



Matt Kales/R6/FWS/DOI

03/04/2008 04:35 PM

To Sharon R Rose/R6/FWS/DOI@FWS

.cc

bcc

Subject Fw: Baca EA Concerns

This is powerful medicine. Please don't circulate this. Dean is, in my opinion, right on with his concerns (and big enough to note that he wasn't always so). This is what Rick came up to discuss. The good news is NWRS is keenly aware of how this could blow up on the new RD's watch and are looking to find a solution(s).

I can provide some additional detail off line. MK

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----- Forwarded by Matt Kales/R6/FWS/DOI on 03/04/2008 04:31 PM -----

Rick Coleman/R6/FWS/DOI

03/04/2008 04:07 PM

To Matt Kales/R6/FWS/DOI@FWS

cc

Subject Fw: Baca EA Concerns

Rick Coleman

ARD - Refuges/Partners for Fish and Wildlife

303-236-4303

----- Forwarded by Rick Coleman/R6/FWS/DOI on 03/04/2008 04:07 PM -----

Mike Blenden/R6/FWS/DOI

02/29/2008 01:17 PM

To Dean Rundle/R6/FWS/DOI@FWS

cc Bud Oliveira/R6/FWS/DOI@FWS, Rick

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Subject Re: Baca EA Concerns

Dean, Bud and Rick,

I appreciate and share every one of Dean's concerns. In fact, I was going to devote some time today to sifting through the barrage of advice I've been receiving from our agency, solicitor's office, NPS, public, etc. and chart our course on handling this EA for the near future.

Here are some thoughts and observations:

NEPA

We were sued because we decided that NEPA did not apply in this situation where the Service feels we have no permitting authority over the exploration of privately held mineral rights. The FWS draft "Management of Oil and Gas Activities on National Wildlife Refuge System Lands" manual clearly stated that last year and continues, as a draft, to say it today. But our solicitors said we need to do NEPA based upon 2004 case law, Friends of South Montezuma Valley v. Calvin Joyner, a BLM case over regulation of privately held gravel rights on BLM land in Colorado. In our suit the judge remanded the case back to the FWS to complete NEPA before ground breaking activities. The draft manual has been in review by Allan Pallisoul (?) for the last 10 months.

The Baca EA was developed from the plan that we, (including me, Ron, regional planning staff, Lexam and their contractor) generated last summer, with the advice of the first solicitor (he later recused himself from the case). In a general sense, I don't see that the current solicitor has deviated from that plan. His methods have differed and we do vary on some topics like how to handle public comment and cooperating agency status. But, the original plan called for an EA of very limited scope. It recognized that the federal action was not drilling, it was the issuance of restrictions to contain impacts to the surface estate and other refuge resources within reasonable limits. The two other alternatives are, no restrictions placed by FWS and no exploration by purchase of the mineral rights by the federal government.

The limited scope of the document seems to be the heart of much criticism from the public, EPA, and to a lesser extent NPS. I must add that we had a second conference call with EPA on 2/26. It was a different set of individuals than on the first call. It was a productive and rational discussion about their concerns which seemed dramatically toned down from our first call a couple of weeks prior. Their concerns are; inadequate air quality analysis and inadequate discussion of impacts to groundwater and wetlands to support a FONSI, and inadequate analysis of socioeconomic impacts. After hearing all the concerns I tend to agree with all but the socioeconomic criticism. I think all but the air quality will be easily addressed and the amount of work required to beef up air quality is still unknown. I think Mike Spratt and Dave Carlson (acting Region 6 NEPA coordinator) agrees with my assessment.

However, the Baca EA seems a cut above in all aspects than recent examples I've seen from similar situation on refuges in Region 2.

FWS authority

The attorney for the other side clearly feels we are not exercising all of our authority to regulate oil and gas activity even under a severed estate situation. That opinion has been effectively adopted and relayed to all of our local critics and beyond, see my note yesterday from Bill Reffalt of the Blue Goose Alliance.

But, the way I view it. We are closely following the FWS manual, 612 FW 2 and CFR 29.32.

Today's status

We are spending a lot of time fine tuning the EA. I speculate it will be a better document in a few weeks that will look good to Mike Spratt's office, me and Ron. It will seem like gross overkill to Lexam and will be criticised as pathetically inadequate by those on the otherside of the argument, maybe even EPA, FWS air quality and NPS.

Future

We will finish the EA in a few weeks and brief Rick and the Regional Director. I speculate with a fair amount of confidence that if the RD signs a FONSI the case with the San Luis Valley Ecosystem Council will be reopened challenging the decision and requesting the courts require an EIS. I don't know how this can stop exploration other than to delay and financially wear the mineral owner out. If the RD decides an EIS is justified Lexam will likely sue alleging a take of private property.

Problems

FWS has individuals with NEPA knowledge, but apparently no confident authorities.

We, at the refuge, are and have been in a position of searching for credible advice. It has become confusing enough that I've had to retreat to complete reliance on the solicitor's office realizing they are not infalable. But the basis of virtually all criticism of our actions are legal

The outcome of this process may well have implications on the entire FWS policy regarding management of oil and gas on refuge lands. Ron, the solicitor and me are the point guys trying to persuade the public and other federal agencies that we are following policy and the policy is sound. We haven't had dramatic success, for what it's worth.

Recommendations

1. If I'm correct, this case will either support FWS understanding of property law and FWS mineral management policies or it will underscore substantial inadequacies. Consequently, at least the Refuge program, from Geoff Haskett's office down (Air Quality, Oil an Gas and other regions) need to jump in to this, understand the debate and truly clarify any thing they can. We should probably involve the Solicitor's office beyond Region 6 in this discussion.
2. Once the Refuge program is on the same page I can proceed with the NEPA process and make sound recommendations to the Regional Director when finalizing a decision document for the EA. I have no problem dissappointing our critics or Lexam. I'm just desparate to do the right thing.
3. This should happen quickly. The refuge staff and the consultants preparing the EA are increasingly unclear of the best direction to take for the refuge and the refuge system.

Thanks again for your suggestion Dean. I'm available and anxious to have a conference call or face to face meeting as soon as possible.

Thanks for considering this.

Mike

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"Everything that can be counted does not necessarily count; everything that counts cannot necessarily be counted." A. Einstein

Dean Rundle/R6/FWS/DOI

Dean Rundle/R6/FWS/DOI
02/29/2008 07:03 AM

To Rick Coleman/R6/FWS/DOI@FWS, Bud
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cc Mike Blenden/R6/FWS/DOI@FWS
Subject Baca EA Concerns