



ROBERT L. BAYLESS PRODUCER, *ET AL.*

177 IBLA 83

Decided April 9, 2009



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

ROBERT L. BAYLESS PRODUCER, *ET AL.*

IBLA 2009-157

Decided April 9, 2009

Appeal from decisions of the Utah State Office, Bureau of Land Management , withdrawing parcels from a competitive oil and gas lease sale and returning the high bids submitted for those parcels.

Dismissed.

1. Administrative Authority: Generally--Administrative Procedure: Administrative Review--Appeals--Board of Land Appeals--Office of Hearings and Appeals--Oil and Gas Leases: Competitive Leases--Rules of Practice: Appeals: Generally--Secretary of the Interior

Under 43 C.F.R. § 4.410(a), any party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management has a right to appeal to the Board, with exceptions that include “[w]here a decision has been approved by the Secretary.” 43 C.F.R. § 4.410(a)(3). Where the Secretary has issued a public statement and a memorandum directing a BLM officer to withdraw parcels from an oil and gas lease sale and refund the bids submitted for those parcels, the officer’s decision withdrawing those parcels falls within this exception.

APPEARANCES: Robert S. Thompson, III, Esq., William E. Sparks, Esq., Bret A. Sumner, Esq., and Matthew L. Crocket, Esq., Denver, Colorado, for appellants; James E. Karkut, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Robert L. Bayless Producer and others have appealed from separate February 12, 2009, decisions of the Utah State Office, Bureau of Land Management (BLM), withdrawing 53 parcels from the December 19, 2008, Utah competitive oil

and gas lease sale.<sup>1</sup> BLM returned the high bids that appellants submitted for those parcels. BLM's decisions state that the Secretary of the Interior directed these actions.

Two days before the sale, the Southern Utah Wilderness Alliance (SUWA) filed a complaint in the United States District Court for the District of Columbia seeking to have BLM's decision to authorize the sale declared invalid with respect to 77 parcels including those involved in this appeal. SUWA subsequently sought a temporary restraining order to prevent BLM from issuing the leases for those parcels, which the Court granted on January 17, 2009. *Southern Utah Wilderness Alliance v. Allred*, Civ. No. 08-2187(RMU), 2009 WL 765882 (D.D.C., Jan. 17, 2009). On February 4, 2009, Secretary Salazar publicly announced that "I have directed [the] Bureau of Land Management not to accept bids on 77 parcels from the December 19[, 2008,] lease sale." U.S. Department of the Interior News Release, Feb. 4, 2009. By memorandum to BLM's Utah State Director dated February 6, 2009, Secretary Salazar directed that the 77 parcels covered by the Court's order be withdrawn from the sale and that money received by BLM in connection with those parcels be returned. On February 12, 2009, BLM issued decisions related to 53 of those parcels from which this appeal is taken.

[1] Under 43 C.F.R. § 4.410(a), any party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management has a right to appeal to the Board, with exceptions that include "[w]here a decision has been approved by the Secretary." 43 C.F.R. § 4.410(a)(3). BLM has filed a motion to dismiss this appeal, citing cases in which the Board has held that it lacks jurisdiction to review decisions that are made or approved by the Secretary. *E.g., Mouat Nickel Mines, Inc.*, 165 IBLA 305, 312 (2005); *see also Blue Star, Inc.*, 41 IBLA 333, 335-36 (1979). BLM asserts that its decisions in this appeal merely implement the Secretary's directive.

Appellants point out they received no decisions other than those that BLM issued on February 12, so it was not clear to them whether BLM's decision or the Secretary's February 6 memorandum was final agency action under the Administrative Procedure Act, 5 U.S.C. § 704 (2006). Response at 2. They assert that the Secretary's memorandum was an internal communication to BLM that is unlike the Secretarial actions in the cases upon which BLM relies, in which the decisions themselves had been approved by a Secretarial Officer.<sup>2</sup> *Id.* at 3. Although

<sup>1</sup> Appellants, the parcels, and the leases for which BLM returned their bids are listed in the Appendix.

<sup>2</sup> The Board has addressed numerous appeals involving approval of agency decisions by the Secretary or an Assistant Secretary. For example, in *Marathon Oil Co.*, 108 IBLA 177 (1989), the Board dismissed an appeal from a decision signed by the

(continued...)

the Secretary did not himself withdraw the parcels from the sale but directed BLM to do so, we do not see how this affects the scope of authority under 43 C.F.R. § 4.410. In *Blue Star, Inc.*, 41 IBLA 333 (1979), we dismissed an appeal from a BLM decision that cancelled patents because an Assistant Secretary had previously issued an order that required such action. Although appellants attempt to distinguish the memorandum issued in this case from the order issued in *Blue Star*, we perceive no difference in the effect that each has on our authority to consider an appeal. The Secretary did not issue a policy statement, but instead specifically directed BLM to take a particular action in particular cases. In this case, the Secretary's authority was exercised in a manner that falls within the exception to our authority under 43 C.F.R. § 4.410(a)(3).

Although appellants seek our opinion as to whether the Secretary's memorandum constitutes "final" administrative action for purposes of judicial review, we do not issue advisory opinions regarding matters in an appeal that we have no authority to consider. *See generally, Amax Coal Co.*, 131 IBLA 324, 327 (1994); *Tennessee Consolidated Coal Co. v. Office of Surface Mining Reclamation & Enforcement*, 99 IBLA 274, 275-76 (1987).<sup>3</sup>

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 appeal is dismissed.

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/s/  
H. Barry Holt  
Chief Administrative Judge

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<sup>2</sup> (...continued)

Director, Minerals Management Service, that was subsequently approved by the Assistant Secretary for Land and Minerals Management. In *The Wilderness Society*, 122 IBLA 162 (1992), the Board dismissed an appeal from a decision of BLM's Colorado State Director that approved a BLM vegetation treatment program for 13 western States insofar as it applied to lands administered by BLM in Colorado, because the 13-state program had been approved by BLM's Director with the concurrence of the Assistant Secretary for Land and Minerals. In *Mouat Nickel Mines, Inc.*, 165 IBLA 305 (2005), we vacated a BLM decision rejecting an application for a mineral patent because BLM had failed to give effect to a prior Secretarial decision.

<sup>3</sup> Appellants have also requested that BLM be ordered to produce the "record" in this case, but it is well established that BLM satisfies any obligation to an appellant to produce a record by making it available for inspection at the appropriate BLM office. *Center for Native Ecosystems*, 161 IBLA 135, 138 (2004).

I concur:

\_\_\_\_\_/s/  
Bruce R. Harris  
Deputy Chief Administrative Judge

## APPENDIX

<b>APPELLANT</b>	<b>PARCEL</b>	<b>LEASE NO.</b>
Robert L. Bayless Producer	UT1108-176	UTU86911
	UT1108-116	UTU86982
Samuel Butler III	UT1108-355	UTU86886
Cirque Resources, LP	UT1108-330	UTU86851
	UT1108-331	UTU86852
	UT1108-332	UTU86853
Fidelity Exploration & Production Co.	UT1108-167	UTU86902
Robert W. Hanagan	UT1108-112	UTU86979
William P. Harris	UT1108-101	UTU86970
Impact Energy Resources, LLC	UT1108-328	UTU86850
	UT1108-83	UTU86856
	UT1108-335	UTU86860
	UT1108-86	UTU86876
	UT1108-87	UTU86877
	UT1108-337	UTU86878
	UT1108-338	UTU86879
	UT1108-163	UTU86894
Questar Exploration & Production Co.	UT1108-166	UTU86901
	UT1108-168	UTU86903
	UT1108-106	UTU86975
Bill Barrett Corporation	UT1108-348	UTU86862
	UT1108-339	UTU86880
	UT1108-340	UTU86881
	UT1108-341	UTU86882
	UT1108-342	UTU86883
	UT1108-349	UTU86884
	UT1108-350	UTU86885
	UT1108-343	UTU86896
UT1108-345	UTU86898	

Par Five Exploration, LLC	UT1108-201	UTU86935
	UT1108-202	UTU86936
	UT1108-203	UTU86937
	UT1108-205	UTU86939
	UT1108-206	UTU86940
	UT1108-207	UTU86941
	UT1108-208	UTU86942
Peak Royalty Holdings, LLC	UT1108-90	UTU86944
	UT1108-94	UTU86949
	UT1108-96	UTU86950
	UT1108-97	UTU86951
Summit Operating, LLC	UT1108-136	UTU87000
Twilight Resources, LLC	UT1108-159	UTU86887
	UT1108-361	UTU86888
	UT1108-368	UTU86889
	UT1108-369	UTU86890
	UT1108-370	UTU86891
	UT1108-162	UTU86893
	UT1108-164	UTU86899
	UT1108-170	UTU86905
	UT1108-171	UTU86906
	UT1108-174	UTU86909
	UT1108-175	UTU86910
UT1108-197	UTU86931	