

NOTE: This disposition is nonprecedential.



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
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EMAILED

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May 12, 2016

IBLA 2016-38-1)	Hearings Division Docket No.
)	NX-2015-05-R; Cessation
M.L. JOHNSON FAMILY)	Order No. C14-081-538-001;
PROPERTIES, LLC, <i>ET AL.</i>)	Permit No. 898-0944
(ON RECONSIDERATION))	
)	
v.)	Surface Mining
)	
OFFICE OF SURFACE MINING)	
RECLAMATION AND)	Motion to Withdraw Motion for
ENFORCEMENT, <i>ET AL.</i>)	Reconsideration Granted;
)	Motion for Reconsideration
)	Dismissed

ORDER

M.L. Johnson Family Properties, LLC (Johnson, filed a Motion for Reconsideration of our Order dated February 19, 2016, in which we granted Johnson’s Motion to Dismiss its appeal docketed by the Board as IBLA 2016-38. In our Order, we granted Johnson’s Motion to Dismiss, but “in doing so we deem[ed] it important to correct Johnson’s erroneous assertion that this Board’s jurisdiction to rule on the Petition for Stay and the merits of its appeal ended when this Board did not rule on the Petition for Stay within the 45-day period specified in 43 C.F.R. § 4.21(b)(4).”¹

In its Motion for Reconsideration, Johnson asked the Board to reconsider and correct its Order to state that the Board’s jurisdiction to decide its petition for stay or the merits of its appeal ended when Johnson filed a Complaint and Petition for Judicial Review in the U.S. District Court for the Eastern District of Kentucky.²

¹ Order, IBLA 2015-91, at 5.

² *M.L. Johnson Family Properties, LLC v. Jewell*, Case No. 7:16:CV-6-ART.

On May 9, 2016, the Office of Surface Mining Reclamation and Enforcement (OSM) filed with the Board a Notice of Supplemental Authority informing the Board of a May 3, 2016, Order of the U.S. District Court for the District of Oklahoma in a case styled *Farrell-Cooper Mining Co. v. U.S. Dep't of the Interior (Farrell-Cooper v. U.S.)*.³ Farrell-Cooper had filed a Complaint in District Court seeking review of a September 30, 2015, decision by Administrative Law Judge (ALJ) Harvey C. Sweitzer after the Board, in an order dated December 14, 2015, denied Farrell-Cooper's petition for a stay of the ALJ's decision. In its Order, the District Court granted summary dismissal of Farrell-Cooper's Amended Complaint on the basis that Farrell-Cooper had not exhausted administrative remedies, "a bar to subject matter jurisdiction."⁴ The Court rejected Farrell-Cooper's argument that upon denial of a petition for a stay by the Board the underlying decision of the ALJ became final action of the Secretary of the Interior for purposes of judicial review. The Court stated that "[a] decision still subject to administrative appeal is not the consummation of the agency's decisionmaking process, by definition."⁵ The Court held that "it lacks subject matter jurisdiction to review the underlying merits of the agency decision, as the administrative appeal is still ongoing."⁶ The Board takes official notice of this District Court Order.⁷

On May 9, 2016, we received Johnson's Notice of Withdrawal of its Motion for Reconsideration, stating that "this administrative action is now complete and concluded." Notice at 1. We construe Johnson's pleading as a motion to withdraw the matter docketed as IBLA 2016-38-1. In light of Johnson's Notice, we dismiss its Motion for Reconsideration of our February 19, 2016, Order.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Johnson's Motion for Reconsideration of our February 19, 2016, Order is dismissed.

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

³ Docket No. CIV-16-012-RAW.

⁴ Order, *Farrell-Cooper v. U.S.*, at 3.

⁵ *Id.* at 4.

⁶ *Id.* at 5.

⁷ See 43 C.F.R. § 4.24(b).

I concur:

_____/s/
Amy B. Sosin
Administrative Judge

Knoxville, TN 37929