



GENE R. HILTON *ET AL.*

183 IBLA 270

Decided April 16, 2013



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

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IBLA 2013-66

Decided April 16, 2013

Appeal from a decision by the Colorado River Valley Field Office, Bureau of Land Management, approving a communitization agreement.

Motion to Intervene Granted; Motions to Dismiss Granted.

1. Oil and Gas Leases: Communitization Agreements--Administrative Review: State Director Review--Appeals: Jurisdiction

The authority for a Bureau of Land Management officer to approve or reject a communitization agreement is derived from 43 C.F.R. § 3161.2. Such a decision is subject to administrative review and decision by the State Director under 43 C.F.R. § 3165.3(b), and the State Director's decision may then be appealed to the Interior Board of Land Appeals under 43 C.F.R. § 3165.4. An appeal of BLM's initial decision approving or rejecting a communitization agreement is not ripe for review by the Interior Board of Land Appeals and will be dismissed as premature if a decision on State Director Review has not yet been issued.

APPEARANCES: Cynthia L. Bargell, Esq., Dillon, Colorado, for appellants; Kristen C. Guerriero, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management; Janet N. Harris, Esq., Denver, Colorado, and Hadassah M. Reimer, Jackson, Wyoming, for intervenor.

OPINION BY CHIEF ADMINISTRATIVE JUDGE H. BARRY HOLT

This case presents the issue of whether a person who opposes a Bureau of Land Management (BLM) decision either approving or rejecting a communitization agreement (CA) must request State Director Review (SDR) rather than file an appeal directly with the Interior Board of Land Appeals under 43 C.F.R. Part 4. Because we hold that such a person must seek SDR, we grant the motions to dismiss filed by BLM and intervenor WPX Energy Rocky Mountain, LLC (WPX).

Background

On December 27, 2010, WPX filed a request for approval of CA COC-75098 with the Colorado River Valley Field Office (the Field Office) of BLM. The CA sought to communitize natural gas and associated hydrocarbons underlying 640 acres of Federal and private lands owned by various parties, including Gene R. and Mary J. Hilton, husband and wife (appellants) and the United States. By letter dated January 8, 2011, appellants informed BLM that they did not concur in the CA on various grounds that are not relevant to our analysis.

On August 22, 2011, the Field Office issued a decision denying WPX's CA application, finding that communitization did not serve the public interest. Subsequently, WPX requested SDR of the decision. After accepting the request, the Acting Deputy State Director of BLM Colorado set aside and remanded the Field Office's decision, finding that "the basic intent of communitization was served by the CA application," because the Federal land covered by it could not be independently developed and operated in conformity with the governing Colorado Oil and Gas Conservation Commission orders. IBLA 2012-79 Order (June 27, 2012) at 4-5.

Appellants filed an appeal of the SDR decision with the Board, but in dismissing that appeal, we held that the issue was not ripe for our review because no appealable decision was in place. *Id.* at 5-7. Rather, we indicated that once the Field Office made a new decision on the CA, that decision would be subject to a request for SDR and, if the decision on SDR was adverse to appellants, they could file an appeal with the Board. *Id.*

On November 30, 2012, the Field Office issued a decision approving the CA. Subsequently, appellants simultaneously requested SDR and filed this appeal with the Board. WPX has moved to intervene in the appeal. Based on its obvious interest in this case and its status as the proponent of the appealed decision, WPX's motion to intervene is granted.

BLM and WPX have moved to dismiss the appeal on the ground that the State Office has yet to render a decision, such decision being appealable to the Board, and therefore the issue is not ripe for the Board's review. Appellants have responded, indicating that "the Deputy State Director notified Appellants that the Appellants' request for [SDR] was timely received [T]he State Director will be . . . process[ing] and render[ing] a ruling on the SDR." Response to BLM Motion to Dismiss at 2. Accordingly, appellants do not oppose dismissal if their right to appeal the forthcoming SDR decision remains unaffected.

Analysis

In the past, the Board has heard appeals of SDR decisions made after a party requested SDR of an underlying decision on a CA. See *Burlington Resources Oil & Gas Co.*, 150 IBLA 178 (1999); *Daniel T. Davis*, 142 IBLA 317 (1998); *Home-Stake Royalty Corp.*, 130 IBLA 36 (1994). However, if SDR is required, the Board has dismissed as premature efforts to seek Board review of a decision when SDR has not yet occurred. See, e.g., *Wyoming Wildlife Federation*, 123 IBLA 392, 393 (1992).

[1] The purpose of, and requirements for, a CA are set forth by 43 C.F.R. Subpart 3105. However, the authority for a BLM officer to approve or reject a CA is found at 43 C.F.R. § 3161.2. That regulation is within 43 C.F.R. Part 3160, and any decision issued under that Part is subject to a request for SDR. 43 C.F.R. § 3165.3(b). The SDR decision may then be appealed to the Board. *Id.* § 3165.4. Accordingly, an initial BLM decision on a CA application is not properly appealed directly to the Board if a decision on SDR has not yet been issued. In the instant case, appellants properly requested SDR, but erroneously filed a simultaneous appeal with the Board.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, WPX's motion to intervene is granted and BLM's and WPX's motions to dismiss are granted. Appellants' appeal is dismissed as premature.

/s/
H. Barry Holt
Chief Administrative Judge

I concur:

/s/
James F. Roberts
Administrative Judge