

INTERIOR BOARD OF LAND APPEALS

Western Slope Environmental Resource Council and
High Country Citizens Alliance

164 IBLA 329 (February 8, 2005)

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WESTERN SLOPE ENVIRONMENTAL RESOURCE COUNCIL
HIGH COUNTRY CITIZENS ALLIANCE

IBLA 2003-333

Decided February 8, 2005

Appeal from a decision of the Acting Deputy State Director, Colorado State Office, Bureau of Land Management, dismissing a protest to offer nine parcels of Federal land at a competitive oil and gas lease sale. COC66700 NCO COC62868; COC66702 NCO COC62869; COC66704; COC66705; COC66714; COC66715; COC66716; COC66717 NCO COC66472; and COC66722.

Decision affirmed.

1. Environmental Policy Act--Environmental Quality:
Environmental Statements--National Environmental
Policy Act of 1969: Finding of No Significant Impact--Oil
and Gas Leases: Competitive Leases

A BLM decision dismissing a protest to a competitive oil and gas lease sale is properly affirmed on appeal where the appellant fails to demonstrate with objective proof that BLM's decision was premised on a clear error of law or demonstrable error of fact, or that BLM's analysis failed to consider a substantial environmental question of material significance to the proposed action. BLM did not fail to consider alleged significant unique impacts associated with coalbed methane production in the Piceance Basin where no evidence was produced establishing that significant impacts had occurred or were reasonably likely to occur in connection with coalbed methane production. Evidence of asserted significant impacts associated with coalbed methane production in other basins is insufficient to establish that those impacts would occur on parcels in the Piceance Basin, absent objective proof that the conditions that exist in the Piceance Basin will result in the asserted significant impacts.

APPEARANCES: Mike Chiropolos, Esq., and Brad A. Bartlett, Esq., Boulder, Colorado, for appellants; Laura Lindley, Esq., and Robert C. Mathes, Esq., Denver, Colorado, for Gunnison Energy Corporation; and Susan L. Aldridge, Esq., Thomas Davidson, Esq., and Michael J. Wozniak, Esq., Denver, Colorado, for SG Interests VII, Ltd.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Western Slope Environmental Resource Council (WSERC) and High Country Citizens Alliance (HCCA) (hereinafter “appellants,” unless individually noted) have appealed from a July 2, 2003, decision of the Acting Deputy State Director, Colorado State Office, Bureau of Land Management (BLM), dismissing their May 7, 2003, protest to BLM’s decision to offer nine parcels of Federal mineral estate land at the May 8, 2003, competitive oil and gas lease sale. The nine oil and gas lease parcels (COC66700 NCO COC62868; COC66702 NCO COC62869; COC66704; COC66705; COC66714; COC66715; COC66716; COC66717 NCO COC66472; and COC66722) overlie the Piceance Deep Coal Field. Parcels COC66700 NCO COC62868 and COC66702 NCO COC62869 are within the Grand Mesa, Uncompahgre, and Gunnison (GMUG) and the White River (WR) National Forests, and thus under the administrative jurisdiction of the Forest Service (FS), U.S. Department of Agriculture. The remaining parcels are within BLM’s Uncompahgre Basin Resource Area. The United States owns the underlying mineral estate of all the lands involved, with the surface estate in Federal or private hands.

In their Petition for Stay, appellants describe the Piceance Basin as “one of the major CBM [coal bed methane gas] basins in the West,” generally extending from western Colorado into eastern Utah. (Petition for Stay at 5.) They note that all of the parcels overlie the Piceance Deep Coal Field, which is the “primary CBM producing field in the Piceance [B]asin,” and thus will very likely be subjected to CBM development in the near future. ^{1/} Id.

BLM and FS had, using a “Reasonably Foreseeable Development” (RFD) scenario, analyzed the potential environmental impacts of leasing the nine parcels and other Federal lands, thus providing for oil and natural gas exploration and development, in three environmental impact statements (EIS’s). ^{2/} BLM had

^{1/} The nine parcels encompass a total of 9,651.13 acres of land in Ts. 9 and 12 S., R. 89 W., Ts. 11, 12, and 13 S., R. 90 W., and T. 15 S., R. 91 W., Sixth Principal Meridian, Gunnison, Pitkin, and Delta Counties, Colorado.

^{2/} The EIS’s were prepared by BLM and FS in order to satisfy their obligation under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as
(continued...)

prepared a September 1988 EIS in connection with its promulgation of the July 26, 1989, Uncompahgre Basin Resource Management Plan (RMP), which constituted BLM's basic land use plan, and FS had prepared two EIS's specifically with respect to proposed oil and gas leasing and related exploration and development in the GMUG National Forest (1993 GMUG National Forest Oil and Gas Leasing EIS), and in the WR National Forest (1992 WR National Forest Oil and Gas Leasing EIS).

Appellants' principal contention is that, in deciding to go forward with leasing, BLM failed to adequately consider the "unique and potentially severe" environmental impacts of leasing, especially those associated with expected CBM development. (Protest, dated May 7, 2003, at 1.) They argued in their protest, and now before the Board, that no environmental review document satisfied the requirements of section 102(2)(C) of NEPA, as amended, 42 U.S.C. § 4332(2)(C) (2000), since CBM development "differ[s]," from the standpoint of likely environmental impacts, from the "conventional" development of other natural gas resources, which had been considered in the EIS's. Id.

Prior to deciding whether to offer the nine parcels at issue for a competitive oil and gas lease sale, BLM and FS prepared, in each case, a "Documentation of Land Use Plan Conformance and NEPA Adequacy" (DNA), or a "NEPA Validation & Verification Form for Oil & Gas Leasing," which concluded that the potential environmental impacts of leasing the parcel had already been adequately considered in existing environmental review documents, and that offering the parcels conformed to the applicable land use plan. The Uncompahgre Basin Resource Area Office, Colorado, BLM, then decided to offer the nine parcels for competitive oil and gas leasing, and then issued a "Notice of Competitive Lease Sale" on March 24, 2003.^{2/} Appellants

^{2/} (...continued)

amended, 42 U.S.C. § 4332(2)(C) (2000), to consider the significant impacts likely to occur to the human environment as a consequence of undertaking a major Federal action, and reasonable alternatives thereto.

^{2/} FS consented to the leasing of the two parcels of National Forest land, concluding that the parcels "comply with the applicable Forest plan, the existing oil and gas leasing decision, and environmental analysis performed for the existing oil and gas leasing decision, including considering potential for development of natural gas from coal seams." (Letter to BLM from Director, Physical Resources, Rocky Mountain Region, FS, dated June 13, 2003, at 1; see Letter to BLM from Director, Physical Resources, dated Dec. 10, 2002 (with attached NEPA Validation & Verification Form for Oil & Gas Leasing, dated July 8, 2002) (COC66700 NCO COC62868); Letter to BLM from Director, Physical Resources, dated Dec. 10, 2002) (COC66702 NCO COC62869).)

filed a protest, challenging BLM's decision to include the parcels in the upcoming sale.

The Acting Deputy State Director concluded, in her July 2003 decision, that BLM had adequately considered the likely environmental impacts of CBM development which would occur as a consequence of leasing the nine parcels of Federal land, since the impacts of extracting CBM from coal reservoirs were not expected to be fundamentally different from the impacts of extracting other natural gas resources from sandstone and shale reservoirs, which were already addressed in the EIS's. She further stated:

All oil and gas well drilling on federal lands, regardless of the geologic formation being developed, are subject to Onshore Order No. 2 Drilling Operations. This regulation includes minimum standards for casing and cementing of wells, which ensures protection of usable water zones penetrated by the well. Usable water zones, which include those containing up to 10,000 ppm [parts per million] of total dissolved solids, must be protected and isolated. Given that this regulation applies to all wells, protection of groundwater from oil and gas well drilling is not a unique CB[M] issue.

In regard to any unique impacts to surface water due to potential CB[M] drilling and development * * *, there will not be any fundamentally different impacts from those of a well drilled into a sandstone or shale reservoir. For example, the U[ncompahgre] B[asin] RMP requires that site specific conditions of approval be utilized to minimize erosion. In the case of produced water disposal, Onshore Order No. 7, Disposal of Produced Water, applies to all federal oil and gas wells, regardless of formation. The approved water disposal methods contained in Onshore Order No. 7 require close coordination with the state since they have primacy of most water disposal issues via Environmental Protection Agency (EPA) delegation. The Colorado Oil and Gas Conservation Commission, in coordination with the Colorado Department of Public Health and Environment, has strict standards and a rigid permitting process for any surface discharge of water co-produced with oil and gas. Currently, in Colorado more than 90 percent of the water co-produced with oil and gas is disposed of or used for enhanced recovery by underground injection while the rest is placed in disposal pits. Given this approach it would be highly speculative to assume that surface water disposal will be an issue in the North Fork Valley.

(Decision at 2.) The Acting Deputy State Director, BLM, thus dismissed appellants' protest.

Appellants appealed from and petitioned the Board to stay the effect of BLM's decision. We note that, on the same date the decision was issued, and thus before the filing of appellants' appeal, BLM approved leases of the nine disputed parcels, effective August 1, 2003. The leases were issued to SG Interests VII, Ltd. (SGI) (COC66700 NCO COC62868; COC66702 NCO COC 62869; COC66704, COC66705, and COC66714 through COC66716), Gunnison Energy Corporation (Gunnison) (COC66717 NCO COC66472), and John K. Hughes (COC66722). They were the high bidders at the May 8, 2003, competitive lease sale.

Gunnison and SGI filed motions to intervene in the pending appeals, as full parties thereto.^{4/} Because their oil and gas lease interests will clearly be affected by any Board decision regarding the merits of appellants' appeal, and because they otherwise could have maintained an appeal from BLM's decision, by order dated November 17, 2003, the Board granted the motions by Gunnison and SGI to intervene in the pending appeal. See, e.g., Bales Ranch, Inc., 151 IBLA 353, 355 (2000); Sierra Club-Rocky Mountain Chapter, 75 IBLA 220, 221-22 n.2 (1983).^{5/}

With their notice of appeal, appellants filed their Petition for Stay of BLM's decision, and they subsequently filed a notice stating that they intended their Petition for Stay to serve as their statement of reasons (SOR) in this proceeding (jointly referred to as "Petition/SOR"). In their Petition/SOR appellants offered a "Statement of Related Cases," explaining the interrelation of this appeal with those appeals docketed by the Board as IBLA 2003-125, 2003-126, and 2003-127, decided by the Board in an opinion styled Western Slope Environmental Resource Council (WSERC), 163 IBLA 262 (2004). The Board deferred a ruling in the present case because we accepted the following statement by appellants:

The instant appeal is grounded in the same issues as the pending 2003 appeal [IBLA 125, 126, and 127] and disposition of the earlier cited appeal will control disposition of the instant appeal. Accordingly,

^{4/} Hughes did not file a motion to intervene in the proceeding, or any opposition to appellants' stay petition.

^{5/} Gunnison and SGI have also motioned the Board to dismiss appellants' appeal because they lack standing under 43 CFR 4.410(a) to appeal BLM's July 2003 decision. Given our disposition of this appeal, we deny their motions for dismissal for lack of standing as moot.

Appellants believe that the two appeals should be consolidated. [^{6/}] To avoid repetition in terms of submission of multiple volumes of materials already provided by WSERC in these related cases, Appellants incorporate by reference all exhibits provided by WSERC in IBLA Docket Nos. 2003-125, 126, and 127. See Declaration of Jeremy Puckett, Exhibit 48. References to exhibits in this Request for Stay correspond to Plaintiffs' exhibits submitted in Docket Nos. 2003-125, 126, and 127. Only the master exhibit list from the earlier appeal is attached hereto. * * *.

(Petition/SOR at 4, n.1.) This quote reflects our view that the Board's disposition of the appeals decided in WSERC controls the present case.

[1] In our November 17, 2003, order, we denied appellants' stay petition. As noted, on October 28, 2004, this Board issued its decision in WSERC, supra, which involved lease parcels in the North Fork Valley of the Piceance Basin area, and involved the same parties and issues as well. The briefing of the parties in that case was very lengthy, and the arguments in the instant case are often similar to or duplicative of those offered therein. For a detailed review of the arguments of the parties concerning the possible environmental consequences of oil and gas leasing in the North Fork Valley of the Piceance Basin, see WSERC, 163 IBLA at 275-85, and the Board's November 17, 2003, order.

The Board's reasoning in denying the motions for stay filed by Gunnison and GIS, as set forth in our November 17, 2003, order, applies equally to our decision to affirm BLM on the merits herein. For ease of reference, we quote the relevant portions of our November 17, 2003, order, wherein we stated:

Appellants conclude that the "environmental impacts associated with CBM extraction are different, and by all accounts more severe, than conventional natural gas development," but that "no agency land-use planning and/or related NEPA documents adequately address CBM activities in the Colorado portion of the Piceance Basin," or specifically concerning the nine disputed lease parcels, even though the impacts of CBM development are unique to the specific resource basin and producing formation at issue. (Petition for Stay at 14, 15; see id. at 16 (distinguishing Pennaco v. Department of the Interior, 266 F. Supp.2d 1323 (D. Wyo. 2003), appeal filed, No. 03-8061 (10th Cir. July 29, 2003)).)

^{6/} In our order dated Nov. 17, 2003, we took the motion to consolidate under advisement. Meanwhile, the Board issued WSERC, which we agree with appellants controls this case.

We are not persuaded that BLM failed to adequately consider the significant adverse environmental impacts likely to occur as a consequence of leasing the nine parcels of Federal land at issue here, and resulting CBM development. Thus, we conclude that appellants are, in this principal respect, not likely to succeed on the merits of their appeal.

We find that, in the course of preparing the Uncompahgre Basin RMP EIS, GMUG National Forest Oil and Gas Leasing EIS, and WR National Forest Oil and Gas Leasing EIS, BLM and FS did not discern any significant adverse impacts to the quality and quantity of surface and underground water, or to graziers, farmers, and other downstream users from the disposal of produced water generated by oil and gas operators. Appellants have failed to demonstrate any error in this determination by BLM and FS, concerning the impacts of oil and gas operations on water resources, specifically attributable to actual differences in the quantity and/or quality of water which is likely to be produced in connection with CBM (versus conventional natural gas) development of the leased lands at issue here and the resulting environmental impacts, and thus to show noncompliance with section 102(2)(C) of NEPA. Above all, they have not identified any specific environmental impact uniquely attributable to CBM development of the lands at issue here, which should have been, but was not, addressed in the EIS's.

Appellants have endeavored to demonstrate that significant adverse consequences are, indeed, likely to follow from leasing the nine parcels of Federal land at issue here, because that potential is said to exist in other areas of the West, as evidenced by the pronouncement of Governmental and private entities in the case of the proposed CBM development of such other areas. However, they have offered no evidence that these other areas are similar, in terms of the nature and characteristics of CBM development, to the nine parcels, or that, for any reason, any particular impacts are likely to occur, or rise to the level of significance, as the specific consequence of leasing the nine parcels.

Nor are we convinced that appellants have shown a likelihood of succeeding on the merits of their contention that BLM violated the land-use plan conformance requirement of section 302(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §1732(a) (2000). The 1989 RMP authorizes the leasing of oil and natural gas resources, including methane gas, within BLM's Uncompahgre Basin Resource Area. It does not specifically envision the

extraction of methane gas from coal reservoirs. However, the RMP “specifically provide[s]” for oil and gas leasing, and CBM development, which would follow from such leasing, is “clearly consistent” with the decision to authorize leasing, and thus natural gas development. 43 CFR 1601.0-5(b), see RMP at 9-10, 32. Thus, we think that appellants have failed to demonstrate that they are likely to succeed on the merits of their argument that BLM failed to satisfy the general land-use plan conformance requirement of section 302(a) of FLPMA.

* * * * *

Appellants principally maintain that not staying the effect of BLM’s July 2003 decision will lead to CBM development which will adversely affect air quality, water quality and quantity, and other aspects of the human environment, and thus their members and other members of the public, without the benefit of the prior environmental review required by section 102(2)(C) of NEPA. We are not persuaded that leasing the nine parcels at issue here is sufficiently likely to significantly adversely impact the quality and quantity of air and/or surface and underground water, even were CBM development to occur.

Further, while we agree that a NEPA violation, by itself, constitutes a “serious, immediate, and irreparable injury,” it is not apparent that BLM failed to adequately consider significant adverse impacts of issuing the leases, and resulting CBM development, and thus to comply with section 102(2)(C) of NEPA. (Petition for Stay at 31 (quoting from Foundation on Economic Trends v. Heckler, 756 F.2d 143, 157 (D.C. Cir. 1985)).)

(Order, IBLA 2003-333, Western Slope Environmental Resource Council & High Country Citizens Alliance, Nov. 17, 2003, at 4-6.)

Appellants contend that BLM’s approach toward CBM development in the Piceance Basin area is contrary to the Board’s decisions in Wyoming Outdoor Council (WOC I), 156 IBLA 347 (2002), and Wyoming Outdoor Council (On Reconsideration) (WOC II), 157 IBLA 259 (2002). In WSERC, 163 IBLA at 270-75, we provided a thorough review of the cited Board decisions, as well as the consequent Federal court litigation resulting in Pennaco Energy, Inc. v. U.S. Department of the Interior (Pennaco I), 266 F.Supp.2d 1323 (D.Wyo. 2003), in which the U.S. District Court for the District of Wyoming (District Court) reversed the Board’s holding in WOC I, and culminating in Pennaco Energy, Inc. v. U.S. Department of the Interior (Pennaco II), 377 F.3d 1147 (10th Cir. 2004), in which the Tenth Circuit Court of Appeals reversed the District Court’s decision, and

remanded the matter to the District Court for reinstatement of the Board's decision in WOC I. WOC I, as interpreted by the Tenth Circuit in Pennaco II, controlled this Board's disposition of the appeals in WSERC, and controls this related case as well.

The Board's application of WOC I and Pennaco II in WSERC, as set forth below, applies herein:

As can be seen from the arguments offered by the parties, there is a profound disagreement in this case as to whether BLM complied with NEPA in approving the sale of the parcels in question. This case is governed by the rule, followed by the Board, that the appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public lands for oil and gas purposes because leasing, at least without NSO stipulations, constitutes an irreversible and irretrievable commitment to permit surface-disturbing activity, in some form and to some extent. WOC I, 156 IBLA at 357; Colorado Environmental Coalition, 149 IBLA 154, 156 (1999), and cases cited; see also Sierra Club v. Peterson, 717 F.2d 1409, 1414-15 (D.C. Cir. 1983). We must judge the adequacy of BLM's analysis by whether it reflects a "hard look" at the potential environmental impacts of the proposed leasing, considering all relevant matters of environmental concern. WOC I, 156 IBLA at 357; Colorado Environmental Coalition, 149 IBLA at 156.

The Tenth Circuit stated in Pennaco II, 377 F.3d at 1152, that "[t]he hotly contested issue underlying [WOC I and II] is whether the environmental impacts of CBM development are significantly different than the environmental impacts of non-CBM oil and gas development." In the instant case, Gunnison contends that given the geologic realities of the Piceance Basin and the North Fork Valley, and the consequent fact that very little water will be produced as a result of CBM development, if the parcels are in fact eventually developed for CBM production, there are no impacts from CBM development that would be significantly different from non-CBM development. The evidence presented by Gunnison, including the USGS and Wright Reports described above, ^[Z/] regarding relatively small amounts of water resulting from CBM production on the subject parcels, given the

^{Z/} The "USGS Report" is entitled "Hydrology and Subsidence Potential on Proposed Coal Lease-Lease Tracts in Delta County, Colorado," dated May 29, 1984. The "Wright Report" was prepared by Wright Water Engineers, Inc., retained to prepare an "independently peer-reviewed study of the surface and underground water supplies in the area."

porosity and lack of transmissivity of the geologic formations, supports its position that the environmental consequences of concern in WOC I and II do not obtain herein. Gunnison presents “substantial” objective evidence that water amounts resulting from CBM production in the Piceance Basin are no greater than water produced from conventional oil and gas production from shale and sandstone reservoirs. As in Pennaco II, “the narrow question before us is whether * * * the leases at issue should not have been issued before additional NEPA documentation was prepared.” 377 F.3d at 1156. We conclude on the facts of this case that BLM took a “hard look” at the environmental consequences of issuing the subject leases, considering all relevant matters of environmental concern. See WOC I, 156 IBLA at 357; Colorado Environmental Coalition, 149 IBLA at 156.

This Board has held on numerous occasions that appellants challenging a BLM decision bear the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action, here the leasing decisions. Native Ecosystems Council, 160 IBLA 288, 292 (2003); Lee and Jody Sprout, 160 IBLA 9, 12-13 (2003); Klamath Siskiyou Wildlands Center, 157 IBLA 322, 328 (2002); Southern Utah Wilderness Alliance, 123 IBLA 302, 308 (1992). Mere differences of opinion provide no basis for reversal of a BLM decision, and appellants bear the burden of demonstrating error by a preponderance of the evidence.

In this case, appellants have failed to carry this burden, not because of a disagreement between experts, but rather because of a failure to demonstrate that BLM did not consider a substantial environmental question of material significance, namely environmental impacts associated with CBM development on the North Fork Valley parcels. While acknowledging that each basin is different, appellants nonetheless attempt to extrapolate impacts associated with CBM development in other basins to the North Fork Valley parcels in the Piceance Basin, without any geologic or scientific evidence that conditions which give rise to such asserted impacts exist in the Piceance Basin and on the North Fork Valley parcels.

There is simply no objective proof in this case that CBM production, should it occur on the subject leases, will result in impacts associated with large volumes of water produced with CBM as in the WOC cases. In fact, the only evidence offered concerning the Piceance

Basin and the geology underlying the North Fork Valley parcels indicates that owing to the lack of transmissivity of the coal, relatively little water will be co-produced. Appellants did not dispute the volumes identified by Gunnison, or argue that the anticipated volumes exceed volumes typically associated with conventional oil and gas development, including secondary recovery operations. Appellants' Reply in response to the data proffered by Gunnison abandons their primary claim concerning the impacts of anticipated huge volumes of water and attempts to focus on the quality of the water likely to be co-produced. However, assuming the volumes to be co-produced are no different than found in conventional operations, those impacts are covered by the existing NEPA analyses, as well as by Onshore Order Nos. 2 and 7, relied upon by BLM in its decisions.

Again, in the case of impacts identified by appellants as being associated with CBM operations in the San Juan Basin, appellants have not shown that these impacts are likely to occur on the North Fork Valley parcels. Several of the impacts listed by appellants appear to relate to shallow coal seams that are significantly closer to useable water aquifers. By contrast, there is a great deal of objective evidence that the geologic realities of the North Fork Valley parcels are strikingly different from those found in the San Juan and Power River Basins.

163 IBLA at 285-86.

We again state our agreement that there is no question that CBM development, as a general matter, raises the possibility of environmental impacts which are different in degree, if not kind, from impacts associated with conventional natural gas development. Indeed, CBM development will possibly result in the production of greater quantities of water, which has a higher salinity and sodium adsorption ratio, than is the case with conventional development. See Petition for Stay, at 20, quoting from Coalbed Methane Development in the Intermountain West, Natural Resources Law Center, University of Colorado School of Law, 2002, at 69 ("Water is the single biggest issue in coalbed methane development, and it is the issue that separates development of this resource from development of conventional resources."). Further, such impacts must be addressed in a pre-leasing environmental review, since that is the point where BLM makes an irretrievable and irreversible commitment to the development of CBM resources somewhere and at some time within the leased area. WOC II, 157 IBLA at 264-65; Wyoming Outdoor Council, 153 IBLA at 388.

However, in the course of preparing the Uncompahgre Basin RMP EIS, the GMUG National Forest Oil and Gas Leasing EIS, and the WR National Forest Oil and

Gas Leasing EIS, BLM and FS did not discern any significant adverse impacts to the quality and quantity of surface and underground water, or to grazers, farmers, and other downstream users, from the disposal of produced water generated by oil and gas operations. Appellants have failed to demonstrate any error in this determination by BLM and FS, concerning the impacts of oil and gas operations on water resources, specifically attributable to actual differences in the quantity and/or quality of water which is likely to be produced in connection with CBM development of the leased lands at issue and the resulting environmental impacts, as opposed to the development of those lands for conventional natural gas, and thus to show noncompliance with section 102(2)(C) of NEPA. Above all, they have not identified any specific environmental impact uniquely attributable to CBM development of the lands at issue here, which should have been, but was not, addressed in the EIS's.

Again, we will quote from WSERC, which governs our disposition of this appeal:

On the present record, appellants have not shown that BLM failed to consider impacts which it contends will be associated with CBM production on the North Fork Valley parcels, principally because they have not shown that the impacts associated with CBM production in other basins, such as Powder River and San Juan, will result from such development and production. Absent an objective showing that the reported impacts on which appellants predicate their case are reasonably likely to occur on the North Fork Valley parcels, we decline to find that appellants have shown error in BLM's decision.

We conclude that the NEPA documentation at issue demonstrates that BLM took the requisite hard look at the environmental consequences of oil and gas development on the North Fork Valley parcels in the Piceance Basin. Given that the effects of CMB production in the Piceance Basin will not significantly differ from conventional oil and gas production, we do not fault BLM for not specifically analyzing the environmental impacts of CBM production in the Piceance Basin per se. As in WOC, 158 IBLA 384 (2003), appellants have not convinced us that BLM erred in including the subject parcels in the competitive oil and gas lease sale, "especially since the impacts associated with CBM development will be analyzed in greater detail in site-specific environmental documents prepared for any proposed development on the lease issued for that parcel." Id. at 395.

BLM's decisions herein were predicated upon the fact that eventual development of the subject parcels for CBM or conventional

oil and gas production would be subject to site-specific review. The geologic realities of the North Fork Valley, together with the fact that there will be further site-specific environmental study when the leases are developed, lead us to conclude that appellants have not shown by a preponderance of the evidence that BLM's analysis failed to consider a substantial environmental question of material significance to the proposed action, here the leasing decisions. There is simply no evidence, let alone substantial evidence, that BLM failed to consider significant impacts associated with CBM development in approving the competitive lease sales at issue in these appeals.

163 IBLA at 289-90.

Leasing the nine parcels at issue here does not appear to be sufficiently likely to result in a significant adverse impact on the quality and quantity of air and/or surface and underground water, even were CBM development to occur. Moreover, the fact of the matter is that the leasing decision does not itself result in any drilling, development, or other on-the-ground activity. Park County Resource Council, Inc. v. U.S. Department of Agriculture, 817 F.2d 609, 622 (10th Cir. 1987) ("The oil and gas lease, by itself, does not cause a change in the physical environment."). The leasing decision does not even specify the formation which will be targeted for development, whether coal or non-coal, or the method for extracting and recovering the oil and/or gas. Thus, it does not itself necessarily provide for CBM development. Rather, drilling and other activity is subject to separate approval by BLM, which will first include additional environmental review pursuant to section 102(2)(C) of NEPA.

In summary, appellants have endeavored to demonstrate that significant adverse consequences are, indeed, likely to follow from leasing the nine parcels of Federal land at issue, because that potential is said to exist in other areas of the West, as evidenced by the pronouncement of Governmental and private entities in the case of the proposed CBM development of such other areas. However, they have offered no evidence that these other areas are similar, in terms of the nature and characteristics of CBM development, to the nine subject parcels, or that, for any reason, leasing these nine parcels will result in unique impacts or rise to the level of special environmental significance requiring that we disturb 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.

James F. Roberts
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge