stipulated that its authority “to conduct wilderness reviews, including the establishment of new WSAs, expired no later than October 21, 1993,” and that “[a]s a result, the [Department is] without authority to establish Post-603 WSA’s.” Utah v. Norton, No. 96-C-870 B (D. Utah Apr. 14, 2003) (Stipulation No. 3). That stipulation nevertheless recognized the Department’s authority to manage land dedicated to a specific use, to develop and revise land use plans and designate areas of critical environmental concern, and to take any action necessary to prevent unnecessary and undue degradation of public lands. The Department also stipulated that it “would not establish, manage or otherwise treat public lands, other than Section 603 Congressionally designated wilderness, as WSAs or as wilderness pursuant to the Section 202 [of FLPMA, 43 U.S.C. § 1712,] absent congressional authorization,” but that stipulation further provided:

However, nothing herein is intended to diminish BLM’s authority under FLPMA to prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values, as described in FLPMA Section 201. These resources and other values may include, but

are not limited to characteristics that are associated with the concept of wilderness.

Utah v. Norton, *supra* (Stipulation 7). BLM's Director has stated that "the terms of the settlement will be applied Bureau-wide" and that the "settlement affects all states." (Instruction Memorandum (IM) 2003-274 (Sept. 29, 2003), at 1.)

The IM characterizes the settlement as having the following effect upon proposals by wilderness advocates:

BLM will continue to manage public lands according to existing land use plans while new information (e.g., in the form of new resource assessments, wilderness inventory areas or 'citizen's proposals') is being considered in a land use planning effort. During the planning process and concluding with the actions after the planning process, BLM will not manage those lands under a congressionally designated non-impairment standard, nor manage them as if they are or may become congressionally designated wilderness areas, but through the planning process BLM may manage them using special protections to protect wilderness characteristics.

(IM 2003-274 at 2.) The principles recognized by the United States in that litigation merely reflect the requirements of statutory provisions that have been in effect since FLPMA was enacted in 1976, and they govern the resolution of issues raised in this appeal.

[4, 5] Thus, while BLM lacks authority to designate new WSA's, it retains authority to consider wilderness characteristics when amending its RMP's. The issue in this appeal is whether BLM is required to postpone leasing under its existing RMP and the 1991 Oil and Gas Plan while considering appellants' wilderness proposal. In Southern Utah Wilderness Alliance, 122 IBLA 165 (1992), a wilderness advocacy group challenged a BLM decision to approve an oil and gas exploration project contending that BLM failed to consider designation of the land as wilderness or an area of critical environmental concern as an alternative land use under the RMP. We recognized that such designations would require amendment of the existing RMP and held that alternative uses of the land "need not be considered anew each time BLM decides to lease the land or grant leave to undertake an activity." 122 IBLA at 172-73. We continue to adhere to this holding. E.g., Southern Utah Wilderness Alliance, 160 IBLA 225, 231 (2003). One court noted: "The language of [43 U.S.C. §] 1712 [pertaining to land use plans] does not, however, establish a clear duty of when to revise the plans, nor does it create a duty to cease actions during such revisions." ONRC v. Bureau of Land Management, 150 F.3d 1132, 1139 (9th Cir. 1998).

We turn now to appellants' arguments that BLM's decision should be reversed because BLM failed to address a no leasing alternative and failed to analyze the cumulative and indirect effects of leasing the tracts in question in the context of planned oil and gas development in the region. The EA referred to the "no action alternative" as the continuation of present management under the 1991 Colorado Oil and Gas Leasing EIS, under which the land would be leased with no further need of environmental analysis. (EA at 4.) The "no leasing alternative" was considered but eliminated, since all of the land to be leased fell outside BLM's roadless review boundary. *Id.* We find that BLM did not apply the correct definition of the "no action" alternative. Having identified the proposed action as leasing the land in the EA, it necessarily follows that the "no action" alternative to that specific proposal is not to issue the leases. Having found this error, we will examine its impact.

[6] Appellants' arguments concerning the absence of an analysis of a no leasing alternative or of cumulative and indirect effects in the EA fail for several reasons. In Southern Utah Wilderness Alliance, 159 IBLA 220, 242 (2003), we reiterated our holding that "an EA which is tiered to a final EIS need not restate the cumulative impacts analysis or a no action alternative considered in the document to which the EA is tiered," citing Blue Mountains Biodiversity Project, 139 IBLA 258, 267 (1997); Oregon Natural Resources Council, 115 IBLA 179, 186 (1990); In re Long Missouri Timber Sale, 106 IBLA 83, 87 (1988), reconsideration denied (1989); In re Upper Floras Timber Sale, 86 IBLA 296, 311 (1985); Southern Utah Wilderness Alliance, 158 IBLA 212 (2003), and citations therein. In this case, BLM relies on its April 26, 1989, Little Snake RMP, which governs activities on public lands in the Little Snake Resource Area, and its 1991 Colorado Oil and Gas EIS.

Appellants contend that these documents are no longer adequate because the issuance of the RMP and EIS preceded their wilderness proposals. (SOR at 14.) In doing so the appellants overlook the fact that we have previously addressed the adequacy of the RMP and EIS as supporting documents in the context of oil and gas leasing within their proposed Vermillion Basin wilderness area:

BLM considered a varied program of leasing and no leasing in the Little Snake Resource Area: 765,610 acres (Standard Terms), 388,650 acres (Controlled Surface Use), 860,220 acres (Timing Limitation), 57,894 acres (No Surface Occupancy), and 35,380 acres (No Leasing). (FEIS at 2-13 through 2-15, 2-26.) Such leasing/no leasing was further broken down on the basis of four regions in the Resource Area, which were defined by their relative potential for producing oil and gas and identified on a map of the area. *Id.* The BLM also projected that there would be a total of 550 wildcat and development wells, distributed primarily in the regions with moderate to high oil and gas potential,

which would disturb a total of 6,672 acres at any one time and 12,350 acres over the 20-year life of the plan. Id. at 2-2, B-2. Moreover, the FEIS demonstrates that BLM considered the impact of oil and gas leasing and subsequent oil and gas exploration and development throughout the 5.145-million acre study area. Also, BLM thoroughly reviewed the many specific potential environmental impacts taking into account the diversity of land, plant and animal species, and other environmental factors across that area. Id. at 2-31, 3-1 through 3-36, and 4-1 through 4-31.

Colorado Environmental Coalition, 142 IBLA at 53. The Coalition was a party to that case but offers no explanation why that decision and the other decisions cited in that decision do not govern our disposition of this appeal.

In support of their argument that BLM failed to consider a “no lease” alternative, appellants refer to Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228 (9th Cir. 1988), cert. denied, 489 U.S. 1066 (1989). In that case, the court stated: “NEPA requires that federal agencies consider alternatives to recommended actions whenever those actions ‘involve[] unresolved conflicts concerning alternative uses of available resources,’” citing 42 U.S.C. § 4332(2)(E) (1982). In that case, BLM issued leases in a National Forest area that remained open to oil and gas exploration “pending the development of management plans which will consider whether to recommend the area for inclusion in the wilderness system” but for which “development activities that might reduce the land’s wilderness potential are prohibited.” 852 F.2d at 1226.

The quoted language shows that the Bob Marshall Alliance case is inapposite to the instant appeal for several reasons. Unlike the Bob Marshall Alliance case, BLM’s management plan was completed with the issuance of the Little Snake RMP upon which BLM relied in this case. Clearly that plan is not “pending.” The conflicts identified as “unresolved” in the Bob Marshall Alliance case were resolved when BLM adopted its RMP. The resolution of conflicts effected by BLM’s adoption of its RMP does not unravel when a proponent of a different land use makes a new proposal. Unlike the Bob Marshall Alliance case, there is no similar prohibition on development activities that might reduce the wilderness potential of the two tracts in question in this case.

Appellants contend that the decision to issue the leases is “highly controversial because of the dispute over whether route VR-A-1 qualifies as a ‘road’ that would eliminate the area from further consideration of the area as wilderness.” (SOR, 14.) However, as previously noted, the disposition of this appeal does not hinge on the status of route VR-A-1. In Colorado Environmental Coalition, supra, our decision to

affirm BLM's decision denying CEC's protest of the issuance of leases within the Coalition's proposed Vermillion Basin wilderness area involved no dispute regarding the designation of a route as a road. In that case we concluded that when determining the environmental consequences of leasing land in the Vermillion Basin, BLM was not required to consider the impact of the proposed action on a possible designation of that land as wilderness. 142 IBLA at 53. Recognizing that BLM may have indicated some willingness to consider amending its RMP with respect to other land in the Vermillion Basin, there is no evidence that BLM has taken any action that would warrant a departure from our prior decision with respect to the two tracts at issue in this appeal.

We turn now to appellants' argument that BLM failed to analyze the effectiveness of its mitigation measures when determining that leasing would have no significant impact. (SOR, 14-18.) Appellants acknowledge that BLM has excluded surface-disturbing activities from riparian zones, imposed timing restrictions to protect wildlife needs, and required that facilities minimize impact to visual resources in Class II visual resource management (VRM) areas. They contend, however, that mitigation measures may not be enforced because they are subject to waivers and assert that some BLM stipulations are subject to frequent exceptions, citing "routinely granted exceptions to timing restrictions designed to protect winter range."^{4/} (SOR at 16.)

In its Answer, BLM explains that it waives mitigation measures only when the resource for which the measure was developed would not be subject to significant impacts. (Answer, 9.) Referring to the chart listing exceptions, BLM contends that the chart does not demonstrate "an alleged willingness on BLM's part to grant exceptions as a matter of course," noting that the data represent action on formal requests for a waiver, and that it is customary for an operator to consult informally with BLM before going to the expense of preparing a formal application and an operator will usually decide against filing an application when advised that resource conditions do not warrant a waiver. (Answer, 9.) BLM further notes that the vast majority of the waivers are granted for brief periods rather than for an entire season. (Answer, 9.)

Appellants argue that the reclamation BLM is requiring may not occur, asserting that "BLM has a significant problem with abandoned and inactive wells." (SOR, 16-17, Ex. 22.) BLM disputes this assertion, noting that the term "abandoned wells" does not refer to wells that are unreclaimed and actually includes wells that have been completed and reclaimed. (Answer, 13.) The term "orphan" well is

^{4/} Appellants refer to a chart listing Wildlife Winter Range Exceptions for 2000-2001. (SOR, Ex. 21.)

applied to a well having no responsible party to reclaim it, and the data provided by appellant show that when the data was compiled Colorado had only one orphan well.

The leases contain mitigating stipulations intended to protect the Class II VRM areas, where the objective is to retain the existing character of the landscape. The stipulations require that “[t]he level of change to the landscape should be low,” that “[m]anagement activities may be seen but should not attract the attention of the casual observer,” and that “[a]ny changes must repeat the basic elements of form, line, color, and texture found in the predominate features of the characteristic landscape.” These stipulations apply to those portions of the leases that lie within the approximate boundaries of appellants’ wilderness proposal. Appellants contend that BLM has not explained how some of the mitigation measures will function to protect particular resources, and fault BLM for not explaining how facilities can be constructed that would satisfy these conditions. (SOR, 17.) However, the explanation appellants seek can only be provided when specific activities are proposed. BLM enforces the above described requirements for mitigating impact in Class II VRM areas by denying approval of nonconforming proposals. E.g., Eric L. Price, 116 IBLA 210 (1990); Anita Robinson, 71 IBLA 380 (1983). Accordingly, we conclude that appellants’ concerns about future enforcement of the Class II VRM area stipulations provide no basis for reversing BLM’s decision.

Therefore, 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 as modified by this decision.

R.W. Mullen
Administrative Judge

I concur:

T. Britt Price
Administrative Judge