SOJITZ ENERGY VENTURE, INC.

IBLA 2018-82 Decided May 8, 2018

Appeal of, and petition to stay, an order to decommission facilities, wells, and pipelines on the Outer Continental Shelf. OCS-G 19822.

Order vacated; request for stay denied as moot.

1. Administrative Practice;
Administrative Procedure; Administrative Review;
Rules of Practice; Appeals: Effect of;
Rules of Practice, Appeals: Jurisdiction

When an appeal is filed with the Board of Land Appeals, subject matter jurisdiction is lodged with the Board, suspending the authority of the deciding official to exercise further decision-making jurisdiction over matters directly relating to the subject of the decision on appeal. The appeal does not suspend the deciding official’s authority to act on matters that are functionally independent from the subject of the appeal.


OPINION BY ADMINISTRATIVE JUDGE IDZIOREK

Sojitz Energy Venture, Inc. appeals and petitions to stay the effect of a January 25, 2018, order by the Bureau of Safety and Environmental Enforcement (BSEE) to decommission facilities, wells, and pipelines on the Outer Continental Shelf (OCS).
SUMMARY

When an appeal is properly taken from a bureau decision, the bureau loses jurisdiction over the subject matter of the appeal. Here, BSEE ordered Sojitz to maintain and monitor certain facilities on the OCS, and Sojitz appealed. A year later, while the appeal was still pending, BSEE ordered Sojitz to decommission the same facilities. Because the subject matter of the two orders is the same, the orders are not functionally independent. BSEE therefore did not have jurisdiction to issue the decommissioning order. Accordingly, we vacate the decommissioning order, and deny the request for stay as moot.

BACKGROUND

On December 23, 2016, BSEE ordered Sojitz to maintain and monitor facilities, wells, and pipelines located on lease OCS-G 19822 on Ship Shoal Area Block 358 on the Gulf of Mexico OCS (Maintenance Order). BSEE issued this order because the lessee at the time had declared bankruptcy and defaulted on its maintenance obligations, and Sojitz is a prior lessee of the lease. Sojitz appealed the Maintenance Order. In response to a joint motion by the parties, the Board stayed the effect of the Maintenance Order and suspended the appeal until March 8, 2018. In a joint status report filed on March 6, 2018, the parties stated that “Sojitz will be jointly seeking the Board to enter a further stay of this proceeding,” but Sojitz has not yet done so.

Over a year after it issued the Maintenance Order, and while the appeal of that order was still pending, BSEE issued the order subject to the current appeal. In the January 25, 2018, order, BSEE ordered Sojitz to maintain, monitor, and decommission the same facilities, wells, and pipelines (Decommissioning Order). BSEE issued the Decommissioning Order after the lease had expired and the lessee had defaulted on its obligation to decommission. As a prior lessee of the lease, Sojitz is responsible for any decommissioning obligations it accrued under BSEE

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1 Maintenance Order at 1-2 (Dec. 23, 2016).
3 IBLA 2017-112, Order: Joint Motion to Suspend Granted: Case Suspended: Status Reports Ordered (Mar. 8, 2017).
5 Decommissioning Order at 1-2 (Jan. 25, 2018).
6 Id. at 1; Serial Register Page for lease OCS-G 19822 (noting termination on Apr. 25, 2017).
regulations at 30 C.F.R. § 250.1702. Sojitz appealed the Decommissioning Order and petitioned to stay its effect. The stay petition has been briefed and is pending before the Board.

DISCUSSION

When an Appeal is Properly Taken from a BSEE Decision, BSEE Loses Jurisdiction over Matters Directly Relating to the Subject of the Decision on Appeal

[1] When a party appeals a bureau decision to the Board, jurisdiction over the subject of the decision is transferred to the Board, and the bureau’s jurisdiction over matters directly relating to that subject is suspended. The bureau can, however, exercise jurisdiction to make decisions that are “functionally independent from the subject of the appeal.” But the bureau “cannot change any aspect of the decision on appeal until jurisdiction is restored to it.”

For example, the Board has found that a decision to take emergency action after a fire to temporarily close grazing allotments is functionally independent from a decision to authorize the renewal of grazing permits on the same allotments: “The two types of decisions may complement each other, but the short-term emergency actions are not dependent upon the [permit authorizations], which are part of a larger program intended to improve range resiliency and health,” and the decisions can proceed independently. Also, the Board has found that a decision to approve full-field development of one oil and gas formation is independent of a decision to approve drilling to test a different formation in the same geographic area; approval of one “did not hinge on” approval of the other. Therefore, in these cases the bureau was not precluded from issuing both decisions, even though an appeal of one was pending before the Board.

Conversely, the Board has held that a bureau may not issue a decision that modifies an earlier decision on appeal to the Board because the decisions are not functionally independent. For example, a bureau does not have jurisdiction to

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9 McMurry Oil Co., 153 IBLA at 396.
10 Chipmunk Grazing Association, Inc., 188 IBLA at 44.
11 McMurry Oil Co., 153 IBLA at 397.
vacate a decision pending before the Board. Instead, the bureau must ask the Board to vacate the bureau's original decision or ask the Board to remand the case to allow the bureau to withdraw or modify its decision.

Because BSEE's Decommissioning Order and Maintenance Order Relate Directly to the Same Subject Matter, They Are Not Functionally Independent

The question is whether BSEE had jurisdiction to issue its Decommissioning Order while the appeal of its Maintenance Order was pending before the Board. If the Decommissioning Order is functionally independent from the Maintenance Order, then BSEE had jurisdiction to issue the Decommissioning Order, and we can proceed to adjudicate Sojitz's petition for stay. If the orders are not functionally independent, then BSEE did not have jurisdiction to issue the Decommissioning Order, and we must vacate it.

BSEE's Maintenance Order requires Sojitz to maintain and monitor a lease, and BSEE's Decommissioning Order requires Sojitz to maintain, monitor, and decommission the same lease. The premise of both orders, and the point of contention on appeal, is BSEE's authority to order Sojitz to take action on the lease in light of the bankruptcy proceedings. The subject of the Maintenance Order—the responsibility of a particular prior lessee for facilities on a lease—is the same as the subject of the Decommissioning Order.

Because BSEE's Maintenance and Decommissioning Orders both relate directly to the same subject, they are not functionally independent, and BSEE therefore did not have jurisdiction to issue the Decommissioning Order. The appeal of the Maintenance Order must be resolved before BSEE may issue additional orders related to Sojitz's maintenance, monitoring, or decommissioning of the lease. Consequently, we must vacate BSEE's Decommissioning Order.

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13 Melvin N. Barry, 97 IBLA at 361.
14 See Petition for Stay at 8-12 (arguing that Sojitz is likely to succeed on the merits because the bankruptcy court has exclusive jurisdiction and because BSEE failed to determine whether Bennu, who had defaulted on the maintenance and decommissioning obligations, was qualified to hold the lease).
Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,\textsuperscript{15} we vacate BSEE's Decommissioning Order and deny the request for stay as moot.

/s/
Silvia Riechel Idziorek
Administrative Judge

I concur:

/s/
Amy B. Sosin
Acting Deputy Chief Administrative Judge

\textsuperscript{15} 43 C.F.R. § 4.1.