<u>Editor's note</u>: Reconsideration denied by order dated Aug. 25, 1982

UTAH WILDERNESS ASSOCIATION

IBLA 82-908 Decided July 9, 1982

Appeal from advisory letter of Bureau of Land Management reporting to Minerals Management Service the results of its review of an application for permit to drill on oil and gas lease U 44706.

Dismissed.

1. Appeals -- Rules of Practice: Appeals: Dismissal

Where an advisory letter from an official of the Bureau of Land Management to an official of Minerals Management Service reporting recommendations on an application for permit to drill on an oil and gas lease is clearly interlocutory in nature, and where implementation of the action contemplated by the letter is contingent upon the future approval by Minerals Management Service of an application for a permit to drill, an appeal from the recommendations contained in the letter will be dismissed because the letter does not constitute a final decision, and appellant's interests have not yet been adversely affected.

APPEARANCES: Wayne McCormack, Esq., and William J. Lockhart, Esq., Salt Lake City, Utah, for appellant; David K. Grayson, Esq., Office of the Solicitor, Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

By letter dated May 11, 1982, the Area Manager, Henry Mountain Resource Area, Bureau of Land Management (BLM), Hanksville, Utah, sent to the District Supervisor, Oil and Gas Operations, Minerals Management Service (MMS), Salt Lake City, Utah, recommendations resulting from a BLM review of an application for a permit to drill (APD) and a reclamation plan submitted by Exxon Oil and Gas Company (Exxon) in connection with its plans to drill on lease U 44706 in sec. 24, T. 31 S., R. 9 E., Salt Lake meridian, Utah, which is part of the Mount Ellen Wilderness Study Area and Wilderness Inventory

Area. The letter reported BLM's conclusion that Exxon "could develop the well site and reclaim the disturbances so as to not cause impairment of the area's wilderness values" and identified numerous areas of concern that BLM wanted expressed as stipulations and appended to Exxon's surface use plan. The Utah Wilderness Association filed a notice of appeal from the letter with this Board on June 4, 1982. The Association also filed a motion for a stay, requesting the Board to issue an order that no access road development or other surface disturbances related to drilling would be permitted pending a decision on its appeal, in the event that BLM refused to implement the automatic stay provision of 43 CFR 4.21(a). Counsel for BLM has moved to dismiss the appeal on the grounds that the BLM letter is not an appealable decision and that approval of the challenged access roads is the responsibility of MMS, not BLM.

By Secretarial Order No. 2948, dated October 6, 1972, the Secretary of the Interior divided the Department's management responsibilities for onshore mineral leasing between BLM and MMS. 1/ The management scheme set out by the order divides responsibility between BLM and MMS generally as follows: Up to and including lease issuance, BLM has primary responsibility for acting for the Department on oil and gas leasing matters with input from MMS on all geologic, engineering, and economic value determinations; after lease issuance and during exploration and development, MMS takes official action on lease activity after consultation with BLM on matters involving surface use, environmental protection, and reclamation. The order states particularly:

> (1) Prior to the issuance of mineral leases, permits, and licenses, [BLM] will represent the Secretary in dealing with applicants.
>
> (2) After issuance and during the exploration, development, and production phases of leases, permits, and licenses and until a lease, permit, or license has terminated (at which time management is the sole responsibility of BLM), [MMS] is the sole representative of the Secretary in all matters relating to the supervision of operations.

[1] We find that, although both BLM and MMS have specific areas of responsibility throughout the decisionmaking process, the Secretary has determined that for the purpose of efficient and orderly management of onshore leasing, BLM represents the Department on prelease issuance matters, and MMS is the decisionmaker of record in post-issuance activity on oil and gas leases. Thus, in the context of Secretarial Order 2948, the BLM letter

---

1/ Secretarial Order 2948 actually identifies the Geological Survey and BLM as the Departmental agencies sharing responsibility for onshore mineral leasing. By Secretarial Order No. 3071, dated Jan. 19, 1982, Minerals Management Service was established and the minerals related functions of the Conservation Division of Geological Survey, including those addressed in Secretarial Order 2948, were transferred to MMS. See 47 FR 4751 (Feb. 2, 1982).

on appeal is interlocutory in nature and is part of the cooperative decision-making process between BLM and MMS leading to the APD approval or disapproval by MMS.

Based on the management scheme set out in Secretarial Order 2948, we conclude that the BLM letter is not a final agency action and does not represent an appealable decision. Contrary to appellant's assertions, the recitations in the letter are not self-executing. Implementation of the BLM finding and stipulation recommendations is entirely contingent upon MMS's concurrence in and approval of the APD. 2/ The BLM letter is cast in a form that suggests that additional review or discussion may occur since BLM did not propose any actual language for the stipulations. We find that a review of the BLM findings at this time is clearly premature because there is no indication before us whether or in what form the stated concerns of BLM will be addressed in the MMS approval of the APD. 3/ Such an interlocutory appeal must be dismissed. Marathon Oil Co., 43 IBLA 309 (1979); Tenneco Oil Co., 36 IBLA 1 (1978).

Furthermore, under 43 CFR 4.410, any party seeking to appeal to this Board must be adversely affected by a BLM decision. Although we are fully aware of appellant's interests in the Mount Ellen Wilderness Study Area and Wilderness Inventory Area and of the pending appeals concerning it, we fail to see how appellant is adversely affected by the transmittal of the BLM letter. In spite of appellant's assertions, the letter in no way authorizes any activity on the lease. Absent approval by MMS of the APD, Exxon may not proceed to drill or undertake related activities. We find that the only injury that could occur to appellant's interests is dependent upon subsequent action by MMS and that, therefore, the appeal is premature and must be dismissed.

Appellant is attempting to challenge a portion of the anticipated rationale for the prospective approval of Exxon's APD, rather than, or presumably in addition to, appealing the approval when it occurs. The orderly administration of both this Board and those constituent agencies of the Department whose decisions we review requires that only appeals that are truly ripe for review be accepted. Tenneco Oil Co., supra.

In view of the above, we find consideration of the motion for a stay of drilling activities inappropriate.

2/ The Order specifies particularly that before approving drilling permits MMS must consult "with the Bureau of Land Management on the adequacy of the surface use, environmental protection, and reclamation aspects of the plans and will not grant approval if inconsistent with the BLM's recommendations without further discussions with BLM. If differences remain after these further discussions, the resolution is made by the Assistant Secretary -- Mineral Resources and the Assistant Secretary -- Public Land Management. If required, the Under Secretary resolves any remaining differences."

3/ Counsel for BLM has informed the Board that the APD was approved on June 9, 1982, but there is no information in the record as to its details.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed and the motion to stay is denied.

Bernard V. Parrette
Chief Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Bruce R. Harris
Administrative Judge