



YATES PETROLEUM CORPORATION

175 IBLA 44

Decided June 30, 2008



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

YATES PETROLEUM CORPORATION

IBLA 2007-245

Decided June 30, 2008

Appeal from an order issued by Administrative Law Judge Patricia McDonald Dan denying Yates' Motion to Unseal Certain Testimony and Exhibits and request that the Board here grant appellant's Motion to Unseal Certain Testimony and Exhibits.

Order Affirmed; Motion Denied.

1. Administrative Authority: Generally--Appeals:
Jurisdiction--Delegation of Authority--Rule of Practice: Appeals:
Jurisdiction

The source of this Board's review authority is 43 C.F.R. Part 4, whereby the Secretary of the Interior has delegated authority to the Board to decide appeals concerning use and disposition of public land. The Board's jurisdiction and authority to act is initiated by an appeal under 43 C.F.R. § 4.410 and ends with our decision, 43 C.F.R. § 4.403. The only avenues by which the Board may regain jurisdiction over a matter is by a petition for reconsideration, by an order of the Director, Office of Hearings and Appeals or the Secretary, or on remand from a court. The Board has no inherent, retained, or implied authority to manage post-decisional disputes as a proxy for either BLM or the Secretary.

2. Administrative Authority: Generally--Delegation of Authority--Administrative Procedures: Administrative Law Judges

An Administrative Law Judge may exercise only that authority as has been expressly delegated by the Secretary and has no inherent authority or continuing jurisdiction to act beyond the strictures of his/her delegated authority. Following a referral to the Hearings Division,

an Administrative Law Judge's jurisdiction over and authority to act in that referred matter ends with his/her issuance of findings of fact, following hearing and incorporation of the hearing transcript in the record.

APPEARANCES: James E. Haas, Esq., Artesia, New Mexico, Phillip Wm. Lear, Esq., and Stephanie Barber-Renteria, Esq., Salt Lake City, Utah, for appellant; Robert Tuchman, Esq., Steven B. Richardson, Esq., James F. Cress, Esq., and James N. Phillips, Esq., Denver, Colorado, for Intervenor; and Sue E. Umshler, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Albuquerque, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE JACKSON

Yates Petroleum Corporation (Yates) appeals from a May 31, 2007, Order issued by Administrative Law Judge Patricia McDonald Dan (ALJ), Hearings Division, U.S. Department of the Interior, denying Yates' Motion to Unseal Certain Testimony and Exhibits (Motion to Unseal) for lack of jurisdiction. In the alternative, Yates urges the Board to rule on and grant its Motion to Unseal. Statement of Reasons (SOR) at 1. The Potash Association of New Mexico (PANM) opposed Yates' motion before the ALJ and has filed its objections to this appeal. We affirm the ALJ's decision and also deny Yates' Motion to Unseal.

Background

This case emanates from a challenge by Intrepid Potash-New Mexico LLC (Intrepid) to the decision of the State Director, New Mexico State Office, Bureau of Land Management (BLM), approving 11 applications for permits to drill oil and gas wells (APDs)¹ on public lands within the 491,916-acre "Potash Area," designated by the Secretary of the Interior under an October 21, 1986, Secretarial Order (1986 Order).² Intrepid has appealed that decision, docketed as IBLA 2006-288, claiming

¹ The 11 wells would be situated on public lands in sec. 17, T. 21 S., R. 32 E., New Mexico Principal Meridian, Lea County, New Mexico. All 640 acres of public land in sec. 17 are subject to a competitive oil and gas lease, NM-94095, which was issued effective Dec. 1, 1994, and is currently held by Yates Petroleum Corporation, Yates Drilling Co., Abo Petroleum Corp., and Sharbro Oil Ltd. Co. Yates Petroleum Corporation is the designated operator of the 11 wells, as well as the Caper BFE "17" Federal Nos. 1 through 5 wells, which had already been approved.

² The 1986 Order, entitled "Oil, Gas and Potash Leasing and Development within the Designated Potash Area of Eddy and Lea Counties, New Mexico," was published in
(continued...)

that BLM did not properly apply the 1986 Order before approving those APDs. Intrepid there argues that BLM did not consider the latest available information for identifying potash enclaves (e.g., gamma ray logs) and that had it done so, potash enclaves would have been identified properly and the APDs would then have been denied under the 1986 Order's enclave policy.

Throughout the pendency of IBLA 2006-288, Yates has sought access to information, primarily gamma ray logs, that Intrepid submitted to show that the 11 APDs are located in potash enclaves. See Nov. 1, 2006, Order in IBLA 2006-288 at 8 (Freedom of Information Act request), 9 (motion to compel production). Additional motions seeking such information have been filed and are under consideration in IBLA 2006-288. Pursuing another avenue for information relevant to its arguments in IBLA 2006-288, Yates filed its Motion to Unseal to obtain evidence submitted in the hearing of *In the Matter of Yates Petroleum Corp. (Yates)*. Motion to Unseal at 1; Appellant's Memorandum in Support at 7. *Yates* was the result of our referral of a matter for hearing to the Hearings Division, Department of the Interior. *Yates Petroleum Corp.*, 131 IBLA 230 (1994).³ The ALJ's *Yates* decision was appealed to and decided by the Board in *IMC Kalium Carlsbad, Inc.*, 170 IBLA 25 (2006) (*IMC Kalium*); the decision in *IMC Kalium* was appealed and is currently under judicial review in *Potash Association of New Mexico v. Dept. of the Interior*, Civ. No. 1:06-CV-01190-MCA-ACT (D.N.M. filed Dec. 6, 2006). In her May 31, 2007, Order, the ALJ ruled that she lacked jurisdiction to consider Yates' Motion to Unseal evidence presented in *Yates* because that "case is now final for the Department," citing *IMC Kalium*. This appeal then followed.

Issues and Arguments

Yates asserts that the ALJ had the requisite authority to modify her earlier order in *Yates* to protect the "official record." Yates argues that the finality of decision regulations relied upon by the ALJ are inapplicable because its motion was not an appeal, but a request to modify the Stipulated Confidentiality Order (SCO), an interim order issued by her in *Yates*. Appellant explains that a ruling on its motion will not disturb the finality resulting from the Board's decision in *IMC Kalium* and likens its motion to a request under Rule 28, Federal Rules of Civil Procedure, which

² (...continued)

the *Federal Register* on Oct. 28, 1986 (51 Fed. Reg. 39425), with corrections on Aug. 27, 1987 (52 Fed. Reg. 32171).

³ At issue in that case were numerous APDs located elsewhere in the Potash Area which had been denied by BLM and were appealed by Yates and Pogo Producing Co. Judge McDonald Dan's decision in that case is considered the seminal starting point for subsequent discussions regarding oil and gas APDs in the Potash Area.

recognizes continuing jurisdiction to modify an order protecting trade secrets and other confidential information. Yates also argues that certain sections of the SCO, particularly paragraphs 9, 14, and 19, provide for continuing jurisdiction by the ALJ and avers that granting its motion will not prejudice any of the parties to the SCO as there will be no public disclosure. Yates further avers that confidential information provided under the SCO has been used in other proceedings and appeals.

PANM counters that neither the ALJ nor this Board has jurisdiction to consider the unsealing of the testimony and documents presented in *Yates*. PANM contends that the ALJ's jurisdiction ended when the hearing concluded and her decision was appealed to the Board and that the Board's jurisdiction ended when it decided that appeal and judicial review of its decision was sought. Regarding disclosure under the SCO, PANM argues that information submitted under that Order could be used only in *Yates* and for no other purpose. PANM states that the SCO requires that all confidential information be returned to the submitting party and that disclosure to any non-party was prohibited except as required by law. PANM avers that disclosure of this information to Yates would harm Intrepid's competitive position and violate the Trade Secrets Act, 18 U.S.C. § 1905 (2000).⁴

Discussion

Our review of this appeal necessarily focuses on whether the ALJ and/or the Board has jurisdiction to consider this matter. Upon critical examination, we conclude that neither has jurisdiction.

Yates has offered the Federal Rules of Civil Procedure as a point of reference. While those rules are not directly applicable to administrative proceedings, the Board has acknowledged that they can provide helpful guidance when considering similar procedures of the Department. *United States v. Pittsburgh Pacific Co.*, 68 IBLA 342, 353, 89 I.D. 586, 593 (1982). Rule 28, Federal Rules of Civil Procedure, recognizes that courts have plenary, continuing authority over matters under judicial review pursuant to Article III of the U.S. Constitution. While the Secretary has plenary,

⁴ The question of when proprietary or confidential data must be released by the Department has been on the periphery of a number of Departmental decisions. See, e.g., *Taylor Energy Co.*, 143 IBLA 194, 197 (1998). Thus, we parenthetically observed in *Yates Petroleum Corp.*, 131 IBLA at 239, after ordering a hearing on disputed issues of fact, that Departmental regulations applicable to the release of confidential information, 43 C.F.R. § 4.31, distinguish between disclosing information to the general public and release of information to parties engaged in a proceeding before the Department.

Executive branch authority over the disposition of the public lands, *see Cameron v. United States*, 252 U.S. 450, 459-64 (1920); *Ideal Basic Industries, Inc. v. Morton*, 542 F.2d 1364, 1367-68 (1976), this Board and Departmental ALJs have more limited authority, as expressed in delegations of authority from the Secretary.

[1] The source of this Board's review authority is 43 C.F.R. Part 4, whereby the Secretary of the Interior has delegated authority to the Board to decide appeals concerning use and disposition of public land. The Board has no inherent authority of its own. *See Samedan Oil Corporation*, 32 OHA 61, 69-70 (2005). Thus, we have stated:

In describing the Board's appellate role and relationship to BLM, we have held that "[t]he Board does not exercise supervisory authority over BLM except in the context of deciding an actual appeal case over which the Board has jurisdiction." *Defenders of Wildlife, Wyoming Outdoor Council*, 169 IBLA 117, 127 (2006), quoting *Nevada Outdoor Recreation Association*, 158 IBLA 207, 210 (2003). Therefore, although we may consider BLM decisions "as fully . . . as might the Secretary," *United States Fish & Wildlife Service*, 72 IBLA 218, 221 (1983), we cannot manage the public lands as a proxy for BLM. Rather, we may modify a BLM decision only to correct an underlying error of law or fact in the context of a challenge to the merits of that BLM decision.

Southern Utah Wilderness Alliance, 172 IBLA 183, 184-85 (2007). The Board's jurisdiction and authority to act is initiated by an appeal under 43 C.F.R. § 4.410 and ends with our decision, 43 C.F.R. § 4.403. The only avenues by which the Board may regain jurisdiction over a matter is by a petition for reconsideration, by an order of the Director, Office of Hearings and Appeals, or the Secretary, or on remand from a court. The Board simply has no inherent, retained, or implied authority to act or otherwise resolve post-decisional disputes as a proxy for either BLM or the Secretary. *See Eugene V. Simons*, 135 IBLA 125, 128-29 (1996).

[2] The Hearings Division and its corps of administrative law judges are delegated authority by the Secretary under 43 C.F.R. Part 4 to conduct "hearings in cases required by law to be conducted pursuant to 5 U.S.C. 554, and hearings in other cases arising under statutes and regulations of the Department, including rule making hearings." 43 C.F.R. § 4.1(a); *see also* 43 C.F.R. § 4.433. *Yates* was decided by the ALJ following our referral of that matter to the Hearings Division under 43 C.F.R. § 4.415. Thus, the ALJ's jurisdiction and authority to act in that matter ended with the completion of a hearing, incorporation of the hearing transcript (or summary of evidence) into the record, and issuance of proposed findings of fact.

43 C.F.R. § 4.439. There is no specified process under 43 C.F.R. §§ 4.430 through 4.439 for an ALJ to reassume jurisdiction and authority to act unless that matter is again referred for hearing. 43 C.F.R. § 4.415.

Once a matter is reviewed under 43 C.F.R. Part 4 and finally decided for the Department, there is no further delegated authority over that matter to be exercised. Unlike a court's continuing authority over matters before it, ALJs and this Board may exercise only that authority as has been expressly delegated by the Secretary. Neither they nor we have any inherent authority or continuing jurisdiction to act beyond those strictures. *Yates* was decided with finality for the Department in *IMC Kalium*, a decision currently under judicial review. Since the official record of that case has been transmitted to the reviewing court and it is information in that record which *Yates* here seeks, it would appear prudent for *Yates* to make its requests for information to that court.

The plain language of the SCO manifests an intent that its terms apply "to the present consolidated matters and any appeals or challenges thereof before an appropriate Administrative body or Court of competent jurisdiction." SCO at 1. Further, the SCO includes multiple references to the ALJ, a defined term which refers to "the Administrative Law Judge presiding over the present proceedings [Judge McDonald Dan] . . . the Administrative agency [IBLA] or Court of competent jurisdiction [U.S.D.C. D.N.M.], as may be appropriate for any challenge or appeal of these proceedings." SCO at 1. The above-quoted language simply does not support *Yates*' view that only the ALJ has the authority to modify the SCO. See SCO ¶¶ 14 and 19. To the contrary and until that matter is finally concluded, it logically follows that the authority to modify the SCO reposes in the entity with jurisdiction over that dispute and custody of its official record. As jurisdiction, authority to act, and custody of the official record currently repose in the United States District Court for the District of New Mexico, it is that court which can interpret and apply the provisions of the SCO to the record before it. We will not attempt to usurp that court's authority in this appeal.

Appellant also suggests that Judge McDonald Dan had continuing jurisdiction of this matter under 43 C.F.R. § 4.31. We are unpersuaded. The process outlined in that rule does not contemplate, and we do not infer, continuing authority to act on the disclosure of confidential information. At most, it specifies that confidential information must be "retained under seal as part of the official record." 43 C.F.R. § 4.31(f). Once a proceeding is concluded, neither the Board nor an ALJ is the custodian of that record; it is either returned to the managing agency (*e.g.*, BLM), forwarded to the next level of review within the Department (*e.g.*, the Secretary), or transmitted to a reviewing court. Since neither the ALJ nor this Board are custodians

of the official record in *Yates*, 43 C.F.R. § 4.31 has no applicability to the circumstances presented by this appeal.⁵

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the ALJ's order denying the Motion to Unseal is affirmed and Yates Motion to Unseal is here denied for lack of jurisdiction.

_____/s/_____
James K. Jackson
Administrative Judge

I concur:

_____/s/_____
H. Barry Holt
Chief Administrative Judge

⁵ After the official record is returned to BLM by the Board or a reviewing court, a request for documents from that record would properly be made to BLM.