CIMAREX ENERGY CO., ET AL.

IBLA 2018-105 & 2018-106

Appeals of, and petitions to stay, orders to decommission facilities, wells, and pipelines on the Outer Continental Shelf. OCS-G 19822 & OCS-G 26078.

Orders vacated; requests 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

Cimarex Energy Co. and Magnum Hunter Production, Inc. (collectively, Cimarex) appeal and petition to stay the effect of two January 25, 2018, orders 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 Cimarex to maintain and monitor certain facilities on the OCS (Maintenance Orders), and Cimarex appealed. A year later, while those appeals were still pending before the Board, BSEE ordered Cimarex to decommission those same facilities (Decommissioning Orders). Because the subject matter of the Maintenance Orders and Decommissioning Orders is the same, the Orders are not functionally independent. BSEE therefore did not have jurisdiction to issue the Decommissioning Orders. Accordingly, we vacate the Decommissioning Orders and deny the requests for stay as moot.

BACKGROUND

On December 23, 2016, BSEE issued two orders to Cimarex to maintain and monitor facilities, wells, and pipelines located on leases OCS-G 26078 and OCS-G 19822 on Ship Shoal Area Blocks 351 and 358, respectively, on the Gulf of Mexico OCS (Maintenance Orders).\(^1\) BSEE issued these orders because the lessee at the time had declared bankruptcy and defaulted on its maintenance obligations, and Cimarex is a prior lessee of these leases.\(^2\) Cimarex (along with The Northwestern Mutual Life Insurance Company and Union Oil Company of California for lease OCS-G 19822) appealed the Maintenance Orders. In response to joint motions by the parties, the Board stayed the effect of the Maintenance Orders and suspended those appeals until June 6, 2018.\(^3\)

Over a year after it issued the Maintenance Orders, and while the appeals of those orders were still pending, BSEE issued the orders subject to the current appeals. In these January 25, 2018, orders, BSEE ordered Cimarex to maintain, monitor, and decommission the same facilities, wells, and pipelines

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\(^1\) Maintenance Orders at 1-2 (Dec. 23, 2016) (one order for each lease).


\(^3\) Order: Joint Motion to Continue Stay and Suspension Granted (IBLA 2017-109 & 2017-111) (Mar. 13, 2018).
BSEE issued the Decommissioning Orders after the leases had expired and the lessee had defaulted on its obligation to decommission.\(^4\) As a prior lessee of the two leases, Cimarex is responsible for any decommissioning obligations it accrued under BSEE regulations at 30 C.F.R. § 250.1702. Cimarex appealed the Decommissioning Orders and petitioned to stay their effect. The stay petitions have been briefed and are 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.\(^6\) The bureau can, however, exercise jurisdiction to make decisions that are "functionally independent from the subject of the appeal."\(^7\) But the bureau "cannot change any aspect of the decision on appeal until jurisdiction is restored to it."\(^8\)

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.\(^9\) 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.\(^10\) Therefore, in those cases the

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\(^4\) Decommissioning Orders at 1 (Jan. 25, 2018).

\(^5\) *Id.*: Serial Register Page for lease OCS G 19822 (noting termination on Apr. 25, 2017); Serial Register Page for lease OCS G 26078 (noting termination on Apr. 26, 2017).

\(^6\) *Chipmunk Grazing Association, Inc.*, 188 IBLA 35, 43 (2016).


\(^8\) *McMurry Oil Co.*, 153 IBLA at 396.

\(^9\) *Chipmunk Grazing Association, Inc.*, 188 IBLA at 44.

\(^10\) *McMurry Oil Co.*, 153 IBLA at 397.
bureau was not precluded from issuing both decisions, even though an appeal of one decision 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 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 Orders and Maintenance Orders Relate Directly to the Same Subject Matter, They Are Not Functionally Independent

The question is whether BSEE had jurisdiction to issue its Decommissioning Orders while the appeals of its Maintenance Orders were pending before the Board. If the Decommissioning Orders are functionally independent from the Maintenance Orders, then BSEE had jurisdiction to issue the Decommissioning Orders, and we can proceed to adjudicate Cimarex's petitions for stay. If the orders are not functionally independent, then BSEE did not have jurisdiction to issue the Decommissioning Orders, and we must vacate them.

BSEE's Maintenance Orders require Cimarex to maintain and monitor two leases, and BSEE's Decommissioning Orders require Cimarex to maintain, monitor, and decommission the same leases. The premise of both sets of orders, and the point of contention on appeal, is BSEE's authority to order Cimarex to take action on those leases in light of the bankruptcy proceedings. The subject matter of the appeals of the Maintenance Orders—the responsibility of particular prior lessees for facilities on a lease—is the same as the subject matter of the appeals of the Decommissioning Orders.

Because BSEE's Maintenance and Decommissioning Orders relate directly to the same subject, they are not functionally independent, and BSEE therefore did not have jurisdiction to issue the Decommissioning Orders. The appeals of the Maintenance Orders must be resolved before BSEE may issue additional orders.

12 *Melvin N. Barry*, 97 IBLA at 361.
13 Petition for Stay (IBLA 2018·105) at 6·8; Petition for Stay (IBLA 2018·106) at 6·9.
related to Cimarex's maintenance, monitoring, or decommissioning of the leases. Consequently, we must vacate BSEE's Decommissioning Orders.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,\textsuperscript{14} we vacate BSEE's Decommissioning Orders and deny the requests for stay as moot.

\textit{\textbackslash/s/}

Silvia Riechel Idziorek
Administrative Judge

I concur:

\textit{\textbackslash/s/}

Amy B. Sosin
Acting Deputy Chief Administrative Judge

\textsuperscript{14} 43 C.F.R. § 4.1.