



WESTERN WATERSHEDS PROJECT, *ET AL.*
(ON RECONSIDERATION)

188 IBLA 211

Decided August 31, 2016



United States Department of the Interior
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WESTERN WATERSHEDS PROJECT, *ET AL.*
(ON RECONSIDERATION)

IBLA 2015-80-1

Decided August 31, 2016

Petition for reconsideration of the Board's decision in *Western Watersheds Project*, 187 IBLA 316 (2016), dismissing an appeal from a decision record of the Price (Utah) Field Office, Bureau of Land Management. DOI-BLM-UT-G023-2014-010-EA.

Petition for reconsideration denied.

1. Practice Before the Department;
Rules of Practice: Appeals: Statement of Reasons

Extraordinary circumstances must be present in order for the Board to grant reconsideration of a final decision. A petitioner seeking reconsideration of a Board decision, which summarily dismissed petitioner's appeal because a statement of reasons was not filed with the Board by one eligible to represent petitioner, must show extraordinary circumstances, not simply aver the absence of prejudice.

APPEARANCES: Neal Clark, Esq., Moab, Utah, for Southern Utah Wilderness Alliance; Cameron B. Johnson, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

On May 2, 2016, the Board issued a final decision dismissing an appeal of Southern Utah Wilderness Alliance (SUWA), one of the co-appellants for that appeal, because it had not signed the only Statement of Reasons (SOR) for the appeal, and the individual who did sign it was not qualified to represent SUWA.¹

¹ *Western Watersheds Project*, 187 IBLA 316 (2016).

On May 13, 2016, SUWA filed a “Motion for Leave to File a Statement of Reasons.” In an Order dated June 23, 2016, the Board construed the motion as a petition for reconsideration under 43 C.F.R. § 4.403, since we had already issued a final decision and SUWA’s motion seeks reconsideration and reversal of that decision. In that Order, we set forth a briefing schedule for the Bureau of Land Management’s (BLM) response to the petition for reconsideration. BLM filed a response opposing reconsideration.

Summary

Under 43 C.F.R. § 4.403(b), the Board may reconsider its decision under “extraordinary circumstances.” SUWA seeks reconsideration of the Board’s decision summarily dismissing its appeal on the basis that BLM will not be prejudiced by SUWA curing the defect in its SOR by filing a corrected SOR bearing the signature of one eligible to practice before the Board on behalf of SUWA. However, the Board’s decision is final for the Department and SUWA now must satisfy the regulatory criteria for a petition for reconsideration. SUWA’s assertion of lack of prejudice from correcting its filing deficiency does not demonstrate an extraordinary circumstance warranting reconsideration under Departmental regulations and Board precedent. Therefore, SUWA’s petition does not satisfy the regulatory requirement for reconsideration of our earlier decision and we deny SUWA’s petition for reconsideration.

Regulatory Standard for Reconsideration

The Board may reconsider its decision under “extraordinary circumstances.”² Under the Board’s regulations, extraordinary circumstances that may warrant granting reconsideration include: (1) error in the Board’s interpretation of material facts; (2) recent judicial development; (3) change in Departmental policy; or (4) evidence that was not before the Board at the time the Board’s decision was issued and that demonstrates error in the Board’s decision.³ As a general principle, if the motion cites extraordinary circumstances based on evidence that was not before the Board at the time the Board’s decision was issued and that demonstrates error in the Board’s decision, the movant must explain why the evidence was not provided to the Board during the course of the original appeal.⁴ The Board has exercised its authority to reconsider a decision due to extraordinary circumstances when the petitioner

² 43 C.F.R. § 4.403(b).

³ *Id.* at § 4.403(d).

⁴ *Id.* at § 4.403(e).

provided information that invalidated the premise upon which the Board based its decision.⁵

*The Original Filing of the SOR and SUWA's Request to Correct the SOR
Construed as a Petition for Reconsideration*

On September 3, 2015, the Board received the sole SOR for the appeal. In the Board's final decision, issued May 2, 2016, we dismissed SUWA from the appeal, *sua sponte*, as it had not signed the SOR for the appeal, and the non-attorney representative of co-appellant, Western Watersheds Project (WWP), who did sign the SOR, had not shown he had authority to represent SUWA under the applicable rules of representation.⁶ The Board cited the Departmental regulation requiring one seeking to represent an organization to be eligible to practice before the Department or in connection with a particular matter on behalf of the appellant⁷ and the rule providing that failure to file an SOR within the time required will subject the appeal to summary dismissal.⁸ We noted that SUWA was well aware of the requirements for practice before the Board, and explained that "although the [representation] rule at 43 C.F.R. § 1.3 'may seem harsh for occasionally penalizing an otherwise qualified appellant, its enforcement is necessary to protect those who do business with the Department against the risk of inadequate or false representation.'"⁹

SUWA moves to file a corrected SOR within 10 days, which would be signed by and limited to SUWA and would "mirror" the previously filed SOR "in all respects."¹⁰ SUWA points out that the Board has allowed late SORs in the past in the absence of prejudice to the opposing party, and that the failure to file an SOR merely subjects an appeal to dismissal, but does not require dismissal.¹¹ However, the cases SUWA cites for support are inapposite, as no Board decision had been issued in those cases, nor do

⁵ *Casey E. Folks, Jr. (On Reconsideration)*, 183 IBLA 359, 365 (2013); *Art Anderson (On Reconsideration)*, 182 IBLA 27, 30 (2012); *Debra Smith (On Reconsideration)*, 180 IBLA 107, 108 (2010); *Ulf T. Teigen (On Reconsideration)*, 159 IBLA 142, 144 (2003).

⁶ *WWP*, 187 IBLA at 324-27.

⁷ 43 C.F.R. § 1.3.

⁸ *Id.* at §§ 4.402(a), 4.412(c).

⁹ *WWP*, 187 IBLA at 326 (quoting *Native Ecosystems Council*, 185 IBLA 268, 272 n.5 (2015) and *Ganawas Corp.*, 85 IBLA 250, 251 (1985)).

¹⁰ Motion for reconsideration at 1, 3.

¹¹ *Id.* at 2 (citing *Southern Appalachian Mining Co. v. Office of Surface Mining, Reclamation and Enforcement*, 153 IBLA 312, 315 (2000); *Sierra Club Uncompahgre Group*, 152 IBLA 371, 375 (2000); *James C. Mackey*, 96 IBLA 356, 359 (1987)).

they relate to representation deficiencies. Moreover, as indicated, in an Order dated June 23, 2016, the Board construed SUWA's motion as a petition for reconsideration under 43 C.F.R. § 4.403. Accordingly, to be granted its petition seeking reconsideration and reversal of our final decision, SUWA must satisfy the regulatory criteria for reconsideration. It must demonstrate extraordinary circumstances.

*Ability to Cure Counsel Oversight Without Prejudice
Does Not Constitute "Extraordinary Circumstances"*

[1] SUWA emphasizes that the Board's authority to summarily dismiss the appeal was discretionary.¹² It asks us to reconsider that decision and allow it to cure its filing, asserting that BLM will suffer no prejudice. Stating it "fully acknowledges" its "glaring error," SUWA "submits that, *in toto*, the balance of harms favors allowing SUWA to file a corrected SOR and obtain a ruling from the Board on the merits of the appeal."¹³

SUWA's filing does not address the regulatory criteria for reconsideration of a Board decision. SUWA does not assert error in the Board's interpretation of material facts, information that invalidates the premise upon which the Board based its decision, or any other factor constituting extraordinary circumstances under Departmental regulations and Board precedent. SUWA asserts an absence of prejudice to BLM if it were allowed to properly file an SOR, but does not provide information that invalidates the premise upon which the Board based its decision--the representation regulation and Board precedent.¹⁴

Extraordinary circumstances must be present in order for the Board to grant reconsideration of a final decision.¹⁵ A petitioner seeking reconsideration of a Board decision, which summarily dismissed petitioner's appeal because the only SOR was

¹² Motion for reconsideration at 2.

¹³ *Id.* at 4.

¹⁴ See 43 C.F.R. § 1.3; *Peter J. Mehringer*, 177 IBLA 152, 153 n.1 (2009); *Antonio J. Baca*, 144 IBLA 35, 38 (1998) (cited in *WWP*, 187 IBLA at 326) (both involve failure to comply with the representation rule in the context of an SOR, and in neither did the Board require a showing of prejudice to the opposing party as a prerequisite to dismissal).

¹⁵ See 43 C.F.R. § 4.403(b); *Anadarko Petroleum Corp. (On Reconsideration)*, 188 IBLA 127, 128 (2016); *Kathleen Ness (On Reconsideration)*, 188 IBLA 63, 65 (2016).

filed with the Board by one ineligible to represent petitioner, must show extraordinary circumstances, not simply aver the absence of prejudice.

In conclusion, SUWA has not shown “extraordinary circumstances”¹⁶ that warrant granting reconsideration of the Board’s decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,¹⁷ the Board denies SUWA’s motion for reconsideration.

/s/
Christina S. Kalavritinos
Administrative Judge

I concur:

/s/
James F. Roberts
Deputy Chief Administrative Judge

¹⁶ 43 C.F.R. § 4.403(b).

¹⁷ 43 C.F.R. § 4.1.