

NOTE: This disposition is nonprecedential.



United States Department of the Interior
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Interior Board of Land Appeals
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March 23, 2016

IBLA 2014-191-1)	ONRR-11-0123-OCS
)	
BHP BILLITON PETROLEUM (AMERICAS) INC.)	Royalties
)	
)	Motion for Reconsideration Granted;
)	Appeal Reinstated

ORDER

BHP Billiton Petroleum (Americas) Inc. and the Office of Natural Resources Revenue (ONRR) filed with the Board a Joint Motion for Reconsideration (Motion) of the Board's December 28, 2015, Order. In that Order, we dismissed appellant's appeal because the statutory time period for adjudicating it had expired. While the parties executed an extension agreement on October 14, 2015, which extended the time the Board had for processing the appeal, they inadvertently did not file the agreement with the Board. In light of these circumstances, we grant the parties' Motion and vacate our December 28, 2015, Order issued in IBLA 2014-191. The merits of appellant's appeal will be decided in due course under the docket number IBLA 2014-191-2.

Background

Appellant appealed from ONRR's May 5, 2014, decision wherein the agency affirmed its September 29, 2011, Demand for Payment. ONRR issued to appellant the Demand for Payment for royalties due on gas produced from the Federal offshore West Cameron Block 61 Unit between October 2004 and November 2006. The Board docketed the matter as IBLA 2014-191. The matter became ripe for final disposition on February 6, 2015.

On April 17, 2015, the Board issued an Order for Supplemental Briefing in IBLA 2014-191. In that Order, the Board noted that appellant's appeal to this Board was subject to the Federal Oil and Gas Royalty Simplification and Fairness Act of

1996 (FOGRSFA), 30 U.S.C. § 1724(h) (2012).¹ The Board directed the parties to advise us whether the statutory time limit for deciding the appeal had run, and, if applicable, indicate whether they had executed an extension agreement and when the Board's jurisdiction would expire. On May 19, 2015, the parties responded. They stated the Board's timeframe for processing the appeal would lapse on October 14, 2015.

The parties did not file with the Board an executed extension agreement or any other written documentation that extended the statutory time period for deciding the appeal past October 14, 2015. Consequently, the Board issued the December 28, 2015, Order in IBLA 2014-191, wherein we dismissed appellant's appeal because the statutory time period for adjudicating it had expired.

Analysis

The parties have timely requested the Board to vacate its December 28, 2015, Order issued in IBLA 2014-191, and place the appeal back on the Board's active docket. Under our rules, the Board may reconsider its decision under "extraordinary circumstances." 43 C.F.R. § 4.403(b). Extraordinary circumstances that warrant reconsideration include "[e]vidence that was not before the Board at the time the Board issued its decision and that demonstrates error in the decision." 43 C.F.R. § 4.403(d)(4). If a movant cites evidence that was not before the Board at the time of its decision, the movant must explain why the evidence was not provided to the Board during the course of the original appeal. 43 C.F.R. § 4.403(e). The movant must also show the Board would have likely reached a different result had the evidence been a part of the administrative record at the time of the Board's decision. *Id.*; see, e.g., *Leo Wittner (On Reconsideration)*, 186 IBLA 30, 32 (2015).

In this case, the parties state they executed an agreement on October 14, 2015, to extend the 33-month deadline "until a final decision is issued by the Interior Board of Land Appeals in IBLA-2014-0191." Motion at 3 (quoting Exhibit 1 (Extension Agreement)). The parties indicate the Extension Agreement was then "inadvertently not forwarded to the Board until after receipt of the" December 28,

¹ FOGRSFA establishes a 33-month deadline within which the Department must make a final decision. If the Board does not issue a final decision within this time frame, then ONRR's decision is deemed final for the Department, and the appellant may seek judicial review of that decision. 30 U.S.C. § 1724(h)(2) (2012); 43 C.F.R. § 4.906(a); *Continental Res., Inc.*, 184 IBLA 59, 62 (2013). The parties may extend the 33-month period by any amount of time agreed upon in writing. 30 U.S.C. § 1724(h)(1); 43 C.F.R. § 4.409.

2015, Order. *Id.* According to the parties, had the Extension Agreement been a part of the administrative record at the time the Board issued its Order, the Board could not have dismissed the appeal for lack of jurisdiction. The parties therefore request the Board to vacate its December 28, 2015, Order and reinstate this appeal for final disposition on the merits.

The parties have provided the Board with a timely-executed Extension Agreement, along with an explanation for its omission from the administrative record. Based on this evidence, the Board never lost jurisdiction over the matter and should not have dismissed appellant's appeal.

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 Board's December 28, 2015, Order issued in IBLA 2014-191, is vacated. The merits of appellant's appeal will be decided in due course under the docket number IBLA 2014-191-2.

_____/s/
Eileen G. Jones
Chief Administrative Judge

I concur:

_____/s/
James F. Roberts
Deputy Chief Administrative Judge