BLACK HILLS PLATEAU PRODUCTION, LLC

188 IBLA 368 Decided September 28, 2016

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
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BLACK HILLS PLATEAU PRODUCTION, LLC

IBLA 2016-261 Decided September 28, 2016

Appeal from a decision of the Colorado State Office, Bureau of Land Management, dismissing a request for State Director Review of a decision concerning the suspension of operations and production for oil and gas leases. SDR CO-16-07.

Affirmed as Modified; Petition for Stay Denied as Moot

1. Rules of Practice: Appeals: Timely Filing

The Department of the Interior's regulations require that a request for State Director Review of an order or decision concerning a suspension of operations and production for federal oil and gas leases be filed within 20 business days after the order or decision was received. A request for State Director Review is properly dismissed as untimely when the request is filed more than 20 business days after a decision was received.

2. Estoppel

Estoppel against BLM in matters concerning the public lands is an extraordinary remedy, and must be based on affirmative misconduct, such as misrepresentation or concealment of material facts.

3. Estoppel

To establish a claim of estoppel against a party, an appellant must show that (1) the party knew the true facts; (2) the party intended its conduct to be acted upon or so acted that the appellant had the right to believe it was so intended; (3) the appellant was ignorant of the true facts; and (4) the appellant detrimentally relied on the party's conduct.

APPEARANCES: William E. Sparks, Esq., Denver, Colorado, for appellant; Danielle DiMauro, Esq., Office of the Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Summary

Black Hills Plateau Production, LLC (Black Hills) appeals from and petitions to stay the effect of a Bureau of Land Management (BLM) decision dismissing its request for State Director Review (SDR) on the basis that the request was not timely filed. The Department of the Interior's regulations require that a request for SDR of an order or decision concerning a suspension of operations and production (SOP) for federal oil and gas leases be filed within 20 business days after the order or decision was received. Because Black Hills did not file its request within that 20-day time period, we affirm BLM's decision dismissing the request and deny Black Hills' petition for a stay as moot.

BLM's Decisions

Black Hills requested an SOP for certain federal oil and gas leases in Moffat County, Colorado.[1] By decision dated June 1, 2016, the Field Manager of BLM's White River Field Office (WRFO) granted in part and denied in part Black Hills' request.[2] Although BLM's decision was labelled as having been sent certified mail, it was not.[3]

Counsel for Black Hills contacted the Field Manager via email on June 14, 2016, to inquire as to the date that the decision "was actually received by Black Hills."[4] In that email, counsel stated that Black Hills had received the SOP Decision, but there was no return receipt number, and therefore wrote "to check the date that it

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[1] Black Hills Plateau Production, LLC Notice of Appeal and Petition for Stay (Appeal) Ex. 5 ("Request for Lease Suspension of Operation and Production") (April 29, 2016).

[2] Appeal Ex. 3 (Field Manager, White River Field Office, Decision Granting in Part and Denying in Part Black Hills' Request for Lease Suspension of Operation and Production)(SOP Decision) (June 1, 2016).

[3] Appeal Ex. 4 (Email from Kent Walter, Field Manager, White River Field Office, to William Sparks, Counsel for Black Hills) (June 15, 2016)

[4] *Id*.

was actually received by Black Hills."[5] In response, BLM's Field Manager stated that there was no tracking number and that "it is my decision that the 20 day period should begin June 14, 2016 since you have indicated that Black Hills does have the letter as of that date."[6]

Black Hills requested SDR of the SOP Decision on July 13, 2016.[7] BLM's Acting Deputy State Director responded with a decision dismissing Black Hills' request on the basis that it was "not timely filed in accordance with 43 C.F.R. 3165.3(b) . . . ."[8] He reasoned that the SOP Decision was mailed on June 2, 2016, and that under 43 C.F.R. § 3165.3(a), in the absence of a verifiable delivery date, service on Black Hills was deemed to have occurred on June 13, 2016, which was 7 business days after the Decision was mailed.[9] He further calculated that the 20 business day deadline under 43 C.F.R. § 3165.3(b) for requesting SDR of the decision therefore fell on July 12, 2014, the day before Black Hills submitted its request.[10] The Deputy State Director concluded that Black Hills did not file its request for SDR by the deadline and that, therefore, it must be dismissed.[11]

Black Hills appealed and petitioned to stay the SDR Decision. BLM filed a response to the petition for stay,[12] to which Black Hills filed a reply.[13]

Black Hills Did Not File Its Request by the Deadline

Black Hills first asserts that the Deputy State Director erred in issuing the decision because "BLM failed to follow its own regulations and Black Hills' SDR, therefore, was timely."[14]

BLM's rationale supporting its decision was in error because the Departmental regulation at 43 C.F.R. § 3165.3(a) did not apply in this situation. That regulation

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[5] *Id*.
[6] *Id*.
[7] Appeal Ex. 2 (Black Hills' Request for State Director Review) (July 13, 2016).
[8] *Id*., Ex. 1 (BLM Decision SDR CO-16-07 "Request for State Director Review Dismissed") (SDR Decision) at 1 (July 26, 2016).
[9] *Id*.
[10] *Id*.
[11] *Id*.
[12] Bureau of Land Management's Response to Petition for Stay (Sept. 6, 2016).
[13] Black Hills Plateau Production LLC's Reply to BLM's Response to Petition for Stay (Sept. 16, 2016).
[14] Appeal at 9, 10-13.

applies to orders and notices of violation of the regulations. The SOP Decision was neither. BLM should have applied 43 C.F.R. § 3165.3(b), which applies to requests for SDR of decisions like the SOP Decision.

BLM's error did not, however, render Black Hills' filing timely. Under 43 C.F.R. § 3165.3(b), which governs the filing of requests for SDR, Black Hills was required to file its request within 20 business days of receiving the SOP Decision. In its Appeal, Black Hills states that it received the SOP Decision on June 13, 2016.[15] Using the actual date of receipt attested to by appellant, the 20-day deadline was July 12, 2016, one day before Black Hills filed its request for SDR. Accordingly, Black Hills' SDR request was not timely filed pursuant to 43 C.F.R. § 3165.3(b). Black Hills was responsible for filing its SDR request by the deadline imposed by 43 C.F.R. § 3165.3(b) because all persons dealing with the Government are presumed to have knowledge of relevant statutes and regulations.[16]

In conclusion, the agency correctly calculated the deadline for requesting SDR as July 12, 2016, and correctly concluded that Black Hills had failed to file by the deadline.

The Field Manager Could Not Change the Filing Deadline

Black Hills also argues that it timely filed its SDR request because the Field Manager had the discretion to determine the effective date of the SOP Decision under 43 C.F.R. § 3103.4-4.[17] That is incorrect. That regulation provides that an authorized officer has the discretion to determine when a lease suspension takes effect.[18] The Field Manager did exactly that in the SOP Decision by determining that the suspension for Lease COC46741 would be effective April 29, 2016.[19] The regulation and the discretion it affords have no bearing on the date Black Hills received the SOP Decision and the resulting 20-day deadline for requesting SDR of that decision.

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[15] Appeal at 6.

[16] *See, e.g., Michael Warholic*, 186 IBLA 358, 361 (2015) (quoting *Fed. Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 385 (1947)).

[17] Appeal at 9, 14-18.

[18] 43 C.F.R. § 3103.4-4.

[19] SOP Decision at unp. 2.

Because Black Hills Did Not File its SDR Request by the Deadline, BLM Properly Dismissed the Request as Untimely

[1] We have consistently held that a request for SDR is properly dismissed as untimely when it is filed more than 20 business days after a decision was received.[20] Black Hills filed its SDR request 21 days after it received the SOP Decision, and the erroneous information provided by the Field Manager did not change that fact. Therefore, BLM properly dismissed the SDR request because it was untimely filed.[21]

BLM is Not Estopped from Dismissing Black Hills' SDR Request as Untimely

Black Hills contends that BLM is estopped from dismissing its SDR request as untimely based on the email from BLM's Field Manager to Black Hills' counsel misinforming it of the deadline for its SDR Request.[22] We disagree. The email does not support a claim of estoppel.

[2][3] Estoppel is an extraordinary remedy when applied against the United States.[23] Estoppel must be based upon, among other criteria, affirmative misconduct, such as an affirmative misrepresentation or concealment of material facts by a Federal agency, upon which the party asserting estoppel detrimentally relied.[24] To establish a claim of estoppel, an appellant must show: (1) BLM knew the true facts; (2) BLM intended its conduct to be acted upon or so acted that the appellant had the right to believe it was so intended; (3) the appellant was ignorant of the true facts; and (4) the appellant detrimentally relied on BLM's conduct.[25]

Black Hills does not establish a claim of estoppel because it does not show that BLM knew the true facts controlling the deadline. Black Hills states that it received the SOP Decision on June 13, 2016, but Black Hills does not state (and there is no record evidence demonstrating) that it ever advised the Field Manager of when it

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[20] *Crystal River Oil & Gas, LLC,* 180 IBLA 139, 143-44 (2010); *National Wildlife Federation, et al.*, 162 IBLA 263, 266 (2004); *Southern Utah Wilderness Alliance,* 148 IBLA 117, 118-19 (1999).

[21] SDR Decision at 2.

[22] Appeal at 9, 18-20.

[23] *See, e.g., Larry and V. Christina Westlake*, 188 IBLA 110, 113 (2016); *Jack C. Scales*, 182 IBLA 174, 180 (2012).

[24] *See, e.g., Larry and V. Christina Westlake*, 188 IBLA at 113; *Ron Coleman Mining, Inc.*, 172 IBLA 387, 391 (2007).

[25] *See, e.g., Donna J. Vrooman*, 186 IBLA 241, 250 (2015)(quoting *Texkon Onshore Oil & Gas, LLC,* 184 IBLA 134, 143 (2013)); *Ron Coleman Mining, Inc.*, 172 IBLA at 391.

received the SOP Decision.[26] As knowledge of the true facts is one of the elements necessary to establish estoppel against the Government, Black Hills does not establish that the Field Manager's email can serve to estop the Government from determining Black Hills SDR request was untimely.[27]

In conclusion, Black Hills has not demonstrated that BLM erred in dismissing its SDR request on the basis that it was not timely filed, nor has it shown that estoppel prevents BLM from dismissing the request. As discussed above, while BLM calculated the deadline based, in part, on the incorrect subsection of 43 C.F.R. § 3165.3, the agency nonetheless correctly calculated the deadline as July 12, 2016, and correctly concluded that Black Hills had failed to file by the deadline. We therefore affirm the Deputy State Director's SDR CO-16-07 Decision, as modified, to rely on 43 C.F.R. § 3165.3(b) for its calculation of the due date and determination that Black Hills' request for SDR should be denied as untimely.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,[28] we deny Black Hills' appeal, deny its petition for stay as moot, and affirm BLM's SDR CO-16-07 Decision as modified.

/s/
Christina S. Kalavritinos
Administrative Judge

I concur:

/s/
James K. Jackson
Administrative Judge

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[26] *Compare* Appeal at 6 ("The Black Hills' land department received the Decision Denying SOP on June 13, 2016") with *id*. at Ex. 4 (Black Hills' counsel stating that email was "to check the date that [the decision] was actually received by Black Hills.")
[27] *See, e.g., Donna J. Vrooman*, 186 IBLA at 250; *Ron Coleman Mining, Inc*., 172 IBLA at 391.
[28] 43 C.F.R. § 4.1.