



LIBERTY SOUTHERN PARTNERS, LLC

183 IBLA 383

Decided May 9, 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

LIBERTY SOUTHERN PARTNERS, LLC

IBLA 2012-40 *et al.*

Decided May 9, 2013

Appeals from and requests for stays of decisions of the Eastern States Office, Bureau of Land Management, canceling one oil and gas lease and canceling a second oil and gas lease in part. MSES 057016, MSES 057021.

Decisions affirmed; requests for stay denied as moot.

1. Administrative Appeals: Generally

The failure of BLM to include an appeals paragraph in a decision will not deprive a party of its right of appeal. Likewise, BLM's inclusion of the appeals paragraph will not create an appeal right where none exists. Nor will BLM's failure to include appeals information preserve or extend an appellant's right to appeal that would otherwise have expired as untimely.

2. Oil and Gas Leases: Acquired Lands Leases

On acquired lands, where the surface management agency objects to mineral leasing, BLM has no authority to evaluate the motivation or objectives of that agency or to consider the objection non-binding, and BLM has no authority to issue a lease in the face of such objection. An affected lease offeror wishing to challenge such an objection must seek relief pursuant to the administrative remedies provided by the surface managing agency.

3. Oil and Gas Leases: Cancellation

BLM has the authority to cancel or appropriately modify an improperly issued lease. A lease issued without the consent of the surface management agency is improperly issued.

APPEARANCES: Jason R. Warran, Esq., Kensington, Maryland, for Liberty Southern Partners, LLC; J. Nicklas Holt, Esq., John P. Coleman, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Knoxville, Tennessee, for the Bureau of Land Management.

#### OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Liberty Southern Partners, LLC (Liberty) has appealed from and requested stays of two decisions issued on October 20, 2011, by the Eastern States Office, Bureau of Land Management (BLM). These decisions involved two oil and gas leases on Forest Service (FS), U.S. Department of Agriculture, acquired lands in Adams County, Mississippi. The decisions canceled one oil and gas lease entirely (Lease MSES 07016) and canceled another in part (Lease MSES 07021), authorizing refunds based on the leased acreage that was canceled.<sup>1</sup> Based on the following analysis, we affirm BLM's decisions.

#### *Background*

The complete background of the lease parcels at issue in this appeal cannot be gleaned from the meager files provided by BLM, but is adequately supplemented by Liberty's Statement of Reasons (SOR) and exhibits.

By letter received by BLM on September 23, 2010, Liberty nominated certain acreage in Adams County, Mississippi, for leasing.<sup>2</sup> SOR, Ex. C. BLM subsequently received a document with a cover sheet dated January 20, 2011, described as "Area-by-Area Reports for T5N R1W, Homochitto [National Forest (NF)], Mississippi" (First FS Report). The cover sheet's comments indicate that the document is "our Area-by-Area Title Reports" and it is signed by Henry B. Hickerson, an employee of FS. The rest of the pages are a list of "Lands Available for Lease as of September 21, 2010," including most of the land nominated for leasing by Liberty.<sup>3</sup>

BLM also received a second similar document from FS (Second FS Report), apparently received on February 16, 2011. Answer at 4. This Second FS Report

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<sup>1</sup> BLM's decision addressing Lease MSES 07016 was docketed as IBLA 2012-40, and the decision addressing Lease MSES 07021 was docketed as IBLA 2012-41. The Board consolidated these appeals *sua sponte* by Order dated Jan. 9, 2012.

<sup>2</sup> These areas, all located in T. 5 N., R. 1 W., Washington Meridian, Adams County, Mississippi, are described as: 1) sec. 24 (all); 2) N $\frac{1}{2}$ E $\frac{1}{2}$ , sec. 29, lot 2; 3) sec. 5 (all); 4) sec. 15, lots 13-18; 5) sec. 54, lots 5 & 12 of tract H-20B; 6) sec. 6, tract H-20B; and 7) sec. 52 (all).

<sup>3</sup> Sec. 5 is not listed among lands available for lease.

separately lists lands available and unavailable for lease “as of January 11, 2011,” and differs significantly from the First FS Report. The list of land unavailable for lease includes most of the lands nominated for leasing by Liberty.

On June 21, 2011, BLM issued offers to lease MSES 057016 and MSES 057021. MSES 057016 is for land described as “Sec. 6, All (Tracts H-20b & H-84); Sec. 15, Lots 13-18” in T. 5 N., R. 1 W., Washington Meridian, Adams County, Mississippi. MSES 057021 is for land described as “Sec. 54, Lots 4, 7, 8, E 42.23 Acres of Lot 3” in T. 5 N., R. 1 W., Washington Meridian, Adams County, Mississippi. Both leases were issued “[s]ubject to Forest Service Lease Notice 3 & 4, Notice to Lessee 5, Timing Limitation Stipulation 1” and “No Surface Occupancy Stipulation 2B.” The lands contained in both leases were identified as acquired lands under the management of Homochitto [Office] FS, the surface management agency. Liberty paid \$37,070.50 for MSES 057016 and \$9,750.00 for MSES 057021 for bonuses, first year’s rentals, and administrative fees, plus an additional \$85.00 to transfer operating rights to another entity (from Liberty Southern Energy, LLC, to Liberty Southern Partners LP).

At some point after having issued the leases, BLM examined the Second FS Report and its list of lands that were unavailable for leasing. Those unavailable lands included 506.0 acres of Tract H-20b described as sec. 54, lots 1-6, 11-12, and lots 7, 8 and 10 lying North and East of FS Road 120 and that part of lot 8 lying North and West of FS Road 172. This land description embraces all of the lands subject to MSES 057021. Other unavailable lands included 738 acres identified as “Sec. 15: All (Tract H-20b).” With the exception of sec. 6, this description encompasses part of the lands subject to MSES 057016.

On October 20, 2011, BLM issued two separate decisions to Liberty. One canceled MSES 057021 in its entirety and authorized a refund, stating that FS verified that the entire leased parcel was unavailable for leasing. The other decision canceled MSES 057016 in part, adjusted its acreage, and refunded a portion of the rental payment. This decision stated that FS advised BLM that the lease parcel was unavailable for leasing with the exception of 446.86 acres described as sec. 6 (all) (Tracts H-20b & H-84), T. 5 N., R. 1 W., Washington Meridian, Adams County, Mississippi. Liberty timely filed an appeal and request for a stay.

#### *Discussion*

Under the Mineral Leasing Act for Acquired Lands, the Department must obtain the consent of the surface management agency having jurisdiction over the involved lands before leasing those lands, and in the absence of such consent, the Department may not issue a lease. 30 U.S.C. § 352 (2006); *Beard Oil Co.*, 88 IBLA 268, 271 (1985). BLM has the authority to cancel an oil and gas lease if it was

issued improperly. 43 C.F.R. § 3108.3(d); *see Celeste C. Grynberg*, 169 IBLA 178, 183 (2006) (citing *Boesche v. Udall*, 373 U.S. 472, 478-79 (1963)), *aff'd*, *Grynberg v. Kempthorne*, No. 06-01878 (D. Colo. June 16, 2008). This authority arises from the power of the Secretary of the Interior to establish “necessary and proper rules and regulations” incident to mineral leasing on public lands. 30 U.S.C. § 189 (2006). An oil and gas lease on acquired lands is properly issued by BLM only “with the consent of the surface management agency.” 43 C.F.R. § 3101.7-1(a). That regulation also emphasizes that “National Forest System lands whether acquired or reserved . . . shall not be leased over the objection of the Forest Service.” *Id.* § 3101.7-1(c).<sup>4</sup>

In this case, despite the lack of clear communication between FS and BLM, the Second FS Report clearly demonstrates that FS objected to leasing the lands in most of MSES 057016 and MSES 057021. BLM’s subsequent issuance of these leases therefore was improper, and BLM corrected the error by canceling the leases as to the unavailable lands.

#### *Lease MSES 50829*

Liberty provides extensive argument with regard to a lease not at issue in this case, MSES 50829. Liberty asserts that BLM erroneously represented that the lease was in good standing, that Liberty relied on these representations when it acquired this lease, and that afterwards BLM issued a decision on March 9, 2011, finding that the lease terminated on February 1, 2006. SOR at 4-6. Liberty states that “[n]o opportunity to appeal was provided by this [March 9, 2011] decision.” SOR at 6. Presumably Liberty argues that BLM’s decision did not include an attachment or statement indicating that the decision could be appealed to the Board.

[1] We have consistently held that:

[W]hether BLM has included the appeals information [in a decision] is not dispositive because the Board has stated that failure to include the appeals paragraph will not deprive a party of its right of appeal. *Texas Oil & Gas Corp.*, 58 IBLA 175, 88 I.D. 879 (1981). Likewise, BLM’s inclusion of the appeals paragraph will not create an appeal right where none exists. *Phelps Dodge Corp.*, 72 IBLA 226 (1983).

*Hacienda del Cerezo*, 135 IBLA 277, 279 (1996). Nor will BLM’s failure to include appeals information preserve or extend an appellant’s right to appeal that would otherwise have expired as untimely.

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<sup>4</sup> A related regulation re-emphasizes that “[t]he authorized officer shall not issue a lease and shall reject any lease offer on lands to which the surface managing agency objects or withholds consent required by statute.” 43 C.F.R. § 3101.7-2(b).

Liberty's arguments regarding MSES 050829, and BLM's decision terminating it, are inapposite. To the extent Liberty's arguments are an attempt to appeal BLM's March 9, 2011, decision, such an appeal is untimely. The Board has no jurisdiction to entertain an appeal of a decision if the appeal was not properly filed within the 30-day time limit. 43 C.F.R. § 4.411(c). Liberty makes no showing that it, or anyone else, timely filed an appeal of BLM's March 9, 2011, decision. Therefore, the March 9, 2011, decision is final for the Department, and not at issue in this appeal.

*Leases MSES 057016 and MSES 057021*

With regard to the two leases at issue in this appeal, Liberty asserts that FS approved the leasing of the involved lands unequivocally, so its subsequent representation to BLM that it objected to such leasing should be barred. SOR at 16-17. Liberty attacks the underlying reason for FS' objection, asserting that it violates a statutory requirement "to insure the adequate utilization of the lands" which, in Liberty's opinion, requires leasing for oil and gas drilling in this case. SOR at 17-18; *see* 30 U.S.C. § 352 (2006). However, Liberty apparently ignores the fact that the statute prohibits mineral leasing unless each element of a two-element test is met. A lease cannot be issued without first obtaining the consent of the head of the relevant surface management agency, and then it will only be issued "subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered." 30 U.S.C. § 352 (2006). Liberty suggests that the statute *requires* the surface management agency consent to leasing if the lease promotes "adequate utilization of the lands."

[2] We reject Liberty's interpretation of the statute. Where the surface management agency objects to mineral leasing, BLM has no authority consider the objection non-binding, and BLM clearly has no authority to issue a lease in the face of such objection. Liberty correctly states that the Board does "not have jurisdiction over whether the Forest Service exceeded its authority in . . . [declaring certain lands as unavailable for leasing],<sup>5</sup> but it does have jurisdiction over whether such an action by the Forest Service should be binding on BLM." SOR at 18. We agree, and find that such an action *is binding* on BLM's authority to issue the leases involved here, regardless of FS' motivation. In fact, the FS exercises an effective veto over BLM's leasing of FS lands. *Colorado Environmental Coalition*, 125 IBLA 210, 215 (1993). If

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<sup>5</sup> Liberty described this somewhat more colorfully, as "a symbolic gesture in response to the concerns of environmental advocates regarding those lands[,] . . . effectively delegating the management of those lands to those advocates." SOR at 18. Of course, we express no opinion about the accuracy of Liberty's description, but the perceived motivation or objectives of the agency are irrelevant.

Liberty wishes to challenge FS' objection to leasing, it must avail itself of any administrative remedies provided by FS. 43 C.F.R. § 3101.7-3(b); *Colorado Environmental Coalition*, 125 IBLA at 217 (“[W]here the surface managing agency has required that certain stipulations be included in a lease or has consented or refused to consent to leasing, any appeal by an affected lease offeror is required to be pursuant to the administrative remedies provided by the surface managing agency”).

[3] Finally, a lease that is issued improperly “shall be subject to cancellation.” 43 C.F.R. § 3108.3(d). As we have said before:

Indeed, it is well established that the Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates, including administrative errors committed prior to lease issuance.

*Celeste C. Grynberg*, 169 IBLA at 183. In this case, BLM improperly issued the subject leases without the consent of the FS and acted properly to correct its mistake.

While we sympathize with Liberty in this case, and find troubling its assertions regarding the conduct of BLM both in its duty to promptly and accurately communicate with FS and in its duty to maintain accurate, publicly available records, we can offer no relief to Liberty. We find that BLM made no error and correctly canceled MSES 057021 in its entirety and MSES 057016 in part based on FS' objection to leasing the lands at issue.

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 decisions are affirmed and the petitions to stay are denied as moot.

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/s/  
H. Barry Holt  
Chief Administrative Judge

I concur:

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/s/  
James F. Roberts  
Administrative Judge