JAMES F. KOHLER

193 IBLA 34               Decided June 15, 2018
Appeal from a decision of the Utah State Office, Bureau of Land Management, declining to process a potassium prospecting permit application absent submission by the applicant of a request to estimate surveying and other processing costs and payment of the estimated costs. UTU-88236.

Set aside and remanded.

1. Administrative Procedure: Decisions; Bureau of Land Management; Delegation of Authority; Potassium Leases and Permits: Permits

A BLM decision declining to process a potassium prospecting permit application will be set aside if it is issued by a BLM employee who does not have the delegated authority to so act and decide the matter. In such cases, the decision is of no legal effect.

APPEARANCES: James F. Kohler, pro se; Christopher J. Morley, 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 JACKSON

James F. Kohler has appealed from a decision by the Minerals Branch Chief, Utah State Office, Bureau of Land Management (BLM), declining to process his potassium prospecting permit application (PPA), UTU-88236, pending Kohler’s requesting and receiving a BLM estimate of surveying and other costs associated with processing his application and his paying those estimated costs to BLM.
But since the Branch Chief was not delegated the authority to act on behalf of the Secretary of the Interior and decide this matter, the decision on appeal is of no legal effect and must be set aside, and the case will be remanded to BLM for appropriate action.

BACKGROUND

Kohler’s PPA was for 2,480 acres of unsurveyed public land in protracted secs. 1 and 11-15, T. 1 S., R. 13 W., Salt Lake Meridian, Tooele County, Utah, pursuant to Subchapter IX of the Mineral Leasing Act (MLA) and its implementing regulations. His application sought permission to prospect for valuable deposits of potassium, which could support his then obtaining a potassium preference right lease (PRL) under the MLA. Along with his PPA, which was on BLM Form 3510-1, Prospecting Application and Permit (March 2010), Kohler paid his first year’s rental ($1,240) required by 43 C.F.R. § 3505.12. He submitted a revised PPA on December 10, 2010, as permitted by 43 C.F.R. § 3505.30.

The Minerals Branch Chief at the Utah State Office responded to the PPA by issuing the decision now on appeal, which informed Kohler that since his PPA embraced unsurveyed lands, he must pay for a BLM survey before BLM would continue processing his application. The Branch Chief’s decision provided Kohler 30 days to request a survey estimate from BLM before his application would be rejected, and explained his right to appeal the decision to the Board.

Kohler did not request a survey estimate and instead timely appealed from the BLM Decision and filed a statement of reasons (SOR); BLM responded on September 17, 2015 (Answer).

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2 BLM Decision, Surveying of Lands on Prospecting Permits Required, dated May 14, 2015, at 1 (citing 43 C.F.R. § 3503.33); see id. (“Until the BLM receives the funds and a proper account is established, the BLM cannot commence a survey or process your application.”); 43 C.F.R. § 3503.33 (“All leased areas must be officially surveyed to BLM standards. If you are applying for a permit or lease on unsurveyed or protracted lands, you must pay for the survey. If BLM intends to issue a lease by competitive bidding, we will pay for surveying the lands.”).
3 BLM Decision at 2
DISCUSSION

Kohler principally objects to being required to pay the estimated cost of BLM performing a survey of his applied-for lands before it would continue processing his application and BLM rejecting his PPA if he did not request a BLM estimate of those survey costs within 30 days. He makes three arguments on appeal: (1) "The decision was issued without any authority to sign the decision"; (2) "The requirement that lands be surveyed applies to the issuance of a lease, not a prospecting permit"; and (3) "The BLM is improperly using the provisions of the case-by-case fee processing process to reject a prospecting permit application." Since the BLM Decision "has no legal basis" and BLM failed to process this PPA "in accordance with the regulations and established guidelines," Kohler asks that BLM's decision be set aside and the case remanded for processing of his PPA. In its Answer, BLM responds only to the second issue raised on appeal, stating that the "other arguments are ancillary to [Kohler's] main argument about payment for a survey[...]." Because we resolve this appeal on the first issue and find the BLM Decision must be set aside, we need not address Kohler's other arguments on appeal.

The Secretary of the Interior has delegated his authority to implement the Mineral Leasing Act to the Assistant Secretary – Land and Minerals Management. The Assistant Secretary, in turn, has delegated that authority to the Director of BLM. Redelegations from the Director of BLM to State Directors and other BLM employees are documented in the BLM Manual; redelegations from the State Directors are documented in State Office supplements to the BLM Manual.

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4 See SOR at 3 ("Because no authority exists to require an individual seeking a prospecting permit to survey the lands encompassed in the permit, the appellant has appealed to this Board to declare unlawful and set aside the Decision.").
5 Id. at 3, 5-6; see id. at 3 ("The current Utah Index for BLM Manual Section 1203 indicates that the authority to approve actions relating to the issuance of prospecting permits and exploration licenses on Public Doman and Acquired Lands is delegated from the State Director to the Deputy State Director, Lands and Minerals, in the State Office and [to] District and Monument Managers in the field.").
6 Id. at 7.
7 Answer at 3; see id. at 2 ("43 C.F.R. § 3503.33 clearly states that when applying for either a permit or a lease, the applicant must pay for a survey.").
9 235 DM 1.1K (effective Oct. 5, 2009).

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In support of his argument, Kohler cites BLM Manual MS-1203 as delegating the authority to act on PPAs from the BLM Director to BLM State Directors, and he cites the Utah Index for BLM Manual Section 1203 as re-delegating the Utah State Director’s authority over “all action matters related to issuance of prospecting permits” to the Deputy Utah State Director, Lands and Minerals, and to all District/Monument Managers.\textsuperscript{11} Since Utah Manual Supplement 1203 does not show the authority to act on PPAs was re-delegated to any other position in the Utah State Office (e.g., Chief of its Minerals Branch), Kohler claims the BLM Decision “is illegal and must be set aside.”\textsuperscript{12}

While neither party provided us with a copy of BLM’s delegation manual or its Utah supplement, we were able to locate them on an internal BLM website.\textsuperscript{13} Based on our review of the manual and its supplement, we find Kohler accurately described delegated and re-delegated authority to act on PPAs in Utah: The BLM Manual re-delegated from the BLM Director to the State Directors the authority to “Approve all action matters related to issuance of prospecting permits and exploration licenses on Public Domain and Acquired Lands”; Utah Manual Supplement 1203 re-delegated the Utah State Director’s authority to so act to the Utah Deputy State Director for Lands and Minerals, to Utah District Managers, and to Utah Monument Managers.\textsuperscript{14} However, there has been no redelegation of that authority to the Minerals Branch Chief of the Utah State Office.\textsuperscript{15}

Under similar circumstances involving MLA decisions, the Board has held:

If a decision is not issued by an employee with delegated authority to issue it, then the action does not bind the Department and is not properly considered a decision of the BLM. The purported decision therefore has no legal effect, and the Board properly sets it aside and remands it for further action.\textsuperscript{16}

\textsuperscript{11} SOR at 3.
\textsuperscript{12} Id.
\textsuperscript{14} See BLM Manual MS-1203, Appendix 13; Utah Supplement at 45.
\textsuperscript{15} See Utah Supplement at 2.22, 9, 45.
\textsuperscript{16} WildEarth Guardians, 189 IBLA 274, 279 (2017); WildEarth Guardians, 187 IBLA 349, 353 (2016).
In this case, the Chief, Minerals Branch, Utah State Office, the BLM official who issued the BLM Decision, simply did not have the authority to issue that decision, which is an action related to issuance of prospecting permits.\textsuperscript{17} Since he lacked the authority to act, his decision has no legal effect and must be set aside, and this matter is therefore remanded to BLM for further action.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,\textsuperscript{18} the decision appealed from is set aside and the matter remanded to BLM.

I concur:

Amy B. Sosin
Administrative Judge

\textsuperscript{17} See WildEarth Guardians, 189 IBLA at 281; WildEarth Guardians, 187 IBLA at 351 ("Delegations from the State Director are documented in State Office supplements to the BLM Manual."); Utah Manual Supplement at 45.

\textsuperscript{18} 43 C.F.R. § 4.1.