

USFWS-LEXAM-ENSR FOIA DOCUMENTS - TABLE 3

Review of Aug 15th FOIA response by Ceal Smith

Pdf file	Pg	Date	From/To	Evidence of withheld documents
1	2	12/21/07	David Bailey to Bill Berg (forwarded by Tgraft to DBailey, cc: mblenden, rgarcia, wberg)	Tom Graf suggested text re: oil and gas exploration and production as an “iterative process”, discussion of infrastructure, pipelines and other facilities, possible use of directional drilling/multiple wells from a single pad, etc...”although no determination can be made at this time regarding the feasibility of any of these alternatives”....”Lexam understands and agrees that...additional NEPA compliance would be required”
1	2	12/21/07	WBerg to DBailey	“forgot to tell you – this is what Graf sent me in response to my request for clarification of “full development of the mineral estate”
1	2	12/21/07	From TGraff to WBerg cc: mblenden, rgarcia, acemrich@hollandandhart (attorney)	...as for indirect/direct effects...at the very least what development of deposits would look like (area disturbed by roads and pads) if wells find economic quantities of oil or gas
1	3	12/21/07	WBerg to rgarcia, mblenden, tgraf	“please provide clarification regarding the comment that an indirect effect of the Proposed Action and NFA is potential “full development of the mineral estate” which needs to be analyzed. What do you envision as “full development” so we can define the extent of impacts?”
1	4	1/3/08	Tgraft to DBailey, cc: Andrew Emrich, CChantal (re: Today’s conference all, importance high)	“What FWS is doing is not an undertaking. We should preface the entire NHPA discussion in EA with this...make sure document is consistent with that statement (note: the State Office of Archeology & Historical Preservation maintains that the project is an undertaking and thus, subject to NHPA, Section 106, see draft EA comment letter)
1	6	7/20/07	JackClark to Connieyoung/fws, rgarcia, wberg	Attached is “Lexam Memo re: proposed action 20July07.pdf. From David Bailey to Steve Hoffman, DOI Solicitor’s Office: “we are not proposing a project-based or programmatic approach to the EA in which the proposed action might have been “all oil and gas exploration on the BNWR”
1	25	1/9/08	MBlenden to Tgraft, MSpratt	Lexam has concerns that we are releasing a “draft” EA...do you see any problems including the statement suggested by their attorney below
1	25	1/9/08	DBailey to TGraff, mblenden cc: jackclark, wberg, ccagle	Attempt by Lexam attorney to bypass incorporation of public input into a “final” EA...”we are concerned that the Service is creating a misperception in the public’s mind that no NEPA decision will be made until a final EA is issued and subjected to a final round of public comment... the best way to handle this is...not to characterize the EA as a “draft”...specific language suggested...”there will not be an additional public comment period prior to a final determination by the Service with respect to NEPA compliance (this was used in the notice)
1	28	1/9/08	TGraff to Mblenden cc: Mspratt	Concedes to Baileys suggested language and agrees that it is “important to be clear that there will be no further comment period on the a final EA”
1	25-26	1/9/08	David Bailey to Thomas Graf and Mike Blenden, cc: Clark, Berg and Cagle	Limiting “draft” to no additional public review or comment
1	32-	11/8/07	Dave Bailey to Steve	Rather curt EA schedule instructions to Solicitors office to

	33		Hoffman, cc: Berg, Cagle	facilitate Lexam's drilling in Aug 2008
2	17	1/18/08	Bailey to Chantal, cc: jlark, tgraf, staylor	Directing ENSR to document notice of availability of the EA in expectation of litigation, inc. point to send Travis Stills an email notification
2	19	12/21/07	William Berg (ENSR) to Garcia, Blenden & Graf	Requesting clarification on extent of impacts needed to analyze "full development of the mineral estate" as an indirect effect of Proposed and No Action Alternatives.
2	26	1/15/08	JClark to Blenden, wberg	Instructing Mike to run notice in Crestone Eagle
2	31	11/14/07	dbaily to rgarcia, mblenden, cc: berg, chantal	Draft Notice of Availability of the EA, approved by Steve Hoffman w/request for ENSR to send to Crestone Eagle,
2	41	11/27/07	Dbaily to wberg, ccagle, mblenden, rgarcia, wjclark	Re: conference call to discuss FWS comments to revised draft EA, "also be collecting comments from the Lexam reviewers"
2	64	1/9/08	Mblenden to dbailey, wberg, mspratt	Asking for review of 5th paragraph of notice of Availability of draft EA (5th paragraph refers to no "additional public comment period prior to a final determination by the Service".
2	67	1/9/08	Wberg to mblenden	Asking Mike if he discussed with Tom (Graf) "the inclusion into the cover letter of the language suggested by Dave Bailey with regard to the process and what the public should expect to see going forward?"
3	1	12/21/07	Dbaily to wberg, ccagle, cc: tgraf, rgarcia, mblenden	No additional Lexam comments on the draft EA, "important that final phase of EA be exclusively in hand of FWS and ENSR" (sent 10 days after our FOIA request)
3	9	12/11/07	Wberg to mblenden, rgarcia, wjclark, dbailey, tgraf, cc: ccagle	Comments on "latest iteration of the EA" requesting response within 2 days, items to bring to your attention: 1) re ring levee... "is Lexam in agreement with the baseline sampling required"?
3	10	11/19/07	Wberg to rgarcia, cc:mblenden	"attached is the directional drilling insert and the conditions that you sent last week and categorized as we discussed. The directional drilling discussion is predicated on drilling from outside the Refuge". Included 2 attachments: Directional_drilling_insert_revBB11-19-07.doc and Baca NWR Refuge Access Conditions Revised*.doc (printed) * many sections are blacked out.
3	23	11/8/07	DBailey to Steve Hoffman (forwarded to MBlenden by JClark with a note that SHoffman left a message for Dave Bailey that he is not person to address timing of the EA)	"after discussing these [timing] issues with Lexam, we believe that this timetable is too extended"... "the collective belief was that we could be completely through NEPA prior to the end of 2007" (the suggested schedule follows) pushing FWS to complete the NEPA process (including issuing a FONSI) by the end of January. Requests that FWS prepare the Decision Record DURING the public comment period (thus disregarding any additional input). Ends with a request to "please give me a call when you have had an opportunity to discuss this memo with your client".
3	28	11/09/07	mblenden to wberg, cc: rgarcia, larchuleta	Attached comments from Mike Rabenberg (FWS/Wildlife Biologist/Refuge & wetland district manager??) on Lexam EA... includes: (line 106) need to be more specific about reclamation requirements; (line 137) need to specify surface or groundwater; (line 87, 141,330) need to discuss Cumulative Impacts; (line 95) need to discuss spill prevention, containment and cleanup; (line 155-157) need more specifics about reclamation and (line 166) post-reclamation; (line 202) highly doubt no cumulative impacts to vegetation and wetlands....it will probably take many years to fully establish native vegetation, what are expected impacts of

				production?; (line 211) need discussion of how and why FWS protective measures will avoid or minimize impacts, what/where are protective measures, will they be included for public review? (printed)
3	32	11/15/07	Laura Archuleta to rgarcia, mblendn	Summary of comments... "EA too much like Lexam's document & not a Service document, does not adequately identify surround land uses..and many analyses incomplete or not adequate especially cumulative impacts (need to discuss Lexam not just FWS activities), No Action alternative not accurate (refers to NPS comment), BMP's need to be cited; consider drill pad lining & cuttings in lined pit prior to off-site disposal, reclamation bond sufficient?; assessment of pre-drilling conditions; use of drill cuttings; suggests contouring pads to increase distance from edge of wet meadows (esp. well #5); need stream quality baseline, sampling for particulate matter, monitoring plan, stability & suitability of stream crossing; dust suppression (re: to Pete Ramirez's water quality related to dust suppression near streams; SVOC results unclear; *(p.3-22) No Effect determination – "we concur with the determination made by Lexam's contractor (Jack) given the information he provided in his request. This needs to be fixed in the EA". (p.4-1, sections 4.2.1) "do not agree with line 26 that impacts from spills would be less than significant because disturbance size is so small compared to the overall refuge size and compliance with COGCC rules – VERY POOR ANALYSIS [emphasis added]!!!! There could be significant impacts depending on what is spilled, how much and so many other variables. I do NOT agree with this statement"; no measures proposed to protect soil (suggests lining pad/same as NPS) and berming edge of pads. (p. 4-4/4-5 section 4.5.1.1 line 158-165) questions conclusion that impacts would be less than significant based on ratio of disturbed area to total refuge area – "this is not analyzing the impacts of the drilling disturbances"; asks how 20-30 year recovery time could be considered less than significant (??????); need for a measurable standard on reclamation; noise issues; did Lexam get a letter of Corp of Engineers confirming "no 404-related issues"? (printed comments)
3	42-65	11/2/08	MEMO from Art Hutchison (NPS) to Mike Blendn (comments on draft EA)	Identified concerns re: noise, light pollution, emissions and dust potential to reduce air quality and visibility, recommends use of diesel-electric rig, shielded lighting (printed comments/TAMAR WILL REVIEW)
3	78	12/14/06	Deanna Cummings (Army Corp of Engineers) to Jack Clark	Re: section 404 permit for seismic testing, "if proposed work is under .10-acre of temporary or permanent fill in waters of the US, you are already considered authorized...so long as any work within waters of the US follows the conditions for NWP #14...would not result in a discharge of dredged or fill material to waters of the US, no section 404 permit is necessary"
3	82	?? 2006	DBailey to rgarcia, cc: james Donaldson, jackclark	Notice of attached ownership documents and surface agreements (no attachments)
3	84-88	9/06	Steve Solokis, Polaris (Seismic contractor) to rgarcia, cc: billmcknab, jdonaldson, jackclark	Seismic study procedures
3	89-90, 92	9/25/06	Ed Schneider (TRC Solutions) to rgarcia, cc: dave byers, james Donaldson, jackclark	Scope of work for cultural resource investigations associated with Baca 3-D Seismic and #5 and #6 well pads. Confirmation that all lines will be inventoried (to rgarcia)

3	93	10/5/06	Ron Garcia to Meg VanNess (FWS Cultural Resources)	Archeological survey, meeting notes for inclusion into the Special Use Permit?
4	4-6	9/3/07	Fred Marinelli (Telesto Inc.) to jackclark, cc: rgarcia, deb phenicie, megestep, fredbunch (nps), laura archuleta	Results of June 2007 water quality sampling. Toluene, diesel and gasoline related hydrocarbons detected in Dec. 06 ground water samples but not detected in June 07 samples, concludes that 06 results were due to “external contamination introduced by the sampling process”, suggests that June 07 results should be used for baseline (see L. Archuleta note in file #3)
4	17	9/27/07	Tom Lennon (wcrminc.com) to Kim Munson (ENSR archeologist) forwarded to jackclark	7 canals documented, a ditch not covered by TRC
4	18	5/26/06	Jack Clark to R. Garcia	Re: plans to drill, conduct seismic on Baca NWR, requested map of wet meadows in vicinity of Willow Creek
4	19	6/08/06	Bill McKnab to rgarcia cc: dbailey, ian@usgold, jdonaldson, wjackclark, tomwatkins, uels	Special use permit/Access permit
4	24	7/19/06	Bill McKnab to rgarcia cc: jdonaldson, tomwatkins, ian@usgold, wjackclark, dbailey	“I will file for a drilling permit with COGCC”, onsite inspection w/ron, archaeologist, dirt contractor, state field inspector, Saguache County rep, Tom Watkins. Attached Lexam Permit docs
4	35	7/30/07	RGarcia to Jack Clark, cc: LArchuleta, MBlenden, ClarkeDirks	Jpg of proposed re-route of Lexam Baca #5 well access road. “This re-route is designed to be less conspicuous and to avoid impacting Slender Spiderflower (Cleome multicaulis) as much as possible...as mentioned earlier, the intended well location of Baca #5, even though moved out of the “extremely” sensitive wetland/wet meadow, is still in an area that we would consider sensitive” followed by discussion on moving the bore hole/drill pad to the north.
4	41	12/17/07	WBerg to CChantal, DBailey, MBlenden, RGarcia	Re: Draft EA (Lexam-Baca): “I have completed inputting all changes received to date but we are still waiting for the last round of comments from Mr. Graf”
4	43	12/07/07	WBerg to DBailey, MBlenden, RGarcia, WJClark, cc: CChantal	Re: Baca EA. “hope that we can have a draft to you sometime Monday”
4	49	11/23/07	WBerg to WJClark, MBlenden, RGarcia, DBailey, cc: CChantal	Re: Baca NWR EA Revisions. “the copy to Mr. Hoffman needs to be into FedEx by noon Saturday”
4	52	12/24/07	Ian Ball to Dbailey, Wberg, Cagle, wjackclark, Thomas Sansonetti, acemrich@hollandhart, srpartners@rogers, Stefan Spears, Thomas Graf@blm	RE: Call Jan. 2nd – EA USFWS + LEX. January 2 conference call to “discuss the EA”
4	52	12/27/07	Jack Clark to MBlenden and Rgarcia	Inviting them to join on the Jan 2 conference call to discuss the EA
4	56	12/27/07	Chantal Cagle to MBlenden, RGarcia, Wberg, SCoughenour@ensr	Re: Lexam EA. “We are finished making changes to the Baca Gas Exploration EA and are sending it to you for USFWS blessing”
4	81	1/8/08	CChantal to MBlenden	“It was suggested that we take out the work Draft-so I did.”
4	86	1/18/08	DBailey to CChantal, cc: Wberg, WJClark, ThomasGraf@blm; Stephen Taylor (USACO)	Re: documentation of notice. “further to our conversation this morning...all documentation described below ultimately may be exhibits to an affidavit signed by you that FWS or Lexam would file in response to a claim in litigation that notice of availability of the EA was inadequate” (followed by a list)
4	98	1/10/08	From Bill McKnab to JClark, then forwarded from JClark	Re: NPR – Drilling Envisioned in Colorado Wildlife Refuge. “Bill McKnab thought you would be interested in this story”

			to MBlendn, RGarcia, Dbailey, billmcknab@aol	
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Notes on documents still missing:

1. Original draft EA and Lexam's comments on it and subsequent drafts;
2. T. Graf's comments on the draft EA and/or justification from defining project as "not an undertaking";
3. Conference call minutes/notes;
4. Section 7, letter of determination – anything related to species, Jack Clarks information, letter of determination, etc. there isn't anything – no basis anywhere (except L. Archuleta's comments and ENSR biologist comments noted in Tables 1 and 2) – for the FWS concession to Lexam's finding of no effect;
5. Evidence of response to NPS comments (aside from Laura Archuleta's comments);
6. Evidence of consultation with CDOW, CNHP, etc.
7. We requested documents to the date that the FOIA request is fulfilled (Aug 29, 2008, I presume), the latest date I see anything here is 1/18/08.