

INTERIOR BOARD OF LAND APPEALS

Southern Utah Wilderness Alliance

148 IBLA 117 (March 30, 1999)

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SOUTHERN UTAH WILDERNESS ALLIANCE

IBLA 99-62 Decided March 30, 1999

Appeal from a decision by the Deputy State Director, Division of Natural Resources, Utah State Office, Bureau of Land Management, denying a request for State Director Review as untimely filed. UTU-62645; SDR 98-08.

Affirmed; Request for Stay denied as moot.

1. Oil and Gas Leases: Rentals: Suspensions–Rules of Practice: Appeals–Rules of Practice: Appeals: Timely Filing

A request for State Director Review of a BLM decision pursuant to 43 C.F.R. § 3185.1 and 43 C.F.R. § 3165.3(b) is properly denied as untimely when the request is filed more than 20 business days after the decision was received.

APPEARANCES: W. Herbert McHarg, Esq., Moab, Utah, for Southern Utah Wilderness Alliance; Michael S. Johnson, Esq., Salt Lake City, Utah, for Intervenor Mission Energy, LLC; David K. Grayson, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Southern Utah Wilderness Alliance (SUWA) has appealed an October 1, 1998, Decision of the Acting Deputy State Director, Utah State Office, Bureau of Land Management (BLM), denying SUWA's request for State Director Review as untimely filed. SUWA's appeal includes a request for a stay of the Decision. By Order dated December 8, 1998, Mission Energy, LLC (Mission) was granted intervenor status.

On September 22, 1998, SUWA filed a request for State Director Review of the November 12, 1997, decision of the Minerals Adjudication Group Leader, Utah State Office, BLM, granting a suspension of oil and gas lease UTU-62645, owned by Mission. The subject lease is located in northeast Carbon County, Utah, along Horse Bench, a ridge dividing the Nine Mile Canyon and the Rock House Canyon drainages. BLM granted Mission the lease

suspension in the interest of conservation, pursuant to section 39 of the Mineral Leasing Act, as amended, 30 U.S.C. § 209 (1994) and 43 C.F.R. § 3103.4-4.

SUWA asserts that Mission failed to timely file its Application for Permit to Drill (APD), and that the public was not notified of BLM's grant of suspension to Mission until August 25, 1998, when SUWA received in the mail an Environmental Assessment (EA) (UT-066-97-55) and a request from BLM for public comment on the EA. Because the EA referenced the grant of suspension, SUWA asserts that "the Grant is inherently tied to the decision record on the EA, and therefore, [SUWA's] Request would be timely if filed within 20 business days of receipt of the EA." (Notice of Appeal, Request for Stay, and Statement of Reasons, hereafter cited as SOR, at 2.)

For purposes of establishing standing, SUWA states that it is "dedicated to the preservation of the wilderness, wildlife and recreational values of the public lands of southern Utah," and that its members "use and enjoy lands surrounding the Nine Mile Canyon and Horse Bench area, including the lands that will be harmed by the challenged action." (SOR at 5.) SUWA further states that the lease suspension decision "will adversely impact the natural values" of the area, and that SUWA's members "are adversely affected by the lease suspension decision, the State Director's denial of Appellant's Request for Review, and the proposed action identified in the EA." (SOR at 5, 6.)

BLM and Mission have filed Answers to SUWA's SOR. Both argue that SUWA's request for State Director Review was untimely filed pursuant to the regulation at 43 C.F.R. § 3165.3(b), and that BLM was not required to notify SUWA and other nonaffected members of the public when it suspended Mission's oil and gas lease. BLM and Mission also assert that SUWA lacks standing to appeal BLM's November 12, 1997, decision suspending Mission's oil and gas lease. Citing 43 C.F.R. § 4.410(a), they assert that SUWA has failed to show that it is both a party to the case and that it has a legally cognizable interest adversely impacted by the November 12, 1997, BLM decision.

[1] Regulation 43 C.F.R. § 3165.3(b) states that

[a]ny adversely affected party that contests a notice of violation or assessment or an instruction, order, or decision of the authorized officer issued under the regulations in this part, may request an administrative review, before the State Director. Such request, including all supporting documentation, shall be filed in writing with the appropriate State Director within 20 business days of the date such notice of violation or assessment or instruction, order, or decision was received or considered to have been received and should be filed with the appropriate State Director.

Under 43 C.F.R. § 3185.1, "[a]ny party adversely affected by a decision of the State Director after State Director review" has the right to appeal that decision to this Board. See also 43 C.F.R. § 3165.4(a).

The record shows that SUWA's request for State Director Review was not filed within the 20 business day time limit set by the regulation, but was filed more than 10 months after BLM's decision granting a suspension of operations and production to Mission for lease UTU-62645. SUWA asserts that the time limit should apply from the date it received notice of the lease suspension on August 25, 1998. Thus, SUWA argues, its request for State Director Review was timely, for it was filed September 23, 1998, within 20 business days of August 25, 1998.

We disagree. A challenge to a decision subject to review under 43 C.F.R. § 3165.3(b) must be denied if it was not filed within 20 business days of receipt of the decision. See Conley P. Smith Oil Producers, 131 IBLA 313, 320 (1994). Further, in Orvin Froholm, et al., 132 IBLA 301, 308 (1995) we stated that, for the purposes of 43 C.F.R. § 3165.3, "[a]ny request for review * * * is untimely if it is not filed within 20 business days of the date the approval was received by the unit operator or its agent." Moreover, as correctly noted by BLM:

There is no requirement that BLM notify SUWA when it decides to suspend an oil and gas lease. Clearly, someone who becomes aware of a BLM decision long after the time for seeking [State Director Review] or appealing that decision has passed cannot then appeal it on the basis that they were unaware of it before.

(BLM Answer at 2.)

We also note that SUWA's appeal is subject to dismissal for lack of standing to appeal BLM's October 1, 1998, Decision to this Board. The Board has repeatedly held that under 43 C.F.R. § 4.410(a), an appellant "must be both a party to the case and have a legally cognizable interest that is adversely affected by the decision in issue." Laser, Inc., 136 IBLA 271, 273 (1996) and cases cited. SUWA is not a party to the case because it is undisputed that it did not participate in the administrative process that resulted in BLM's decision to grant the suspension. See Blue Mountains Biodiversity Project, 139 IBLA 258, 269 (1997). Further, SUWA has not shown that it has an interest that is adversely affected by the suspension. As noted by BLM, since Mission's APD has not been approved by BLM, any drilling on the lease "will require a future decision by BLM approving the APD after completing appropriate review of the environmental and other impacts which such drilling might entail." (BLM Answer at 3.) Thus, SUWA's allegations of injury are hypothetical, rather than real and immediate. See Washington County, Utah, 147 IBLA 373, 379 (1999).

We therefore conclude that BLM's October 1, 1998, Decision was correct and must be affirmed. To the extent SUWA has raised arguments not specifically addressed herein, they have been considered and rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed, and SUWA's Request for Stay is denied as moot.

John H. Kelly
Administrative Judge

I concur.

James P. Terry
Administrative Judge