



RANDALL G. KNOWLES

187 IBLA 99

Decided February 23, 2016



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RANDALL G. KNOWLES

IBLA 2014-117

Decided February 23, 2016

Appeal from a February 20, 2014, Order by Administrative Law Judge Robert G. Holt dismissing appellant's appeal of a June 5, 2013, decision of the Lewiston Field Office, Bureau of Land Management (BLM), authorizing the demolition and draining of the Buffalo Wallow Reservoir. MT-060-13-01.

Affirmed.

1. Administrative Procedure: Generally--Administrative Procedure: Administrative Law Judges--Rules of Practice: Generally--Rules of Practice: Supervisory Authority of the Secretary

Under 43 C.F.R. § 4.474(a), an Administrative Law Judge's authority is limited to conducting hearings on appeals of agency grazing decisions, making findings of fact and conclusions of law, and issuing decisions. An Administrative Law Judge does not exercise supervisory authority over the Bureau of Land Management, and therefore when remanding a decision back to the Bureau of Land Management, an Administrative Law Judge cannot impose conditions on the agency upon remand.

APPEARANCES: Randall G. Knowles, Great Falls, Montana, *pro se*; Jessica M. Wiles, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Billings, Montana, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE SOSIN

Randall G. Knowles (appellant) has appealed from a February 20, 2014, Order issued by Administrative Law Judge (ALJ) Robert G. Holt. ALJ Holt's Order dismissed appellant's appeal of a June 5, 2013, decision of the Lewiston Field Office (Montana), Bureau of Land Management (BLM), authorizing the demolition and draining of the Buffalo Wallow Reservoir. ALJ Holt's Order also granted BLM's

motion to vacate and remand BLM's decision back to the agency for further consideration. For the reasons explained below, we affirm ALJ Holt's order.

Background

This case arises from BLM's June 5, 2013, decision to authorize the demolition and draining of the Buffalo Wallow Reservoir. The Reservoir is the primary water source for livestock and wildlife in the southern portion of the Whisker pasture in the BLM-administered North Crooked Creek Grazing Allotment, and has in the past been a high quality trout fishery. Because the Reservoir poses a safety hazard to the public due to its deterioration, however, BLM determined that it had "reached the end of its functional lifespan," and issued its decision authorizing the Reservoir's demolition. See BLM Decision, June 5, 2013, at 1, 3; see also Buffalo Wallow Reservoir Reconstruction Environmental Assessment, DOI-BLM-MT-L060-2011-005-EA (Mar. 12, 2013), at 3. Appellant filed with the Hearings Division an appeal and a petition for a stay of BLM's decision, and on August 22, 2013, ALJ Harvey C. Sweitzer granted the petition for a stay.

On February 18, 2014, BLM filed with the Hearings Division an Unopposed Motion to Vacate and Remand (Motion) the June 5, 2013, decision so that BLM could conduct additional environmental review and issue a new decision. In that filing, counsel for BLM stated that she had spoken to appellant and appellant represented that he did not oppose the Motion. See Motion at 2. Also on February 18, 2014, appellant filed a Reply to BLM's Motion (Reply). Therein, appellant stated that he did not object to a remand of BLM's decision, but requested that certain conditions be imposed on BLM during the remand period, including that BLM issue a new decision within one year and take steps to prevent further deterioration of the Reservoir. See Reply at 1-2.

On February 20, 2014, ALJ Holt granted BLM's Motion. ALJ Holt held that an ALJ "does not have authority to require BLM to adhere to a decision it no longer supports," and he had no authority to vacate BLM's decision with instructions to satisfy specific conditions. ALJ Holt's Order at 1-2. As explained by ALJ Holt:

An ALJ's authority is derived from express grants from Congress or from the Secretary. The regulations governing grazing procedure give authority for an ALJ to "make findings of fact and conclusions of law . . . and render a decision upon all material issues of fact and law presented on the record." 43 C.F.R. § 4.477(a). The regulations say nothing about authority to place conditions upon BLM without having conducted a hearing.

Id. at 2.

Appellant timely appealed from ALJ Holt's Order. Appellant states that an "unconditional remand" gives BLM the ability to "destroy the dam at Buffalo Wallow during the remand," and "take unlimited amounts of time during the remand," and asks the Board to impose his previously-requested conditions on the agency during the remand period. Notice of Appeal (NOA), dated Mar. 5, 2014, at 1-2.

Discussion

The issue before the Board is whether ALJ Holt erred in granting BLM's motion to vacate and remand its decision without imposing the conditions requested by appellant, and dismissing appellant's appeal.

[1] Under our regulation at 43 C.F.R. § 4.474(a), an ALJ's authority is limited to conducting hearings on appeals of grazing decisions, making findings of fact and conclusions of law, and issuing decisions. *See also* 43 C.F.R. § 4.477.¹ We agree with ALJ Holt that an ALJ's authority does not extend to imposing conditions on BLM for how it conducts business once a decision has been remanded back to the agency. Indeed, once an ALJ remands a decision back to the agency, the Hearings Division no longer has jurisdiction over the decision. Thus, an ALJ has no authority to enforce any conditions imposed upon an agency during remand. As we have previously explained, neither the Board nor an ALJ exercises supervisory authority over BLM, and, as such, "cannot manage the public lands as a proxy for BLM." *Southern Utah Wilderness Alliance*, 172 IBLA 183, 185 (2007). ALJ Holt therefore was correct in granting BLM's motion to vacate and remand its decision without imposing the conditions requested by appellant and dismissing appellant's appeal.

We note that appellant appears concerned that, without conditions imposed on BLM during the remand period, BLM may destroy the dam at Buffalo Wallow. NOA at 1. BLM, however, has represented that it will conduct additional environmental analysis and issue a new decision before taking any action. Moreover, BLM cannot take action at the Reservoir until the agency issues a new decision authorizing any such action. Such a decision will be appealable to this Board.

¹ In his Order, ALJ Holt cited to 43 C.F.R. § 4.477(a), which also identifies an ALJ's role as making findings of fact and conclusions of law and rendering decisions. The regulation cited by ALJ Holt, however, was amended in 2010. *See* 75 Fed. Reg. 64655 (Oct. 20, 2010). While the amendment did not substantively change the language of the previous regulation, it eliminated a second subsection of the rule, 43 C.F.R. § 4.477(b). As a result, the language quoted by ALJ Holt is now contained in 43 C.F.R. § 4.477.

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 decision appealed from is affirmed.

_____/s/
Amy B. Sosin
Administrative Judge

I concur:

_____/s/
Silvia M. Riechel
Administrative Judge