



File 1570 (215) Date: March 10, 1999
Code:
Route
To:
Subject: Bruce Anderson Trailside Unit #1 DN, Appeal #99-01-00-0085
Custer National Forest
To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Wayde Schafer of the Sierra Club (North Dakota Special Projects Office) protesting the Bruce Anderson Trailside Unit #1 Decision Notice signed by the McKenzie District Ranger (Dakota Prairie Grasslands).

The District Ranger's decision adopts Alternative 1 (modified) which authorizes Bruce Anderson's Surface Use Plan (SUP) portion of the Application for Permit to Drill (APD) to drill the Bruce Anderson Trailside Unit #1 oil and gas well. The decision includes modifications to the original SUP submitted by Anderson.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision are in compliance with applicable laws, regulations, policy, and orders. The appeal record, including the Appellants' objections and recommended changes, has been thoroughly reviewed. The Appellants list many interrelated issues in their appeal of the project. Although I may not have listed each specific issue, I have considered all the issues raised in the appeal and believe they are adequately addressed below.

FINDINGS

Appeal Review Findings

The Appellants allege violations of the National Forest Management Act (NFMA) and the National Environmental Policy Act (NEPA). The Appellants request the decision be withdrawn and that an Environmental Impact Statement (EIS) be prepared. An informal meeting was held but no resolution was reached.

Objection 1: The decision violates National Forest Management Act (NFMA) requirements for maintenance of population viability.

Contention A - The Appellants contend that the mitigation contained in the Decision Notice (DN) is inadequate for long-term viability of bighorn sheep. The Appellants state that the proposed action threatens both the Bennett-Cottonwood and Theodore Roosevelt National Park (TRNP) bighorn sheep herds.

Response: The EA and Biological Assessment/Biological Evaluation (BA/BE) disclose the effects of the proposed well on bighorn sheep. The BA/BE, with respect to direct effects, concludes that, "Since the proposed development is located on the perimeter of bighorn sheep use areas, the proposed project may impact individuals, but is not likely to cause a trend to federal listing or loss of viability" (Doc. 13, p. 15). The BA/BE also recommended several mitigation measures which were included as modifications to the proposed SUP in the decision (DN, p. 2). With respect to indirect and cumulative effects, the BA/BE concludes that there may be impacts to individuals or habitat with a "consequence

that the action may contribute to a trend towards federal listing or cause a loss of viability to the population or species" (Doc. 13, p. 17). However, Appendix B describes the speculative nature of future well developments resulting from this well proposal (DN, Appendix B, p. 1). The BA/BE describes ways that, in the event that future well sites and developments do occur, the cumulative and indirect impacts could be mitigated and potentially avoided (Doc. 13, p. 19).

Based on the information regarding the effects of the project on bighorn sheep contained in the EA and project file, I conclude the mitigation measures contained in the DN are adequate.

Contention B - The Appellant contends that the EA fails to provide data and disclose the effects of the proposed action on threatened, endangered or sensitive (TES) species and Management Indicator Species (MIS) as required by the Forest Plan and NFMA.

Response: The BA/BE discloses the direct, indirect, and cumulative effects of the project on species of concern, including MIS, TES species and raptors (Doc. 13). The Interdisciplinary Team's Forest Service biologist concurred with the conclusions contained in the BA/BE (Doc. 12).

Objection 2: The decision results in impacts to TRNP.

The Appellants contend that visitor experience at TRNP will be diminished due to inadequate mitigations for negative odor, sound, and visual impacts.

Response: The EA and DN acknowledge that there may be adverse effects to TRNP visitors as a result of the well and discloses these effects on the visual, auditory, and recreation resources of the area (EA, Ch. III, pp. 1-5). The EA also describes Forest Plan management area direction and the project's consistency with minerals, visual/auditory, and recreation direction provided by the Forest Plan. In my opinion, the EA adequately discloses the effects of the proposed well on these resources and the North Unit of TRNP. Additionally, the District Ranger included modifications to the SUP to mitigate and minimize effects to TRNP (DN, p. 2). The rationale for his decision (DN, p. 3) demonstrates consideration of the trade-offs in authorizing the SUP.

Objection 3: The decision impacts the Bennett-Cottonwood Roadless Area.

The Appellants contend that development within the Bennett-Cottonwood Roadless Area would violate the recent moratorium on new roads and development issued by the Chief of the Forest Service.

Response: The EA discloses the effects of well development to the Bennett-Cottonwood Roadless Area (EA, Ch. III, p. 3). The temporary suspension of road construction in roadless areas does not apply to this project. The final interim rule at 36 CFR 212.13(c)(4) states in part:

Exemptions. Road construction and reconstruction projects are not subject to the suspension...if they fall within one of the following unroaded areas:

Road construction or reconstruction in unroaded areas where roads are needed...pursuant to reserved or outstanding rights.

Oil and gas leases fall within "reserved or outstanding rights." Therefore, the project does not violate the regulations regarding the temporary suspension of road construction in roadless areas.

Objection 4: The decision violates the National Environmental Policy Act (NEPA).

The Appellants contend that the EA fails to adequately assess the direct, indirect, and cumulative impacts of the proposed action in a site-specific manner. The Appellants also contend that the EA and DN fail to consider reasonable, foreseeable, and adverse impacts if the well becomes a producer.

Response: The EA and BA/BE disclose the site-specific direct, indirect, and cumulative effects of the proposed well in relation to past and current actions. Additional cumulative effects analysis is disclosed in Appendix B of the DN which describes several different drilling scenarios for possible future development and explains that:

It should be understood that these drilling scenarios are speculative and that no additional well proposals, other than Bruce Anderson's Trailside Unit #1 proposal, have been submitted. These drilling scenarios do not impel Bruce Anderson to submit additional well proposals on their leases. Any future well proposals will be considered at that time of their proposal, considered on their own merit, and analyzed in association with other existing well sites and foreseeable (i.e., submitted proposals) well proposals (DN, Appendix B, p. 1).

The District Ranger explains that there are no other well proposals that would be considered foreseeable future actions resulting in significant cumulative impacts and concludes that "This proposed action does not represent potential cumulative adverse impacts when considered in combination with other past actions" (DN, p. 6).

I find that the direct, indirect, and cumulative effects of the project were adequately considered and disclosed in compliance with NEPA.

RECOMMENDATION

I recommend the District Ranger's decision be affirmed and the Appellants' requested relief be denied.

/s/ Katherine Q. Solberg

KATHERINE Q. SOLBERG
Reviewing Officer
Director, Human Resources