

WYOMING WILDLIFE FEDERATION

IBLA 92-407

Decided August 7, 1992

Appeal from a decision of the Pinedale (Wyoming) Resource Area Manager, Bureau of Land Management, approving an application for permit to drill on lease No. WYE-022261. WY-046-EA-92-12.

Appeal dismissed; request to stay denied as moot.

1. Appeals: Generally--Appeals: Jurisdiction--Board of Land Appeals--Bureau of Land Management--Oil and Gas Leases: Applications--Oil and Gas Leases: Drilling

A decision approving an application for permit to drill an oil and gas well under 43 CFR 3162.3-1 is first subject to administrative review by the appropriate BLM State Director in accordance with 43 CFR 3165.3(b). Where an appeal to this Board from such a decision has not been the subject of State Director review, it will be dismissed.

2. Rules of Practice: Appeals: Stay

Under BLM's interim final rule, 43 CFR 3165.4(c), promulgated by the Department on Mar. 13, 1992 (57 FR 9010), a petition for a stay of a decision or approval of the authorized officer is required to be filed with the Board of Land Appeals.

APPEARANCES: Stephen Koteff, Esq., Salt Lake City, Utah, for appellant; Glenn F. Tiedt, Esq., Office of the Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

The Wyoming Wildlife Federation (WWF) has appealed from the May 5, 1992, decision of the Pinedale (Wyoming) Resource Area, Bureau of Land Management (BLM), approving the application for permit to drill (APD) filed by Enron Oil and Gas Company (Enron) for the Pine Grove Creek well on Lease No. WYE-022261 situated in sec. 19, T. 28 N., R. 113 W., Sublette County, Wyoming. Further, WWF requests a stay of Enron's operations pending the Board's resolution of WWF's appeal on the merits.

WWF has submitted to the Board a copy of its request for review by the Wyoming State Director, BLM, dated May 14, 1992, in which WWF "appeals" to the State Director pursuant to 43 CFR 3165.3(b), and requests a stay of "implementation" of the Pinedale Resource Area's decision pending resolution of WWF's "appeal." By letter dated May 14, 1992, the Deputy State Director, Mineral Resources, informed WWF that a decision on its request for State Director review (SDR) would be issued within 10 business days from receipt of the request for SDR, *i.e.*, by May 29, 1992. In the same letter, he advised WWF that, under BLM's interim final rule, 43 CFR 3165.4(c), promulgated by the Department on March 13, 1992 (57 FR 9010), WWF should file its request for a stay with the Board of Land Appeals, and that the Wyoming State Office "is not allowed to respond to [WWF's] request to grant an immediate stay on the subject matter."

[1] Subsection (a) of 3165.4(a) provides that "[a]ny party adversely affected by the decision of the State Director after State Director review, under § 3165.3(b) * * * of an instruction, order, or decision may appeal that decision to the Interior Board of Land Appeals pursuant to the regulations set out in [43 CFR Part 4]." This Board has consistently held that decisions of the authorized officer concerning APD's must first be reviewed by the State Director in accordance with 43 CFR 3165.3(b). See Southern Utah Wilderness Alliance, 122 IBLA 283 (1992); Utah Sierra Club, 114 IBLA 172 (1990); San Juan Citizens Alliance, 104 IBLA 288 (1988). Accordingly, since this appeal was filed prior to resolution of SDR, we must dismiss it as premature.

[2] On May 28, 1992, we issued an order directing the parties to brief the Board, within 10 days of receipt of the order, on the proper approach to be taken in interpreting 43 CFR 3165.4(c). As we explained in that order:

While the March 13, 1992, regulatory amendments have had no effect on the requirement that an individual adversely affected by a decision of the authorized officer under the regulations in 43 CFR Part 3160 must first seek SDR before appealing to this Board (see 43 CFR 3165.3), the clear language of 43 CFR 3165.4(c), as recognized by the Deputy State Director, vests the authority to suspend the authorized officer's decision in this Board, not in the State Director. Thus, the amended 43 CFR 3165.4(c) provides that "[a] petition for a stay of a decision or approval of the authorized officer shall be filed with the Board of Land Appeals."

The effective result of this regulatory scheme is to place the decision of the authorized officer under Subpart 3160 into immediate effect and require any adversely affected party to seek review before the State Director and, if a stay of that decision is desired, simultaneously seek such a stay before the Board.

Apart from the obvious time constraints involved in such a procedure, the practical effect is to undercut the Board's ability to timely review requests for such stays since, as this Board noted in its recent decision in Southern Utah Wilderness Alliance

, 123 IBLA 13 (1992), involving a construction of interim final rule 43 CFR 3150.2, "it is difficult, if not impossible, for the Board to determine, under the guidelines set forth in the regulation, whether a request for a stay should be granted without reviewing the case record." *Id.* at 18. Under normal BLM procedures, the case file in an SDR proceeding will not be transmitted to

the Board until after the State Director completes his review. Thus, unless the Board were to automatically grant a temporary stay in every case, there will be a period of time during which the decision appealed from is in effect with no real possibility of obtaining an administrative stay, no matter how meritorious an appellant's showing might ultimately prove to be.

In response to our order, counsel for BLM filed a document on June 5, 1992, stating that "[t]he Wyoming State Director's decision on the Wyoming Wildlife Federation's request for review was issued on May 27, 1992, thus rendering moot the Federation's request to the Board for a stay." BLM did not address the issues raised in our order; rather it stated that "the Board's order is being forwarded to the Bureau of Land Management for consideration as comments on the proposed rule that was published simultaneously with the interim final rule." Counsel for BLM did not include a copy of the State Director's disposition, but we accept counsel's representation that a decision did issue on that date. WWF did not respond to our order. However, on July 30, 1992, counsel for WWF filed a document styled "Request for Dismissal," in which he stated that the well in question has been drilled, and he requested dismissal of the appeal without prejudice to raising the issues in a subsequent administrative action. Under the circumstances, WWF's request for a stay of the Pinedale Resource Area Manager's decision is denied as moot.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, WWF's appeal is dismissed as premature and its request for stay is denied as moot.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

James L. Burski
Administrative Judge

